THE BASIC COURT OF MITROVICË/MITROVICA
Case: C.nr.221/2012
Date: 12th December 2013

THE BASIC COURT OF MITROVICË/MITROVICA acting in the first instance through the EULEX Civil Judge ROSITZA BUZOVA and the Court Recorders VALENTINA GASHI and STEPHAN PARKINSON in the case of the claimant "NRRY" L.L.C. - Mitrovicë/Mitrovica with a legal representative NK – Director from Mitrovicë/Mitrovica and authorized representative Lawyer RD from Prishtinë/ Priština against the respondent NPT "F" - Mitrovicë/Mitrovica, personal business enterprise with Owner KB from Mitrovicë/Mitrovica with authorized representative Lawyer HA from Mitrovicë/Mitrovica, for the release of immovable property - business premise - subject of Leasehold with legal basis Section 4 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45, in conjunction with Article 93 of the Law No. 03/L-154 on Property and Other Real Rights (Official Gazette No. 57/2009) ("LPORR"), and value of the contest 211 111 Euros, after main hearing concluded on 12th December 2013 pursuant to Article 160, paragraphs 1 – 5 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"), on 12th December 2013 renders the following

JUDGMENT

I. The statement of the claim filed by the claimant "NRRY" L.L.C. – Mitrovicë/ Mitrovica, "Agim Hajrizi" Square n/n, business nr.70866463, represented by NK – Director and Owner, ID personal nr.1170812600 is **APPROVED** as grounded, and the respondent NPT "F" – Mitrovicë/Mitrovica, "Mehë Uka" Square, business nr.70134943 with Owner KB, ID personal nr.1020661689 is **OBLIGED** pursuant to Section 4 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45, in conjunction with Article 93 the Law No. 03/L-154 on Property and Other Real Rights to release as illegally possessed the business premise located in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n with a surface of 242 m^2, on the ground floor, registered in Certificate Nr. UL-71208072-07105 for the immovable property rights of the Municipal Cadastral Office - Mitrovicë/Mitrovica as Part of building with unit nr.O-71208072-00548-1-15-0-48, by emptying this immovable

property from people and items and handing over its possession to the claimant as its Leaseholder within a time period of fifteen (15) days after the judgment has become final under the threat of compulsory execution.

II. The respondent NPT "F" – Mitrovicë/Mitrovica, "Mehë Uka" Square, business nr.70134943 with Owner KB, ID personal number 1020661689 is hereby **OBLIGED** to pay to the claimant "NRRY" L.L.C. – Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n, business nr.70866463, represented by NK – Director and Owner, ID personal nr.1170812600, procedural expenses in the total amount of **1 297.20 Euros** (one thousand two hundred and ninety seven Euros and twenty cents) in accordance with Article 452, paragraph 1 LCP.

REASONING

I. PROCEDURAL BACKGROUND - CLAIMANT'S CLAIM; RESPONDENT'S REPLY

1. By the claim, filed on 19th September 2012 and precised by submission, dated 7th October 2013 according to Article 102, paragraphs 1 - 2 LCP, "NRRY" L.L.C. – Mitrovicë/Mitrovica as claimant alleges to have in its 99-years Leasehold the business premise, located in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n, with a surface of 242 m^2, registered in Certificate Nr. UL-71208072-07105 for the immovable property rights of the Municipal Cadastral Office - Mitrovicë/Mitrovica, dated 29th August 2012 as Part of building with unit nr.O-71208072-00548-1-15-0-48-0, actual use – local, ground floor. The claimant contends to have acquired this Leasehold on 13th August 2012 based on Agreement for sale of shares, Declaration on transfer of assets and obligations, Declaration on transfer of real property, and Ratification of these sales documents by the Privatization Agency of Kosovo ("PAK"). However, the claimant could not use this business premise after its privatization as the respondent NPT "F" with Owner KB, previously placed inside, continued to use it for his needs without any legal ground after 1st September 2012, refusing to voluntarily vacate it. The *statement of the claim* is the respondent to be obliged to release as illegally possessed this immovable property by emptying it from people and items and handing it over in possession and use to the claimant as its Leaseholder pursuant to Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, read in conjunction with Article 93 LPORR within 15 days after the judgment has become final with reimbursement of the costs of the proceedings.

2. The respondent – the personal business enterprise NPT "F" – Mitrovicë/ Mitrovica with Owner KB submitted on 30th October 2013 within the legal deadline prescribed by Article 395, paragraph 1 LCP his written reply under Article 396 LCP, contesting the claim as ungrounded. The respondent defends stating that he has been using the business premise for many years; substantial investments have been made in it with his financial means; 15 – 20 workers have been employed there with families depending on their incomes. Contrary to the tradition, before buying the property the claimant did not consult the respondent. During the privatization process he had a lease contract with all liabilities paid on time. PAK acted unjustly conducting the tender with sealed envelopes; the respondent was not nominated as buyer even though he was ready to pay the price and the privatization pertained to him based on the circumstances and the customs. The respondent requests rejection of the statement of the claim with procedural expenses.

3. By the declarations of the parties and their representatives in the preliminary hearing, as well as by their final speeches in the main hearing, the claimant has stood by the claim as precised during the proceedings, while the respondent has maintained his reply, without any of them altering their respective initial procedural positions.

II. SUMMARY OF THE FIRST INSTANCE PROCEEDINGS

4. The revendication claim in paragraph 1 joined with claim for unpaid rent for the usage of the contested business premise after 1st September 2012 was filed on 19th September 2012 to the Municipal Court of Mitrovicë/Mitrovica as C.nr.221/12.

5. Being first instance civil case non-completed on 31st December 2012, with the entry into force of the Law No. 03/L-199 on Courts (Official Gazette No. 49/11) on 1st January 2013 pursuant to its Article 39, paragraph 2, C.nr.221/12 of the Municipal Court of Mitrovicë/Mitrovica was transferred into jurisdiction of the Basic Court of Mitrovicë/Mitrovica without re-registration.

6. By ruling GJA.nr.158/13 issued by the President of the Municipal Court of Mitrovicë/Mitrovica on 18th March 2013, it was approved the disqualification request of Judge RAGIP KADRIU, initially assigned to C.nr.221/12, and the same case was re-assigned to Judge SKENDER SHALA pursuant to Article 70, paragraphs 1 and 5 in conjunction with Article 67, item g) LCP.

7. By ruling ref.nr.2012.OPEJ.0115-0003 of the Vice President of the Assembly of EULEX Judges, dated 2nd May 2013 pursuant to Article 5, paragraph 1, item c), sub-items (ii) and (iii) 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), C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica was taken over by EULEX with assignment to the Mobile Unit at Basic Court level as per its internal roster according to Article 4, paragraph 2 of the Guidelines for Case Selection and Case Allocation for EULEX Judges in civil cases.

8. By ruling C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica, dated 26th September 2013 (points I – III) the proceedings as instituted were severed according to Article 387, paragraph 1, item h) and Article 255, paragraph 2, second sentence LCP - the revendication claim remained in the present case; the joined claim for rent was sent to the court registry for registration as a separate case with new file number.

9. By ruling C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica, dated 26th September 2013 (points IV–V) the claimant was obliged as per Article 387, paragraph 1, item s) and t), Article 390, Article 78, Article 93, paragraph 4 and Article 102, paragraph 1 LCP to remove within a period of 3 days the deficiencies of the claim related to the legal status of the parties, their representation, the type of the pretended real right and its holder, the individualization of the contested property, the value and payment of an additional court fee. The deficiencies were timely and duly removed by submission, dated 7th October 2013. Thus the claim was corrected and completed as of the date of its initial filing pursuant to Article 102, paragraph 2 LCP.

10. In compliance with Article 394 LCP and ruling C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica, dated 16h October 2013 copies of the claim, the submission for its supplementation, regularization and precision, dated 7th October 2013 with all their attachments were served on 21st October 2013 to the respondent for reply. The latter was filed on 30th October 2013 within the 15-days legal deadline prescribed by Article 395, paragraph 1 LCP with objections, denying the claim as fully ungrounded.

11. The preliminary hearing under Articles 400 – 410 LCP was conducted on 19th November 2013. The main hearing under Articles 423 – 436 LCP was held on 12th December 2013. Both litigants and their representatives participated in the sessions.

III. EVIDENCE ADMINISTERED AND FACTS ESTABLISHED

12. The probative procedure in the proceedings included hearing of the parties for collection of evidence - Article 425, paragraph 1, item c) in conjunction with Articles 373 – 378 LCP, and administration of the documents through their reading - Article 425, paragraph 1, item 3) LCP, as recorded in the minutes for the main hearing on 12th

December 2013. After conscientious and careful analysis of the collected evidence, separately and as a whole, and based on the overall picture gained in the proceedings according to Article 8 LCP, the court has established the following factual situation.

Immovable property – subject-matter of the contest

13. There is no dispute between the litigants on the *identification of the immovable property in contest.* It has been officially verified by Certificate Nr. UL-71208072-07105 for the immovable property rights issued by the Municipal Cadastral Office – Mitrovicë/Mitrovica on 29th August 2012, presented by the claimant in accordance with Article 331, paragraph 1 LCP. The same official description has been confirmed by the updated Certificate Nr. 12-6383 for the immovable property rights issued by the Municipal Cadastral Office – Mitrovicë/Mitrovica on 27th November 2013 upon a request of the court according to Article 332 LCP. Both as documents complied in the appropriate form by a public entity within the scope of its competences under Article 5, paragraph 1 of the Law No. 04/L-013 on Cadastre (Official Gazette No.13/11), they prove with a binding evidentiary effect the truthfulness of what is determined therein pursuant to Article 329, paragraph 1 LCP. None of them has been challenged for being inaccurate in content or improperly complied as per Article 329, paragraph 3 LCP. As certified by these public documents, the immovable property in litigation is *part of building – business premise that can be separate physical entity - subject to legal transactions* - Article 3 of the Law No. 04/L-013 on Cadastre. As *basic cadastre unit* under Article 7, paragraph 2, sub-paragraph 3 of the Law No. 04/L-013 on Cadastre, it is registered with nr.O-71208702-00548-1-15-0-48-0 – this number is its *cadastral identifier* – the unique code for its identification individually within the said cadastral zone, separately from the land underneath and other parts of the same building – Article 10, paragraph 1, sub-paragraph 1 in conjunction with Article 3 of the Law No. 04/L-013 on Cadastre. According to its registration, the business premise is located in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n, actual use – local, on the first (ground) floor, consisting of one (1) room, covering a surface of 242 m^2 - Article 10, paragraph 1, sub-paragraphs 2 – 4 of the Law No. 04/L-013 on Cadastre. No *shares in jointly owned parts of the building* are registered as applicable - Article 10, paragraph 1, sub-paragraphs 5 of the Law No. 04/L-013 on Cadastre. There is *no subdivision* of the business premise - Article 10, paragraph 1, sub-paragraph 6 of the Law No. 04/L-013 on Cadastre. Thus the *individualization of the immovable property in the claim*, as precised by the submission dated 7th October 2013, corresponds to its *actual official cadastral registration* without discrepancies affecting its identity.

14. Evidenced by the documentation for the privatization of "NRRY" L.L.C. obtained by the court according to Article 332 LCP from PAK on 22nd November 2013 with Letter Nr.5548/AV-92, dated 20th November 2013, the Information Memorandum ref.nr.PAKSS/MIT037, dated 27th April 2012 in particular, the business premise is described as etage type of property – shop with a surface of 242 m^2 measured by a cadastral survey, occupying the whole ground floor of a commercial - residential building in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n, constructed in 1965–1967 on land in social ownership – cadastral parcel nr.548-1, Possession List nr.3300, Cadastral Zone Mitrovicë/Mitrovica. From its construction till the date of its privatization in 2012 this business premise was included in *the assets list of the Socially-owned Enterprise (SOE) "TH - Mitrovicë/Mitrovica* as Restaurant "Y" (former "Z"). There was no pre-privatization possession list issued for this business premise as *the registration of such properties as separate cadastral units was not permissible in the past* – the Law on Measurement and Land Cadastre (Official Gazette of SAPK No. 12/1980) till 18th February 2004 included in the land cadastre only data for *parcels and objects on it* (Article 34, paragraph 1) and *not of parts thereof*; the Law No. 2003/25 on Cadastre, amended by Law No. 02/L-96, in force from 18th February 2004 till 16th September 2011, allowed for the first time registration of parts of buildings, but only *apartments,* and not business premises (Article 11, paragraph 2).

Pre-privatization usage and possession of the business premise in contest

15. The contested business premise, named Restaurant "Z", was rented by SOE "T" - Mitrovicë/Mitrovica, represented by its Director, as *Lessor* to SUPERMARKET "F" - KB from Mitrovicë/Mitrovica as *Lessee* based on: 1) contract Nr. 11, dated 1st May 2004 from 1st May till 31st July 2004; 2) contract Nr. 20, dated 1st September from 1st September 2005 till 30th November 2005; 3) contract Nr. 02, dated 2nd January 2006 from 1st January till 31st March 2006; 4) contract Nr. 04, dated 1st April 2006 from 1st April till 30th June 2006; 5) contract Nr. 05, dated 1st July 2006 from 1st July till 30th September 2006; 6) contract Nr. 06, dated 1st October 2006 from 1st October till 31st December 2006; 7) contract Nr. 01, dated 2nd January 2007 from 1st January till 31st March 2007; 8) contract Nr. 03, dated 4th April 2007 from 1st April till 30th June 2007; 9) contract Nr. 04, dated 30th June 2007 from 1st July till 30th September 2007; 10) contract Nr.06, dated 1st October 2007 from 1st October till 31st December 2007; 11) contract Nr. 01, dated 2nd January 2008 from 1st January till 31st March 2008; 12) contract Nr. 04, dated 1st April 2008 from 1st April till 30th June

2008; 13) contract Nr.01/10, dated 1st October 2008 from 1st October till 31st December 2008; 14) contract Nr. 01, dated 2nd January 2009 from 1st January till 31st March 2009; 15) contract Nr. 01/07, dated 1st July 2009 from 1st July till 30th September 2009; 16) contract Nr. 01/10, dated 1st January 2010 from 1st October till 31st December 2009; 17) contract Nr. 01/10, dated 1st October 2009 and contract No. 01/01, dated 1st January 2010 from 1st January till 31st March 2010; 18) contract Nr.Zyc, dated 1st April 2010 from 1st April till 30th June 2010 for monthly rent of 1 300 €; 19) contract Nr.Zyc, dated 1st July 2010 from 1st July till 30th September 2010; 20) contract Nr.Zyc, dated 1st October 2010 from 1st October till 31st December 2010; 21) contract Nr.Zyc, dated 1st April 2011 from 1st April till 30th June 2011; 22) contract Nr.03, dated 1st July 2011 from 1st July till 30th September 2011; 23) contract Nr.04, dated 1st October 2011 from 1st October till 31st December 2011; and 24) contract Nr.01/2012, dated 1st January 2012 from 1st January till 31st March 2012.

16. The contracts enumerated in paragraph 15 above were signed with standardized content. *At first place*, in their subject-matter clause it was explicitly said that SOE "T" *as owner* of business premise Restaurant "Y" (former "Z") rents it to SUPERMARKET "F" - KB by free will. *At second place,* the duration of each contract was 3 months with *non-automatic renewal* for 3 months. *At third place*, besides the rent, the Lessee was obliged to pay all costs for the maintenance of the premise, electricity, water, other utilities and the taxes derived by law. *At fourth place*, the renovations of the object by the *Lessee* were allowed upon the consent of the *Lessor* with expenses borne by the *Lessee*.

17. On 1st January, 1st April, 1st July and 1st October 2011, 1st January and 1st April 2012 SOE (N.Sh.H.T.T.) "T" as *Lessor* and SUPERMARKET "F" - KB as *Lessee* signed consecutively *commercial lease agreements* for the same business premise, each with 3-months duration. The ones in force during all trimesters of 2011 and the first trimester of 2012 duplicated in their subject-matter the aforementioned contracts on lease for the same periods, with more extensive clauses on the obligations of the parties, the grounds for termination, legal remedies, etc.

18. The last commercial lease agreement for the contested business premise Restaurant "Y" (former "Z") was concluded between SOE "T" as *Lessor* and SUPERMARKET "F" - KB as *Lessee* on 1st April 2012. The *Lessor* as possessor of cadastral parcel nr.548-1, Possession List Nr. 3300, rented Restaurant "Y" (former "Z") to the *Lessee* to use it for its business activities from 1st April to 30th June 2012. It was agreed that this duration can be renewed each 3 months and ends by launching

of the privatization process (Clause 1.2). The changes or accompaniments made by the *Lessee* without the prior written consent (approval) of PAK were *excluded from compensation by the Lessor, PAK or any other third person* (Clause 2.6.1). The agreement was provided to expire or be terminated in accordance with its provisions (Clause 5.1), *inter alia*, even by *entering the business premise in privatization process* (Clause 5.4, remark). Signed on 1st April 2012, it terminated all previous agreements related to the occupation of the business premise between the same parties (Clause 10).

Privatization of "NRRY" Sh.P.K.

19. In 2012 the contested business premise was subject to privatization through "spin-off", evidenced in the case by the public documents obtained from the Kosovo Business Registry and PAK according to Article 332 LCP, all with binding probative effect - Article 329, paragraph 1 LCP, unchallenged in the case as per Article 329, paragraph 3 LCP.

20. On 30th April 2012, the PAK launched Wave 55 for privatization through the "spin-off" method by inviting the investors to buy through an open competitive tender the NewCos (new companies), established with the essential assets and some limited liabilities listed in the tender notice, published on 30th April 2012. The latter included "NewCo Restaurant Y" L.L.C. ("NRRY" L.L.C.) consisting of a business premise, with a surface of 242 m^2, located in the city centre of Mitrovicë/Mitrovica, registered in Certificate nr.P-71208072-00548-1 for immovable property rights, the Municipality of Mitrovicë/Mitrovica (Bid deposit € 50 000), last previous names and FI nr. – SOE "TH"- Mitrovicë/Mitrovica (MIT037). Announced with the same tender notice were the last day for pre-qualification – 23rd May 2012 and the bid day - 30th May 2012. In the Fact Sheet published with the Wave 55 tender notice it was further indicated that the lack of SOE employees assigned to the tendered NewCo; detailed description of the premise to be tendered and transferred to the NewCo without the land beneath.

21. NK obtained copies of the tender documents, including the tender notice, the applicable General Rules of Tender for Privatization ("Rules of Tender"), Information Memorandum ref.nr.PAKSS/MIT037, dated 27th April 2012 and its attachments. In his hearing for collection of evidence on 12th December 2013, NK stated that, having lived in Finland for 21 years, he wanted to invest the saving earned with hard work abroad in purchase of the tendered business premise in order to return with his family in Kosovo, in his hometown. Because of the location of the property in the city centre,

he thought it would be suitable to develop his business there. These were the reasons NK decided to take part in the privatization, not knowing any of the other participants.

22. On 18th May 2012, NK filed to PAK a request for eligibility registration as a natural person - Article 7, paragraph 1 of the Rules of Tender with attached a) contact information about his name, address, telephone and mail - Article 7, paragraph 1, item (a) of the Rules of Tender; b) a copy of ID - Article 7, paragraph 1, item (a), sub-item (ii) of the Rules of Tender; c) Declaration confirming that he is not a prohibited bidder under Article 4.1 of the Rules of Tender - Article 7, paragraph 1, item (c) of the Rules of Tender; d) Certificate for lack of criminal background in the Kosovo Police Information System, issued by the Regional Directorate of Police - Mitrovicë/ Mitrovica, Police Station – Jugu on 18th May 2012 - Article 7, paragraph 1, item (d) of the Rules of Tender. NK was not requested any other additional information and/or documentation for his status of eligible bidder - Article 7, paragraph 5 of the Rules of Tender.

23. The eligibility registration request of NK was granted by PAK–he was admitted as eligible bidder after being ascertained not to fall in any of the categories of prohibited bidders in Article 4 of the Rules of Tender, and to satisfy the criteria set out in Article 7.2 of the Rules of Tender – Article 7, paragraph 6 of the Rules of Tender. On 28th May 2012 PAK issued to NK *Certificate for eligibility with registration nr.* HQ4127 according to Article 7, paragraph 9 of the Rules of Tender. This registration was not cancelled and erased pursuant to Article 7, paragraph 12 of the Rules of Tender for *post factum* revealed disqualification grounds under Article 4, paragraph 1 of the Rules of Tender.

24. The *bid submission fee* of 1 000 Euros for regular "Spin-off" due according to Article 8, paragraph 1 of the Rules of Tender was paid by NK on 29th May 2012 via bank transfer from his bank account nr. 1503001000915284 at "RAIFFEISEN BANK KOSOVO" J.S.C. to bank account nr. 1000435010000222 of the PAK at the Central Bank of Kosovo, seen by payment order ref. nr.FT1215004506 of "RAIFFEISEN BANK KOSOVO" J.S.C., dated 29th May 2012.

25. The *bid deposit* of 50 000 Euros was also paid by NK according to Article 8, paragraph 2 of the Rules of Tender on 29th May 2012 via bank transfer from his bank account nr.1503001000915284 at "RAIFFEISEN BANK KOSOVO" J.S.C. to bank account nr.1000435000000104 of PAK at the Central Bank of Kosovo, seen by payment order ref. nr.FT1215004632 of "RAIFFEISEN BANK KOSOVO" J.S.C., dated 29th May 2012.

26. There was only one *bidding round* in the tender for "NRRY" L.L.C. on 30th May 2012 as foreseen in Article 9, paragraph 1 of the Rules of Tender. Within the bid submission period on that day in his capacity of a registered eligible bidder NK submitted in person in Albanian his bid to PAK in compliance with Article 9, paragraphs 2 – 5 of the Rules of Tender. This bid consisted of: a) an original bid submission form completed and signed by NK; b) a copy of the eligibility registration certificate issued in his name; c) payment order ref. nr.FT1215004506 of "RAIFFEISEN BANK KOSOVO" J.S.C., dated 29th May 2012 as proof of transfer of the bid submission fee of 1 000 Euros; d) payment order ref.nr.FT1215004632 of "RAIFFEISEN BANK KOSOVO" J.S.C., dated 29th May 2012 as proof of transfer of the bid deposit of 50 000 Euros. NK also presented *Bid Price Statement* completed and signed by him in the form set by Annex B of the Rules of Tender with bid price offered in the amount of € 211 111. There were no discrepancies between this sum in figures and in words, nor were they unreadable or illegible. Formally regular, the bid price statement of NK was not disqualified on any ground.

27. The bid of NK for "NRRY" L.L.C., consisting of the *Bid Price* under Article 9, paragraph 6, item (b) of the Rules of Tender and *the Additional Bid Information* under Article 9, paragraph 6, item (a) of the Rules of Tender, were submitted sealed and imprinted as required by Article 9, paragraph 6, item (c) of the Rules of Tender.

28. Both parties, heard for collection of evidence according to Article 373 LCP in the session on 12th December 2013 stated that the bids of all bidders were filed *sealed*. They were *publicly opened after conclusion of the bid submission period* on 30th May 2012 when *all submitted bids and the highest bid were publicly announced* - Article 10, paragraphs 1 – 3 of the Rules of Tender without irregularities in this phase.

29. Seen from the Tables with the Wave 55 tender results, there were four eligible bidders with non-disqualified bids for "NRRY" L.L.C. (MIT037), all natural persons from Mitrovicë/Mitrovica classified as follows: 1) NK with bid price € 211 111; 2) KB with bid price € 79 690; 3) BS with bid price € 66 666; and 4) AS with bid price € 62 000. Under these circumstances the tender could not be cancelled for the lack of less than three regular bids as per Article 17, paragraph 2, items (a) and (b) of the Rules of Tender. The ranking of bidders was based on the *highest bid price* criterion, explicitly provided by Article 3, paragraph 1 and Article 10, paragraph 4 of the Rules of Tender as the one applicable first for classification of the bids and then for sale of the tendered NewCo. Since these bids *were not with equal prices*, none of them could

be awarded priority based on the order of its submission as per Article 13 of the Rules of Tender.

30. By Letter ref.nr.320, dated 4th June 2012 of the Director of Sales Department of PAK, within the deadline of 3 working days after the bid submission period set out by Article 12, paragraph 1, item (a) of the Rules of Tender, NK was informed that he had been ranked as *the Highest Bidder* in Wave 55 tender for "NRRY" L.L.C. (MIT037), as well as that the notification for declaring him the Provisional Winning Bidder or for rejection of the sale would be announced after the Board of PAK would decide on 21st June 2012.

31. By Letter ref.nr.320a, dated 26th June 2012 of the Director of Sales Department of PAK, pursuant to Article 12, paragraph 1, item (b), sub-item (i) of the Rules of Tender NK was informed that he was the *Provisional Winning Bidder* of "NRRY" L.L.C. He was notified to pay the first rate of the purchase price in the amount of € 2 778 (25% of the total bid price € 211 111 minus € 50 000 bid deposit) by bank transfer to the PAK account at CBK within 20 working days. Within the same deadline he was requested to provide certificate on his criminal record in the Kosovo Police Information System pursuant to Article 11 of the Rules of Tender.

32. These instructions were duly fulfilled by NK. According to the Statement with details of the transactions for the specific bank account of PAK opened at the CBK for the proceeds from privatization of "NRRY" L.L.C. nr.1000 501000055381, dated 26th June 2012, the amount of € 2 778 was transferred to it by NK on 26th June 2012 from his bank account nr.1503001000915284 at "RAIFFEISEN BANK KOSOVO" J.S.C. as per Transaction Confirmation Nr. FT1217806042. The first installment of 25% of his bid price was thus duly paid by him. He also submitted to PAK the requested Certificate issued by the Regional Directorate of Police-Mitrovicë/ Mitrovica, Police Station – Jugu on 27th June 2012, verifying that he has no criminal record in the Kosovo Police Information System.

33. By Letter ref.nr.320b, dated 27th June 2012 of PAK NK was informed that his background check was positive, i.e. without revealed evidence for his disqualification as Provisional Winning Bidder, and he was invited to transfer within 20 working days 75% of his highest bid price for "NRRY" L.L.C. in the amount of € 158 333 to bank account nr.1000 501000055381 of PAK at CBK. The deadline set out for this final payment was 24th July 2012.

34. Seen from the Statement with details of the transactions for the specific account nr.1000 501000055381of P0AK at CBK, dated 5th July 2012, the sum € 158 333 was transferred to it by NK on 5th July from his bank account nr.1503001000915284 at "RAIFFEISEN BANK KOSOVO" J.S.C. as 75% of the bid price as per Transaction Confirmation Nr. FT1218709056.

35. Thus the purchase price for "NRRY" L.L.C. was fully and timely paid by NK in strict compliance with Article 12, paragraph 1, item (b), sub-item (ii) and paragraph 2, item (a) of the Rules of Tender. Since there was no failure of his in this regard, there was no ground under Article 12, paragraph 3, items (a) – (c) of the Rules of Tender to be forfeited the right to purchase the tendered NewCo. NK was not rejected as Winning Bidder for provided false information as per Article 18, paragraph 3 of the Rules of tender. He was not otherwise disqualified in the tender procedure with its termination in relation to him. Hence, the purchase was not completed by PAK neither with the Second Highest Bidder as per Article 12, paragraphs 6 - 7 of the Rules of Tender, nor with the Third Highest Bidder as per Article 12, paragraph 9.

36. The bid of NK for "NRRY" L.L.C. in the total amount of 211 111 Euros was not modified or withdrawn in any moment and in any form - Article 14, paragraphs 1 and 2 of the Rules of Tender are equally non-applicable. There was no postponement or cancellation of the tender, *inter alia*, because of downgraded highest bid price not corresponding to the rationally perceived value of the tendered NewCo, collusion between bidders or other illegality as per Article 17, paragraph 2, items (c) – (d) of the Rules of Tender.

37. On 20th July 2012, evidenced by the attachments to Letter nr.959, dated 13th November 2013 of the Kosovo Business Registration Agency (KBRA), PAK for and in the name of SOE "TH" (previous Fi numbers Fi-603/89, Fi-604/90, Fi-1125/90, Fi-1367/96, and Fi-1638/96) pursaunt to Article 8 of Law No. 04/L-034 on PAK filed an application reg. nr. 9400122 for initial registration in the business registry of "NRRY" L.L.C. as a limited liability company with seat in Prishtinë/Priština, "Ilir Konushevci" Street Nr.8 with Owner – PAK as administrator of SOE "TH" and Director SLL, personal ID 1009861137, registered agent and representative. Presented was also the Charter required by Article 33 of the Law No. 02/L-123 on Business Organizations, amended and supplemented by Law No. 04/L-006 (Official Gazette No. 6/2011) ("LBO"). Verified by Certificate of registration issued on 25th July 2012 by KBRA, "NRRY" L.L.C. was registered in the business registry on 25th July 2012 as a limited

liability company with seat in Prishtinë/Priština, "Ilir Konushevci" St. Nr.8 and business nr. 70866463.

38. PAK and NK conducted their negotiations and undertook the other necessary actions to close this privatization process by sales contract in the 90-days deadline after the official selection note to this Winning Bidder prescribed by Article 15, paragraph 1 of the Rules of Tender. No modifications of the highest bid price, the tendered item, the terms or content of the contract were made at that phase, as required by Article 15, paragraph 4 of the Rules of Tender. These negotiations were successfully finalized and not terminated on any of the legal grounds under Article 15, paragraph 5, items (a) – (c) of the Rules of Tender.

39. On 13th August 2012, PAK as the successor of the Kosovo Trust Agency (KTA) according to Article 1 of the Law No. 03/L-067 on the Privatization Agency of Kosovo, amended by Law No. 04/L-034 (Official Gazette No. 19/2011) ("LPAK") and representative of all shares in "NRRY" L.L.C. decided this Enterprise to issue one (1) ordinary share, numbered 1001 in the Shareholders register, held by PAK in trust for SOE "TH". PAK on behalf of SOE "TH" decided to pay for this share the amount of € 1 000 and to transfer to "NRRY" L.L.C. the assets and obligations of SOE "TH" stipulated in the Declarations, attached as Annexes A and B, through their execution. Finally on behalf of "NRRY" L.L.C., PAK accepted this transfer. It was formalized as Decision of the Shareholders of "NRRY" L.L.C. and was signed by the Managing Director of PAK.

40. On 13th August 2012, PAK acting as trustee of *SOE "TH"*, on one side, and NK as *Buyer* – a natural person selected through an open public tender as Winning Bidder to purchase the entire issued share capital of the privatized NewCo, on the other side, concluded written *Agreement on sale of ordinary shares in "NRRY" L.L.C.* Subject to, and in accordance with its terms, all issued 1 001 ordinary shares in "NRRY" L.L.C. hold up by PAK on behalf of SOE "TH", representing the entire share capital of this company, were sold by PAK to NK who as Buyer purchased them (Clause 2.1). PAK was obliged to transfer the ownership of these shares with all legal and beneficial rights attached thereto to the Buyer who was obliged to pay their purchase price of 211 111 Euros, equal to his bid price (Clauses 2.2 and 2.3). All and any rights of PAK and SOE "TH" to the shares were terminated with their acquisition by NK (Clause 2.4). It was further explicitly acknowledged that the purchase price of 211 111 Euros had been already made by the Buyer to the bank account of PAK (Clause 2.5). The parties agreed on the actions legally necessary to complete the

transfer of shares and the control of the company and to register them in the Business Registry (Clauses 3, 4 and 8.1).

41. Attached to the Agreement according to its Annex 1, point 1 as its integral part was *Declaration of PAK acting for and on behalf of SOE "TH" on transfer of assets and determined obligations of SOE "TH" to "NRRY" L.L.C.*, executed on 13th August 2012 for and on behalf of PAK by its Managing Director. Relevant for this dispute is its Annex 4 "*Transferred contracts*" providing that the Commercial Lease Agreement between SOE "TH" as *Lessor* and Supermarket "F" as *Lessee* of 1st April 2012 was transferred to "NRRY" L.L.C. with all rights and obligations in its content in so far: (1) it had been renewed automatically according to the applicable law; or (2) it had been renewed by the parties before the entry into force of this declaration. *In case this Lease Agreement had expired and had not been renewed, the property was then transferred with usurpation and responsibility of "NRRY" L.L.C. to deal with the usurper.* Seen from Annexes 1 – 3 to this Declaration, there were no other rights, titles to, interests in or obligations of SOE "TH", transferred by it to "NRRY" L.L.C.

42. Attached to the Agreement according to its Annex 1, point 2 as its integral part was *Declaration by PAK regarding the transfer of real property of SOE "TH" to "NRRY" L.L.C.*, also issued on 13th August 2012. In its preamble it was foreseen that PAK in its execution acts as trustee for and behalf of this SOE, as well as of this NewCo. In that capacity *PAK transferred all rights, titles to and interests of SOE "TH" in the contested real property to "NRRY" L.L.C.,* subject to or with the benefit to all easements, agreements, occupations and any other encumbrances existing on the date of the Declaration (point 2.1). "NRRY" L.L.C. accepted the property – subject of this transfer "as is" and subject to any third person's occupation, covenanting that it shall not assert any claim against the SOE or PAK on the account (points 2.4 and 2.5). In Schedule 1 – Part B the property was described as a business premise constructed in 1965 – 1967 of firm material, with a surface of 242 m^2, located in Mitrovicë/ Mitrovica, "Agim Hajrizi" Square n/n. It was explicitly noted that *the land beneath is not transferred.* Schedule 2 comprised: 1) Lists of the assets SOE "TH" including with Restaurant "Y" (former "Z"; 2) Declaration of the management of this SOE; and 2) Orto-photo for illustrative and identification purposes.

43. On 13th August 2012 the Managing Director of PAK SLL and NK in person signed *Annex for the necessity of ratification by the PAK of the Sales Documents for "NRRY" L.L.C. (the Enterprise) to NK (the Buyer).* As such *Sale Documents* were designated: 1) the Agreement on Sale of Shares; 2) the Declaration on Transfer of

Assets and Obligations; 3) the Declaration on Transfer of Real Property. Reference was made to the Decision of the Board of PAK, dated 21st June 2012 by which it was ordered to its Managing Director *to sign the Sales Documents and to renounce any request for ratification by the Board of PAK*. Hence, it was agreed that the ratification requirement in the Sales Documents should be considered met immediately after their signing. Thus the Transfer Declarations entered into force after both parties signed the Agreement on Sale of Shares – 13th August 2012, while the latter entered into force at 12:00 hrs noon of the next day – 14th August 2012. Finalized, the Sales Documents were officially registered by the PAK under ref.nr.493 on 14th August 2012.

Registration of the privatization 99-years Leasehold in the cadastre

44. By Decision protocol nr.15-464-43385/12 of the Directorate for Geodesy, Cadastre and Property–Mitrovicë/Mitrovica, dated 24th August 2012, it was approved the request of "NRRY" L.L.C., represented by NK, for registration of its right as the Leaseholder for 99 years from 9th May 2003 till 9th May 2102 of the business premise, with a surface of 242 m^2, at "Agim Hajrizi" Square, n/n, with unit nr.O-548-1-15-0-48-1, CZ Mitrovicë/Mitrovica in the Register of immovable properties. This decision was issued pursuant to Articles 1, 2, 3, and 7 of the Law No. 2002/5 on the Establishment of the Immovable Property Rights Register, Article 5 of Administrative Instruction No. 2004/3, Articles 10, 11 and 29 of the Law No. 04/L-013 on Cadastre, and Article 77 of the Law No. 02/L-028 on Administrative Procedure, following a written request of "NRRY" L.L.C. with attached the privatization Sales Documents, found complete evidence for fulfillment of all registration requirements.

Registration of the privatization sale of shares in the business registry

45. Seen by the Certificate of Registration issued by KBRA on 20th March 2013, based on application nr.11T0000861 filed by NK on 8th March 2013 with attached the privatization Sales Documents and new Charter under Article 34 LBO, on 20th March 2013 the privatization changes in the status of "NRRY" L.L.C. were registered in the business registry – its address was moved to Mitrovicë/Mitrovica, "Agim Hajrizi" Square, n/n; the capital was increased to € 211 111; NK ID Personal nr.1170812600 was registered as the only Director, and Owner of this limited liability company, having acquired and paid all its shares in the amount of € 211 111.

Post-privatization current usage and possession of the business premise

46. The respondent explicitly admitted according to Article 321, paragraph 2 LCP in the preliminary hearing on 19th November 2013, as well as in the main hearing on

12th December 2013 that he has continued to use the contested business premise for the needs of his Supermarket "F" after Wave 55 was launched by PAK on 30th April 2012, throughout the whole privatization process, and after its completion on 14th August 2012. PAK sent to the respondent two written notices to vacate this already privatized property within a period of two (2) weeks. NK extended it with another two (2) weeks. The respondent, however, did not release the contested business premise at any moment prior to or after the expiry of this deadline. Again according to the admissions of the respondent, now he is still in possession of the contested business premise, where Supermarket "F"-part of his personal enterprise NPT "F" functions still as a retail sale store. The respondent could not specify any ground entitling him to remain in possession of the object after its privatization. Nevertheless, throughout the proceedings he has refused to release it voluntarily. Pursuant to Article 321, paragraph 2 LCP these facts being admitted by the party in two subsequent hearings need not to be further proven.

IV. PROCEDURAL PREREQUISITES FOR ADMISSIBILITY OF THE CLAIM

47. In so far there is a *civil dispute* over the possession of the business premise located in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n after its privatization, the claimant has *the legal interest* demanded by Article 2, paragraph 4 LCP to initiate a contested procedure for its resolution according to Article 1 LCP by filing a claim to enforce performance of the statutory obligation of the illegal possessor of this real property to release it according to Article 252, firs hypothesis LCP.

48. The claimant "NRRY" L.L.C. by its legal status is a *business organization established in Kosovo* - Article 4, paragraph 1 LBO as a *limited liability company* that came into existence with its registration on 25th July 2012 in the Kosovo Registry of Business Organizations and Trade Names - Article 4, paragraph 2 and Articles 33 – 34 LBO. As such, according to Article 78, paragraph 1, first sentence LBO "NRRY" L.L.C. is a *legal person* that is separate and distinct from its owner(s) and has the *general procedural capacity* under Article 73, paragraph 1 LCP to be claimant in the present contested proceedings. Contrariwise, NK has no party's procedural status in the case – as pontificated above pursuant to Article 2 and Article 78, paragraph 1, first sentence LBO, "NRRY" L.L.C. has the *legal identity of a legal person,* separate and distinct from the legal identity of NK as *a natural person - Owner of this NewCo after its privatization.* His ownership over the capital shares of this company is not a ground to procedurally substitute it. Accordingly the claim, as ratified on 7th October 2013, is filed on behalf of "NRRY" L.L.C. by NK in his capacity of its *Director*, duly

appointed as the only current *legal representative* of this legal person – claimant in the proceedings according to Article 110, paragraph 1 LBO and Article 75, paragraph 3 LCP. The active legitimacy of "NRRY" L.L.C. is based on pretended 99-years Leasehold right over the contested business premise in compliance with Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, in conjunction with Article 93 LPORR.

49. The respondent NPT "F" - Mitrovicë/Mitrovica, "Mehë Uka" Square by its legal status is a *business organization established in Kosovo* as per Article 4, paragraph 1 LBO as a *personal business enterprise* nr.70134943, registered as per Article 235, paragraph 1 in conjunction with Articles 27 – 28 LBO on 14th April 2004 and 21st November 2007, owned by KB from Mitrovicë/Mitrovica, "Xhafer Deva" St. Nr.18, ID personal nr.1020661689 (Certificate for registration issued by KBRA on 12th November 2013). Being a personal business enterprise according to Article 48, paragraph 5, first sentence LBO NPT "F" *is not a legal person*. Nevertheless, it may contract, hold property, sue or be sued in its *own name or in the name of its owner* according to Article 48, paragraph 5, second sentence LBO. Based on *this special provision* NPT "F" has the *special procedural capacity* envisaged in Article 73, paragraph 2 LCP *to be a party in the proceedings through its owner* KB. The latter pursuant to Article 48, paragraph 1, first sentence LBO has unlimited personal liability for all obligations incurred by, or imposed by Law or contract, on NPT "F", related to *all property and assets* directly or indirectly owned by this person, whether used for business or non-business purposes - Article 48, paragraph 1, second sentence LBO. The *passive procedural legitimacy* of the respondent is based on alleged *illegal possession over the contested business premise after its privatization* as per Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No.2004/45, in conjunction with Article 93 LPORR.

50. The Basic Court of Mitrovicë/Mitrovica has *substantive jurisdiction* to decide in the first instance this dispute pursuant to Article 29 LCP in conjunction with Article 11, paragraph 1 of Law No. 03/L-199 on Courts. It has also the *exclusive territorial jurisdiction* under Article 41, paragraph 1 LCP over this property-related dispute in view of the location of the contested business premise in its territory under Article 9, paragraph 2, subparagraph 7 of the Law No. 03/L-199 on Courts, which covers the territory of the Municipality of South Mitrovicë/Mitrovica under Article 2, paragraph 1 of the Law No. 03/L-141 on Administrative Municipal Boundaries. The latter itself includes CZ Mitrovicë/Mitrovica as formed according to Article 2, paragraph 1 and

Annex 6 of the Law No. 2003/25 on Cadastre, amended by the Law No.02/L-96, and as now preserved by Article 7, paragraph 5 of the Law No. 04/L-013 on Cadastre.

51. The case does not fall within the exclusive jurisdiction set out by Article 4, paragraph 1, sub-paragraphs 1-13 of the Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters (Official Gazette No. 20/2011) ("LSCSC"). There is no concrete decision of PAK taken in the privatization of "NRRY" L.L.C., challenged in C.nr.221/2012 of the Basic Court of Mitrovicë/Mitrovica as per *Article 4, paragraph 1, sub-paragraph 1 LSCSC.* The claim is not filed against PAK for failure or refusal to perform an act or an obligation, required by law or contract as per *Article 4, paragraph 1, sub-paragraph 2 LSCSC,* nor for financial losses caused by a decision or action in exercise of its competences as per *Article 4, paragraph 1, sub-paragraph 3 LSCSC.* Non-applicable is *Article 4, paragraph 1, sub-paragraph 4 LSCSC* as the case is not initiated *against* any SOE under Article 2, paragraph 1, sub-paragraph 6 LSCSC in conjunction with Article 3, paragraph 1, sub-paragraph 9 and Article 5, paragraph 1, sub-paragraph 1 LPAK or *against any Corporation* under Article 2, paragraph 1, sub-paragraph 6 LSCSC in conjunction with Article 3, paragraph 1, sub-paragraph 5 LPAK. The claim is not related to a *right, title or interest with respect* to an asset or property over which the PAK has or has asserted administrative authority as per *Article 4, paragraph 1, sub-paragraph 5.1 LSCSC* - the contested business premise has been already privatized and thus excluded from the powers of PAK in Article 5, paragraphs 1 and 2 in conjunction with Article 6, paragraphs 1 and 2 LPAK to sell, transfer or otherwise dispose of this asset any more as its second privatization is not admissible. The claim does not fall in *Article 4, paragraph 1, sub-paragraph 5.2 LSCSC* as it is not for the *ownership over any SOE* under Article 2, paragraph 1, sub-paragraph 6 LSCSC in conjunction with Article 3, paragraph 1, sub-paragraph 9 and Article 5, paragraph 1, sub-paragraph 1 LPAK or *Corporation* under Article 2, paragraph 1, sub-paragraph 6 LSCSC in conjunction with Article 3, paragraph 1, sub-paragraph 5 LPAK. The subject–matter is not related to *any capital of such SOE or Corporation* as per *Article 4, paragraph 1, sub-paragraph 5.3 LSCSC.* The claim is not subsumed in *Article 4, paragraph 1, sub-paragraph 5.4 LSCSC* - the contested business premise is not property or asset that is *currently in possession or control* of "NRRY" L.L.C. Equally, non-applicable are all of the hypotheses in *Article 4, paragraph 1, sub-paragraphs 6–13 LSCSC.* After this review, acting *ex officio* pursuant to Article 18, paragraph 1 LCP this first instance court finds the claim for post-privatization revendication of already privatized business premise between its Leaseholder and illegal possessor as falling

within its jurisdiction without any grounds for referral as per Article 23, paragraph 1 LCP.

52. There is no *statutory limitation or preclusive deadline* prescribed for the claim under Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45. All statute-barring periods in Articles 352 – 362 of the Law No. 04/L-077 on Obligational Relationships (Official Gazette No. 16/2012) ("LOR") are for unenforceability of claims for *fulfillment of obligations,* contractual or non-contractual in origin, inapplicable for *property rights*. The latter being absolute in its nature with *erga omnes* statutory prohibition under Article 2, paragraph 2 LPORR to be abused by third persons are not subject to extinction according to Article 7 LPORR, whereas the procedural right to claim their judicial protection cannot elapse or otherwise become legally obsolete as per Article 391, paragraph 1, item e) LCP.

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

V. ANALYSIS ON THE MERITS OF THE CLAIM

54. The claim in C.nr.221/2012 of the Basic Court of Mitrovicë/Mitrovica, as last precised according to Article 102, paragraph 2 LCP and modified according to Article 257, paragraph 2 LCP by the submission of 7th October 2013, is filed by the claimant as *Leaseholder* of the contested business premise against the respondent as *its illegal possessor* for release of this immovable property and handing over its possession with legal basis Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, in conjunction with Article 93 LPORR. This is a *claim of the Leaseholder demanding delivery of the immovable property – subject of Leasehold from the person occupying it without being entitled to possess it.* The prerequisites to grant it are: 1) Leasehold of the claimant over this individually determined immovable property, including the right to possess and to use it; and 2) its current possession by the respondent without a valid legal ground.

Leasehold over socially-owned property – characteristics and legal protection

55. UNMIK Regulation No.2003/13, amended by UNMIK Regulation No.2004/45, governs the *transformation of the right of use to socially-owned immovable property into Leasehold* consequent to privatization. Its Section 2, paragraph 1, first sentence, sub-item (i) states that subject to the limitations and restrictions set out by the same

Regulation *any right of use to property registered in the name of a SOE transferred to a subsidiary corporation of this SOE according to Section 8 of UNMIK Regulation No. 2002/12 shall be transformed into a Leasehold upon such transfer.* Pursuant to Section 2, paragraph 1, second sentence of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45, such Leasehold shall include the right: (a) *to possess and use the property subject to Leasehold for any purposes not prohibited by the applicable law*; (b) *to freely effect transfers of the property – subject to Leasehold to third parties*; (c) *to establish encumbrances on the property – subject to Leasehold to the benefit of third parties*. When held by a natural person, the Leasehold may be inherited, while when held by a legal person it may be transferred through merger or other succession, by contract or by operation of law itself – Section 2, paragraph 3 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45. The Leasehold may be exercised for the duration of the term of 99 years from the date of entry into force of Regulation No. 2003/13 - 9th May 2003, pursuant to its Section 3, paragraph 1, first sentence, Section 2 and Section 15. Its *legal protection* is equalized to the one of ownership – according to Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 the Leaseholder shall have the right to have *any illegal possessors removed from the property to which it holds Leasehold in accordance with the applicable laws protecting owners of real property.* Equalization of the legal regime of the Leasehold to the one of ownership is also foreseen for *the limitations, restrictions and fees in their exercise* - Section 5 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45; *cadastral registration* - Section 6; and *expropriation* - Section 8.

56. Summarizing, the Leasehold as formally defined by Article 2, paragraph 1, sub-paragraph 10 LPAK in conjunction with Section 1 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, is *any and all of the rights set out in its Section 2 with respect to land, structures thereon, and/or parts thereof, classified as socially-owned immovable property according to the applicable law.* The Leasehold is a *sui generis* compound real right over public assets – subject to specific legislation as per Article 1, paragraph 5 LPORR. Its bundle includes, albeit with the restrictions and limitations in Section 3 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, components that constitute prerogatives of the ownership triptych under Article 18, paragraph 1, third sentence LPORR - *the right to possess and the right to use the property* – subject to Leasehold for a 99-years term. Within its duration this respectively covers the long-term exercise of factual power over the property and its utilization for any purpose not prohibited by law provided

that its substance remains unimpaired. Indeed, the Leasehold has been often qualified as *curtailed ownership* since it does not include all owner's prerogatives under Article 18, paragraph 1 LPORR, perpetual and enforceable without limits in time duration. Section 8 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45 makes this differentiation explicitly while stipulating that *the Leasehold shall not be affected by any change to the underlying ownership of the property – subject to Leasehold*. However, relevant for this dispute is that pursuant to Section 2, paragraph 1, second sentence, item (a) of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45, each Leasehold without exception includes *the right to possess and to use the property – subject to Leasehold* for the duration its 99-years term under Section 3, paragraph 1, first sentence in conjunction with Section 1. Further relevant is that any such "*holder of a right*" registered in the cadastral books as user or possessor of property - subject to Leasehold as required by Section 1 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, in the external relations *vis-à-vis* third persons is granted by Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, protection against any illegal possession in accordance with the applicable law protecting owners of real property. Thus any Leaseholder, registered in the cadastre, is thus entitled to the delivery claim under Article 93 LPORR in order to terminate the possession of the Leasehold realty by any person, occupying it without a valid legal ground, and to be effectively handed over this property in a non-obstructed use.

Leasehold of the claimant over the contested object acquired through privatization

57. "NRRY" L.L.C. as claimant in the case has the *active legitimacy of registered Leaseholder of the contested business premise*, demanded by Section 4 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45, in conjunction of Article 93 LPORR. This Leasehold with all its constituent rights has been validly acquired as a result of the spin-off privatization of this NewCo, realized by the PAK in Wave 55. Summarily in this method, the SOE through PAK as a corporate action sets up a subsidiary, splitting-off section(s) of itself as separate business to which transfers its assets; upon this divesture the parent SOE receives equivalent shares in the NewCo to compensate the loss of equity; after a public tender the subsidiary's equity is sold to a private investor. In all these phases PAK has the authorities to administer the SOE and its assets, to act as trustee for and behalf the SOE and to privatize it by transferring its assets to the spin-off and after an open competitive

bidding procedure for its shares to sell the ownership interests of the parent SOE in the NewCo to a private investor.

58. Pursuant to Article 1, paragraph 2, sub-paragraph 1 and Article 5, paragraph 1, sub-paragraph 1 LPAK the PAK *had and has the administrative authority* over SOE "TH" (Commercial Court registration Fi-603/89 (also known as NSH/DP "FENIX", Fi-604/90; SHA/DD "FENIX", Fi-1225/91; NSH/DP "KING", Fi-1638/96) in its capacity of a socially-owned enterprise under Article 3, paragraph 1, sub-paragraph 25.1 PAK – a legal entity other than a publicly-owned enterprise that on 1st January 1989 was established in compliance with Article 3, paragraph 1 of the Law on Enterprises (Official Gazette of SFRY Nos. 77/88, 40/89, 46/90 and 61/90). This administrative authority included, *inter alia,* the competences of PAK until the sale or other disposal in accordance with LPAK to hold and administer this SOE and assets in trust and for the benefit of its Owner (the social community) and Creditors.

59. Based on the powers provided by Article 6, paragraph 1, sub-paragraph 15 LPAK, PAK acting on behalf of SOE "TH" *established as* a *subsidiary corporation* of this SOE under Article 8, paragraph 2, first sentence LPAK - "NRRY" L.L.C. The latter was found in the legal form of a *limited liability company* according to Article 3, paragraph 1, sub-paragraph 5, first hypothesis LPAK with issued 1 000 shares of its capital, all owned by SOE "TH", hold in trust on its behalf and administered by PAK pursuant to Article 5, paragraph 1, sub-paragraph 3, Article 6, paragraph 1, sub-paragraph 15 and Article 8, paragraph 2, third sentence LPAK. Based on this statutory delegation PAK throughout the privatization process was acting as trustee of the SOE capital in this NewCo issued shares.

60. "NRRY" L.L.C. was registered in the Kosovo Registry of Business Organizations and Trade Names under Article 6 LBO in compliance with general registration requirements for *business organizations* - Article 4, paragraph 2, Article 5, paragraphs 1–2, Article 13 LBO and the special registration requirements for *limited liability companies* - Article 33 LBO. On 20th July 2012, an authorized representative of PAK submitted to the KBRA an application for initial registration of "NRRY" L.L.C. with founder's statement as Charter signed by the Managing Director of PAK containing: a) *this official name* of the company, including at the end the abbreviation "L.L.C."–Article 33, paragraph 1, item a) LBO; b) *the address in Kosovo* - principal place of business of the company–Prishtinë/Priština, "Ilir Konushevci" St. Nr. 8 - Article 33, paragraph 1, item b) LBO; c) the same address as its *registered office* - Article 33, paragraph 1, item c) LBO; d) *the business purpose* - Article 33,

paragraph 1, item d) LBO; e) *the founder of the company* and *its owner* – PAK as administrator of SOE "TH" - Article 33, paragraph 1, items e) and k) LBO; d) the *Director* SLL his ID personal nr.1009861137 and address – Prishtinë/Priština, "Ilir Konushevci" St. Nr. 8 - Article 33, paragraph 1, item f) LBO; e) *the charter capital* – 1000 Euros, equal to the legal minimum, distributed in 1 000 ordinary shares - Article 33, paragraph 1, item h) and Article 79, paragraph 1 LBO, all subscribed - Article 33, paragraph 1, item j) LBO. Presented as per Article 33, paragraph 3, first sentence LBO was the *Company Agreement* required by Article 86 LBO, endorsed by PAK. With completion of this registration procedure "NRRY" L.L.C. was created on 25th July 2012 according to Article 4, paragraph 2 and Article 85, first sentence LBO, acquiring the status of *legal person* under Article 78, paragraph 1, first sentence LBO-*subsidiary corporation* of SOE "TH" established in accordance with Article 6, paragraph 1, sub-paragraph 15 and Article 8, paragraph 2, first sentence LPAK. Pursuant to Article 8, paragraph 3 LPAK, the PAK was authorized to exercise *all shareholders rights* of SOE "TH" in "NRRY" L.L.C., *including to sell, to transfer or otherwise to dispose of part or all of such shares on behalf of this Enterprise.*

61. Based on its competences under Article 6, paragraph 2, sub-paragraph 1 LPAK to privatize all or part of the shares of a subsidiary corporation in Article 6, paragraph 1, sub-paragraph 15 LPAK, and complying with Article 8, paragraph 5 LPAK any such sale, transfer or disposal to be done after *an open competitive bidding procedure*, PAK included "NRRY" L.L.C. in Wave 55 for tendering the capital of this NewCo as shares issued in the name of SOE "TH" and the contested business premise as an asset with rights and interests of this SOE that would be transferred to this NewCo after its privatization pursuant to Article 8, paragraph 2, first sentence LPAK.

62. The tender for "NRRY" L.L.C. was held in compliance with Article 8, paragraph 5 LPAK and the Rules of Tender, endorsed by the Board of PAK as its operational policy under Article 10, paragraph 2, sub-paragraph 2 LPAK – transparent and uniformly applied rules governing all bidding procedures for all actions taken pursuant to Article 6, paragraph 2, sub-paragraph 1 LPAK, ensuring fair completion of all bidders and reasonably aimed at obtaining a fair market value of the shares of the privatized subsidiary corporation under Article 6, paragraph 1, sub-paragraph 15 LPAK. Such conformity has been ascertained in all subsequent phases of the tender process as detailed in paragraphs 19 – 43. After Wave 55 was launched on 30th April 2012 the potential bidders *obtained the tender documents* for "NRRY" L.L.C. – Article 6 of the Rules of Tender. In the *eligibility registration procedure* four natural

persons, were admitted pursuant to Article 7, paragraph 6, item a) of the Rules of Tender as *eligible potential bidders* not falling within any category of prohibited bidders in Article 4 of the Rules of Tender and satisfying all the criteria in Article 7, paragraph 2 of the Rules of Tender. NK as one of these admitted eligible potential bidders was registered in the Eligible Bidders Register by PAK and issued on 28th May 2012 Certificate for eligibility with registration nr. HQ127 - Article 7, paragraph 9 of the Rules of Tender without being subsequently disqualified-Article 7, paragraph 12. Only one bidding round in the tender was held on 30th May 2012 in compliance with Article 9, paragraph 1 of the Rules of Tender. There were four bids submitted as per Article 9, paragraphs 2 – 6, items (a) and (b) of the Rules of Tender in the separate sealed envelopes stipulated in Article 9, paragraph 6, item (c) of the Rules of Tender. On the same date they were opened, identified and announced in compliance with Article 10, paragraphs 1–3 of the Rules of Tender. Applying the *highest bid price* (*i.e. the bid offering the highest price for purchase of the NewCo*) as the only legally foreseen criterion for sale of any tendered NewCo, the 4 bidders were classified based on the bid prices offered: 1) NK- € 211 111; 2) KB - € 79 690; 3) BS - € 66 666; and 4) AS - € 62 000. Having offered bid price 3 times higher than the second bidder in this ranking, NK was declared the Provisional Winning Bidder. He underwent the additional *background check* carried out by PAK pursuant to Article 11, paragraph 1 of the Rules of Tender, without being disqualified as per Article 11, paragraph 2, item (a). The initial payment under Article 12, paragraph 1, item (b) of the Rules of Tender in the amount of € 2 778 (25% of the highest bid price € 211 111 minus € 50 000 bid deposit) and the final payment under Article 12, paragraph 2, item (b) of the Rules of Tender in the amount of € 158 333 (75% of the highest bid price) were completed by NK within the set deadlines by bank transfers on 26th June 2012 and 5th July 2012, respectively, to the designated account of PAK. Thus the highest bid price was fully and timely paid by NK - hence, there was no ground he to be forfeited the right to purchase this tendered NewCo as per Article 12, paragraph 3 of the Rules of Tender. NK did not modify his bid and did not withdrawal it in compliance with Article 13 of the Rules of Tender. The negotiations were successfully finalized between PAK and NK by 13th August 2012, within the timeframe in Article 15, paragraph 1 of the Rules of Tender of 90 working days from the official selection notice to this Winning Bidder on 26th June 2012. The negotiations were not terminated by PAK on any of the grounds in Article 15, paragraph 5, items (a) – (c) of the Rules of Tender. PAK did not cancel the tender as a whole for any reason pursuant to Article 16, paragraphs 1 and 3 of the Rules of Tender. This privatization after being regularly conducted

through an open, competitive bidding procedure under Article 8, paragraph 5 LPAK with selection of NK as the Winning Bidder was finalized on 13th August 2012 by signing all the requisite Sales Documents.

63. On 13th August 2012, pursuant to Article 6, paragraph 1, sub-paragraph 15 and Article 8, paragraph 2, first and second sentences LAPK, PAK transferred parts of the assets and determined obligations, as well as *rights and interests in real property* of SOE "TH" to "NRRY" L.L.C. The transfer was realized by three legal acts. *Firstly,* PAK, as representative of all shares in "NRRY" L.L.C., having the competences of the General meeting of the Shareholders, on 13th August 2012 decided to issue one ordinary share of its capital, held in trust in the name of SOE "TH". Further, PAK as the administrator of SOE "TH" *decided on its behalf to pay for this newly issued share the amount of one Euro and to transfer assets, obligations and real property* of SOE "TH" to "NRRY" L.L.C., executing the two Transfer Declarations – Annexes A and B of the Decision. "NRRY" L.L.C. through PAK accepted these transfers and agreed to take over these responsibilities and obligations. At the end it was decided that this new share shall be registered in the Shareholders Register of "NRRY" L.L.C. in the name of PAK as the administrator in trust of SOE "TH" under number 1001. In its essence this is a mixed monetary and non-monetary *contribution* under Article 89, paragraph 1, first sentence, items (a) and (b) LBP of *the owner in a limited liability company in exchange of an ownership interest* under Article 78, paragraph 2 LBO in its capital. *Secondly*, by the Declaration on transfer of real property of 13th August 2012, PAK acting as trustee on behalf SOE "TH" and "NRRY" L.L.C. *transferred all rights, titles to and interests of this SOE in the contested property described in Schedule 1–Part B as business premise in Mitrovicë/Mitrovica, "Agim Hajrizi" Square n/n with a surface of 242 m^2 - to its subsidiary corporation* subject to or with the benefit of all easements, agreements, restrictions, tenancies, occupations and other encumbrances whatsoever existing on the date of entry into force of this Declaration (point 2.1). It was noted in Schedule 1–Part B that though not registered in the cadastre ever since its construction in 1965 - 1967 the transferred business premise (without the land) was an asset of SOE "TH", included in its balance sheet, hold in free non-obstructed possession. Thus pursuant to Article 6, paragraph 1, sub-paragraph 15 and Article 8, paragraph 2, first sentence LAPK all rights, titles to and interests in the contested business premise as an asset of SOE "TH", namely *its right on use over this property in social ownership*, were transferred on 13th August 2012 by PAK to "NRRY" L.L.C. as its subsidiary corporation. Otherwise, this transfer in corporate terms was realized by PAK in the form of contribution of SOE "TH" as

exclusive shareholder of "NRRY" L.L.C. for the newly issued on 13th August 2012 1001st ordinary share of this limited liability company as per Article 89, paragraph 1, first sentence, item (b) LBO.

64. After all these legal procedures and conditions were met the privatization was finalized by the Agreement on sale of ordinary shares in "NRRY" L.L.C. reached on 13th August 2012 by PAK and NK as Buyer according to Article 16, paragraph 1 of the Rules of Tender. Its signature on 13th August 2012 with all related documents followed the payment of the total amount of the highest bid price of € 211 111 on 5th July 2012 and fulfillment of all ancillary formalities in the tender process, as required by Article 16, paragraph 2 of the Rules of Tender. Pursuant to Article 6, paragraph 1, sub-paragraph 1 and Article 8, paragraph 3, first sentence *in fine* LPAK, by this Agreement PAK as trustee or and on behalf of SOE "TH" *sold* all 1001 shares of this SOE in its subsidiary corporation "NRRY" L.L.C. to NK as Buyer, selected as the Winning Bidder after an open public tender, who *purchased* these shares for the price of € 211 111, equal to his highest bid price in the tender. All rights of SOE "TH" to these shares were *terminated* - Article 103, paragraph 1, item e) LBO with *acquisition* by NK of the respective ownership interests in the capital of "NRRY" L.L.C. – Article 96, paragraph 1 LBO. The transferability of these shares was not restricted in its Company Agreement by any restrictions under Article 96, paragraph 2 LBO, including the ones in Articles 97 and 98 LBO, while their sale is not null, void, and unenforceable as per Article 101 LBO. Thus the last component of the spin-off privatization of "NRRY" L.L.C. was accomplished – PAK validly sold to NK as a private investor all 1001 ordinary shares of SOE "TH" in its subsidiary corporation as per the special Article 6, paragraph 1, sub-paragraph 1 and Article 8, paragraph 3, first sentence *in fine* LPAK and the general Article 96, paragraph 1 LBO.

65. According the Annex on the necessity of ratification of the Sales Documents for "NRRY" L.L.C. by the Board of PAK, it decided the sale of the shares of this subsidiary corporation pursuant to Article 15, paragraph 2, sub-paragraph 12 LAPK on 21st June 2012, ordering the PAK Managing Director to sign all Sales Documents and renouncing the need of their ratification by the Board of PAK. Hence, the two Transfer Declarations entered on 13th August 2012 immediately after the Agreement on sale of shares was signed by both parties, while the latter entered into force at 12:00 hrs noon of 14th August 2012 - the working day after it got signed on 13th August 2012. There is no ground nullifying their validity or otherwise excluding their legal effect. The sales contact *was not cancelled by PAK* pursuant to Article 18,

paragraph 6, items (a) of the Rules of Tender for illegal origin of the means utilized by the Winning Bidder for the purchase of the NewCo, for his involvement in collusion during the tender process or for violation of its basic rules. PAK did nor re-acquire or cancel the shares sold in this privatization and did not take any of the possible actions in Article 8, paragraph 6 in conjunction with Article 6, paragraph 2, sub-paragraph 2 LAPK in such event.

66. Summarizing, the privatization was duly conducted by PAK through the spin-off method, its main phases being: 1) the establishment and registration in accordance with LBO of "NRRY" L.L.C. on behalf of SOE "TH" as its subsidiary corporation - Article 6, paragraph 1, sub-paragraph 15, first hypothesis in conjunction with Article 8, paragraph 2, first sentence, first hypothesis LPAK; 2) transfer of certain assets and obligations of this SOE to this NewCo, *including the right on use over the contested business premise* - Article 6, paragraph 1, sub-paragraph 15, second hypothesis in conjunction with Article 8, paragraph 2, first sentence, second hypothesis and second sentence LPAK; 3) sale of all the shares of SOE "TH" in "NRRY" L.L.C. to a private investor NK, selected as Buyer being Winning Bidder in the conducted open public tender for this NewCo – Article 6, paragraph 2, sub-paragraph 2 in conjunction with Article 8, paragraphs 3 and 5 LPAK.

67. Unfounded are all objections of the respondent raised in his reply and in the course of the proceedings against the legality of this privatization.

68. There is no claim filed by NPT "F" or KB whatsoever before SCSC, challenging any decision or other action of PAK directly or indirectly related to the privatization of "NRRY" L.L.C. according to Article 4, paragraph 1, sub-paragraph 1 LSCSC before or after the expiry of the 120-days preclusive legal deadline set out in Article 6, paragraph 2 LSCSC. The authorized representative of the respondent expressly admitted in the preliminary hearing as per Article 321, paragraph 2 read in conjunction with Article 86, paragraph 2 LCP *the lack of any claim, complaint or other motion ever filed to SCSC by KB or NPT "F" regarding this privatization* (minutes of the session on 19th November 2013, page 6). Thus the respondent self-refuted the allegation in his written reply for *"a claim filed by him before the competent court in regards to the privatization of the premise"*. Since there is no such case before SCSC, the present proceedings could not be suspended pursuant to Article 278, paragraph 1, item a) LCP for any prejudicial determination of SCSC on the legality of this privatization.

69. The respondent further challenges the public tender for "NRRY" L.L.C. as being conducted with *sealed envelopes* instead of *with open ones* which would have enabled him to pay any purchase price. However, there is no such violation of the privatization procedure. The Rules of Tender applied for its conduct have been endorsed by the Board of PAK as operational policy under Article 10, paragraph 2, sub-paragraph 2 LPAK setting out transparent and uniformly applied rules governing all bidding procedures as required by Article 8, paragraph 5 LAPK that ensure fair competition of bidders and are reasonably aimed at obtaining a fair market value of the privatized shares. The statutory delegation for adoption of such Rules of Tender by the Board of PAK as a by-law operational policy is explicitly granted by Article 10, paragraph 3, sub-paragraph 2 read in conjunction with Article 6, paragraph 2, sub-paragraph 1 LPAK. In terms of scope these Rules of Tender set out the procedures for sale of "NewCos" and "tendered items", *including conditions/criteria for submitting a bid by bidders*. Article 9 of the Rules of Tender regulates the mandatory content of the bid and its submission. It requires the information and documents listed in Article 9, paragraph 6, item (a), sub-items (i) – (iii) of the Rules of Tender (the original bid submission form, filled in and signed by the bidder, copy of the eligibility registration certificate and proves for paid bid submission fee and deposit) to be placed by the bidder in a *sealed envelope* with the text *"Additional Bid Information"* imprinted on the exterior side. The Bid Price (the form in Annex B to the Rules of Tender with table to be filled in with the amount offered as purchase price by the bidder) according to the imperative Article 9, paragraph 6, item (b), first and last sentences of the Rules of Tender must be placed in a *sealed envelope* with *"Bid Price"* imprinted on the external side. These two sealed envelopes stipulated in Article 9, paragraph 6, items (a) and (b) of the Rules of Tender, according to Article 9, paragraph 6, item (c) must be placed together in a *third sealed envelope* with *"Bid for tender nr."* imprinted on the external side without any information or mark that could help to identify the eligible bidder. According to Article 9, paragraph 7 of the Rules of Tender the Bid admission committee of PAK, immediately after receiving the bid, must write the number on this third sealed envelope and register it on the receipt for bid submission issued to the bidder as per with Article 9, paragraph 8. To sum, all quoted provisions – Article 9, paragraph 6, items (a), (b) and (c) of the Rules of Tender – imperatively demand each bid to be submitted in three *sealed envelopes* – the first with the Additional Bid Information, the second with the Bid Price, and the third, containing the previous two for registration by the Bid Admission committee. In the international practice this is *two-envelope bidding* allowing at the bid opening stage of the tender

the pre-qualification envelopes to be opened first and the bid price envelopes to be opened subsequently only for bidders found qualified. The sequence is expressed in Article 10, paragraphs 2 and 3 of the Rules of Tender. There is *no exception* or *other derogation whatsoever of these rules*, guaranteeing the anonymity of the bidders and fair competition. Namely, there is no option in LPAK, the Rules of Tender or other applicable law for bid submission in *open envelopes* or for *English ascending price auction* where the participants bid verbally against one another and each next bid is higher than the previous one. Article 8, paragraph 5 LPAK requires the conduct of an *open* competitive bidding procedure in the privatization, excluding the limited/closed tenders with pre-selected candidates, and the negotiated tenders with a single contractor invited. Bid submission in *open envelopes* contended as requisite by the respondent is actually not set out normatively and as any other non-existent legal requirement could not be infringed. Thereby, being conducted with all bids submitted in *sealed envelopes*, the public tender for "NRRY" L.L.C. complied with Article 9, paragraph 6, items (a) - (c) of the Rules of Tender in conjunction with Article 8, paragraph 5 and Article 10, paragraph 2, sub-paragraph 2 LPAK and did not violate and avoid any privatization procedural rule.

70. The respondent considers that being Lessee of the contested premise ever since 2004 and operating in it during the whole privatization process, he had preference in purchasing it, unlawfully disregarded by PAK. This argument is also not sustained. Pursuant to Article 3, paragraph 3, first sentence and Article 10, paragraph 3 of the Rules of Tender, PAK shall sell the tendered NewCo with *highest bid price.* The latter is defined by Article 1 the Rules of Tender as "*the bid oferrring the highest price for purchase of the tendered NewCo.*" Further, Article 3, paragraph 3, second sentence of the Rules of Tender stipulates that the highest bidder shall have the right to buy the tendered NewCo and/or items only by the *highest bid price.* This is *the only legally foreseen criterion for classification and selection of the bids, as well as for signing the sale contract.* The bidder having offered the greatest price for the tendered NewCo is ranked at first place as Provisional Winning Bidder, entitled to purchase it from PAK according to his submitted bid. The *highest bid price* automatically wins the tender, in the privatization the *highest bidder contracts.* Non-applicable are any other criteria for ranking of the bidders and selection of the Buyer. Therefore, the *respondent had no legally established preference in the privatization* of the business premise – the long-term usage of the object, the investments made in it, the workers employed for its business operation, its lease and paid rent during the privatization, are equally irrelevant. None of these circumstances grants the respondent the privilege to win the

tender and to purchase the NewCo. In conformity with Article 8, paragraph 5 LPAK, the applicable spin-off privatization regime is based *on competitive bidding in public tenders only without any privileges, advantages, preferences whatsoever, inter alia for lessees, possessors or users of the privatized assets*. The bid of KB in the tender for "NRRY" L.L.C. was €79 690, three times less than the bid of NK for € 211111. Based on these figures in full conformity with Article 8, paragraph 5 LPAK, Article 3, paragraph 3, first and second sentences and Article 10, paragraph 3 of the Rules of Tender, PAK selected NK as Winning Bidder and sold to him as Buyer the tendered NewCo for € 211 111, who duly exercised his right to purchase it at this *highest bid price* as the only legally defined sale factor in the spin-off privatization. Since the tender process was successfully finalized with NK as the Highest Bidder, KB could not be given the opportunity to purchase the NewCo as the *Second Highest Bidder* at the highest bid price pursuant to Article 3, paragraph 3, third sentence and Article 12, paragraphs 6 and 7 of the Rules of Tender. The non-selection of KB as Winning Bidder in the tender and his non-designation as Buyer of the tendered NewCo consequent to his downgraded bid did not infringe any applicable legal requirement.

71. The privatization of "NRRY" L.L.C. was duly conducted by PAK without procedural violations or any other infringements, nullifying the sale under Article 8, paragraph 3 LAP of the shares of SOE "TH" in this NewCo or invalidating any of its ancillary legal consequences. In the course of this privatization as it constituent element the *right on use* of SOE "TH" *over the contested business premise was transferred to its subsidiary corpo*ration - "NRRY" L.L.C. - pursuant to Article 6, paragraph 1, sub-paragraph 15 and Article 8, paragraph 2, first sentence LPAK *with ex lege transformation into Leasehold upon this transfer* pursuant to Section 2, paragraph 1, first sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45. It was accomplished by the Declaration on Transfer of Real Property of SOE "TH" to "NRRY" L.L.C. issued by the PAK as trustee for and on behalf of this SOE, and its subsidiary corporation, executed with its entry into force on 13th August 2012, as integral part of the privatization Sale Documents. This transfer is not null and void, nor is it otherwise deprived of its legal effect. Thus effective from 13th August 2012 it validly transformed the right on use of SOE "TH" into *Leasehold* of "NRRY" L.L.C. over the contested business premise pursuant to Section 2, paragraph 1, first sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45.

72. Based on the privatization Sale Documents, by Decision protocol nr.15-464-43385/12 of the Director of the Directorate for Geodesy, Cadastre and Property – Mitrovicë/Mitrovica, dated 24th August 2012 pursuant to Articles 1, 2, 3, and 7 of the Law No. 2002/5 on the Establishment of the Immovable Property Rights Register, amended by Law No. 2003/13, Articles 10, 11, 16 and 29 of the Law No. 04/L-013 on Cadastre, the 99-years Leasehold of "NRRY" L.L.C. over the contested business premise - part of building with unit nr.O-548-1-15-0-48-1 was registered in the cadastre as *right on use for definite period of time* (9th May 2003 – 9th May 2102). This registration was evidenced by Certificate Nr. UL-71208072 for the immovable property rights, dated 29th August 2012 issued by the Municipal Cadastral Office - Mitrovicë/Mitrovica according to Article 25 of Law No. 04/L-013 on Cadastre. Thus the Leasehold was duly registered according to Section 6 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 and became fully effective on *erga omnes* basis according to Article 7 of the Law No. 2002/5 on the Establishment of the Immovable Property Rights Register, amended by Law No. 2003/13. The present status of the Leasehold coincides with its registration - after its acquisition by "NRRY" L.L.C. as per Section 2, paragraph 1, first sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 it was not transferred to third parties or encumbered according to Section 2, paragraph 1, second sentence, items (b) and (c) in conjunction with Section 3, paragraph 2 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45. The duration of its 99-years term under Section 3, paragraph 1 of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45 will expire on 9th May 2102, as it has not been shortened according to Section 12. There is no other ground for termination of this Leasehold.

73. Based on these considerations, the court finds proven with certainly in this case the *active legitimacy* of the claimant "NRRY" L.L.C. as *Leaseholder* of the contested business premise, having *the right to use and possess it* according to Section 2, paragraph 1, second sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, and also the *right to have any illegal possessor removed from that property* according Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 in conjunction with Article 93 LPORR. This active legitimacy belongs exclusively and only to "NRRY" L.L.C. Contrariwise, SOE "TH" does not have this authorization since by the Declaration on Transfer of Real Property, dated 13th August 2012 (point 2.1) it lost all rights, titles to and interests in the business premise by *transferring* all of them to "NRRY" L.L.C.

subject to any occupation existing on the same date. Equally non-legitimated is PAK – once the privatization was completed on 14th August 2012 it lost its administrative authority under Article 5, paragraph 1, sub-paragraph 3 LPAK over "NRRY" L.L.C., and could not act as its trustee any more. PAK could not act also for and on behalf of SOE "TH" against the usurper(s) of the property since the SOE itself lost any such rights on 13th August 2012. Finally, the Declaration on Transfer of Assets and Obligations, dated 13th August 2012 (Annex 4) expressly states that with its entry into force all rights of SOE "TH" related to usurpation of the property are transferred to "NRRY" L.L.C. and the SOE itself and PAK are released from such responsibilities. Also lawfully the release of the business is claimed by "NRRY" L.L.C. represented by NK as its Director. The Leasehold formally belongs to this privatized limited liability company according to Section 2, paragraph 1, first sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, which according Article 78, paragraph 1, first sentence LBO is legally separate and distinct from its Owner NK. This natural person, though having all shares of "NRRY" L.L.C. under Article 78, paragraph 2 LBO, according to Article 78, paragraph 1, first sentence LBO *is not a co-owner or a titular of other transferable interest in the real property – subject to the Leasehold* of the limited liability company in his exclusive ownership under Article 95, paragraph 1 LBO after 14th August 2012.

74. The first legal prerequisite for granting the claim under Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 in conjunction with Article 93 LPORR – *proven active legitimacy of the claimant "NRRY" L.L.C. as Leaseholder of occupied property* - is met.

Illegal possession of the respondent over the contested business premise

75. At present the contested business premise is *possessed by the respondent, who uses* it for operation of Supermarket "F" – a non-specialized store for retail sale of goods which is a part of the personal business enterprise NPT "F" - Mitrovicë/ Mitrovica, "Mehë Uka" Square, business nr.70134943 of KB, Personal ID nr. 10200661689. The respondent explicitly admitted his current possession and use over the litigious property in the session on 19th November 2012 (page 6 of the minutes), as well as during his hearing for collection of evidence as per Article 373 LCP in the session on 12th December 2013, *denying co-possession or co-usage by any third party* (page 7 of the minutes). NPT "F", though being registered as personal business enterprise according to Article 27 LBO, *is not a legal person* -Article 48, paragraph 5, first sentence LBO. This is why KB as Owner of NPT "F" according to Article 48,

paragraph 1, first sentence LBO *has unlimited personal liability* for all obligations incurred by, or imposed by Law, on this personal business enterprise. Pursuant to Article 48, paragraph 2 LBO the court has no authority to exclude this liability with respect to property and assets of any description in his direct or indirect control. Accordingly Article 48, paragraph 5, second sentence LBO allows NPT "F" to be sued in its name or in the name of its Owner KB for handing over the contested object, now in his material control.

76. The respondent failed to prove as required by Article 322, paragraph 3 LCP the *lawfulness of his possession* over the business premise as per Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45. There is *no legal ground whatsoever, evidenced in the proceedings as entitling the respondent to possess this property* as per Article 93 LPORR, blocking its delivery to the claimant.

77. ***Lack of property right***. The respondent has not acquired in any moment the ownership and/or a limited real right over the business premise by law itself, a legal transaction, inheritance, decision of public authority or other ground determined by law. In particular, there is no such acquisition by *adverse possession* pursuant to: a) Article 28 of the Law The Law on Basic Property Relations (Official Gazette of the SFRY No. 6/80 with amendments and supplements in Official Gazette of the SFRY No. 29/90 and Official Gazette of the SRY No 26/96) ("LBPR") until it lost its effect with the entry into force of LPORR on 20th August 2009; or b) Article 40 or Article 41 LPORR after this new law became effective on 20th August 2009.

78. ***Article 28, paragraph 2 LBPR.*** Pursuant to Article 28, paragraph 2 LBPR conscientious and legal holder of a real estate over which somebody else disposes of the property right, shall acquire its ownership by adverse possession after expiration of 10 years. The cumulatively elements of this *short acquisitive prescription* are: 1) *possession* - Article 70 LBPR; 2) *conscientiousness* of the holder - Article 72, paragraph 2 LBOR; 3) *legality* of the possession - Article 72, paragraph 1 LBPR; 4) *expiration of the 10 years time period* - Article 28, paragraph 2 LBPR. However, these conditions are not met with respect to NPT "F". *At first place*, the possession is the exercise of factual power over property hold personally (*direct possession*) - Article 70, paragraph 1 LBPR or *through another person* based on legal transaction (*indirect possession*) - Article 70, paragraph 2 LBPR. Here the business premise was rented by SOE "TH" as *Lessor* to the respondent as *Lessee* by consecutive 3-months contracts on lease, the first signed on 1st May 2004 and the last on 1st April 2012. SOE "TH" thus *exercised its factual power as a right of use holder over this socially-*

owned asset through KB who based on these lease contracts was given out its use for fixed periods against payment of a specified rent. Or, SOE "TH" as *Lessor* held the contested object through KB as *Lessee* in its indirect possession-Article 70, paragraph 2 LBPR until its lease is terminated. Since according to Article 28, paragraph 2 LBPR the acquisitive prescription runs only for *possessor* holding the property *personally or through another person*, as a result of the indirect possession of SOE "TH" exercised *over the contested rented object through* KB, he himself was not entitled to acquire its ownership by positive prescription. *At second place,* Article 72, paragraph 2 LBPR defines *the possession as conscientious if the holder has not known or could have known that the property he/she is holding is not his/hers*. This is a *subjective* element expressed in the lack of knowledge of the possessor for holding a property not belonging to him/her. Here as admitted by KB in his hearing on 12th December 2013 (page 7 of the minutes) *he has always known* in the years that the contested object, rented to him, was *socially-owned asset* of SOE "TH" till privatized. This admission corroborates with the contracts on lease and commercial lease agreements signed by the respondent for the business premise as an asset – Restaurant "Y" (former "Z") of SOE "TH". The respondent rented this alien property in social ownership, knowing that it is not his, thus holding it in indirect possession which *has never been conscientio*us as per Article 72, paragraph 2 LBPR. *At third place*, it was also *not legal* since contrary to Article 72, paragraph 1 LBPR the respondent only rented the business premise but never held it on the basis of a *legal ground necessary for acquisition of its ownership,* i.e. any legal act which *derivatively transfer* or *non-derivatively establish a property right* as its valid title (legal transactions, court decisions and/or administrative acts). The contracts between SOE "TH" and KB as any other lease could not transfer the ownership of this business premise, moreover, given the administrative authority for disposal with such asset in social property first of KTA - Section 6, paragraph 2, item d) UNMIK Regulation No. 2002/12, and then of the PAK - Article 6, paragraph 2, sub-paragraph 3 LPAK. *At fourth place*, for the adverse possession to transform into ownership based on Article 28, paragraph 2 LPORR, it had to continue at least 10-years. From 1st May 2004 when the contested business premise was delivered to KB based on his first lease till 20th August 2009 when Article 28, paragraph 2 LBPR was abrogated, his possession lasted 5 years, 3 months and 20 days. Since the 10-years minimum of the short positive prescription under Article 28, paragraph 2 LBPR has not expired prior to its abrogation on 20th August 2009, the respondent could not acquire the property right over the contested object on its basis. His possession till 20th August 2009 being *indirect* - Article 70,

paragraph 2 LBPR for SOE "TH", *unconscientious* - Article 70, paragraph 2 LBPR, *unlawful* - Article 70, paragraph 2 LBPR, *below the minimum 10-year time limit* –was not converted *ex lege* pursuant to Article 20 LPBR into ownership right by the short positive prescription under Article 28, paragraph 2 LBPR, until in force.

79. ***Article 28, paragraph 4 LBPR***. Similarly, the respondent having rented the business premise as a socially-owned asset of SOE "TH" from 1st May 2004 (the date of his first lease) till 20th August 2009 (the date of abrogation of LBPR) *held it in indirect possession which was unconscientious and lasted less than 20-years,* contrary to Article 28, paragraph 4 LBPR. Upon such non-compliance, his possession in this pre-privatization period could not become ownership right based on *the long positive prescription* set out in Article 28, paragraph 4 LBPR.

80. ***Articles 40 – 41 LPORR***. *The Law No. 03/L-154 on Property and Other Real Rights* entered into force on 20th August 2009 *ex nunc.* Being a substantive law, it does not have retroactive legal effect, unless such has been explicitly provided by its transitional rule. In line with this Article 291, paragraph 1 LPORR expressly states that the provisions of this new law are applicable *for possessory relationships that exist on the day of its coming into force.* In this case the respondent on 20th August 2009 was holding the contested business premise and using it for the operation of his Supermarket "F" based on the then effective Contract on lease Nr. 01/07, dated 1st July 2009 with SOE "TH". This possessory relationship as existing on 20th August 2009 fell as within the scope of the Article 292, paragraph 1 LPORR and could be governed by Articles 40–41 LPORR, the norms on acquisition by prescription of the new law. However, it does not cover the prerequisites for their application. *At first place*, according to the evidence in the case KB was delivered the business premise for rent use on 1st May 2004 upon his first lease with SOE "TH". Counted from this initial moment – 1st May 2004 till the privatization of this socially-owned asset was finalized on 14th August 2012, his possession *lasted only 8 years, 2 months and 14 days, instead of 20 years* as required Article 40, paragraph 1 LPORR. Without this 20-years minimum of non-interrupted possession, *the respondent has not acquired the ownership of the contested business premise by the long positive prescription* set out in Article 40, paragraph 1 LPORR. *At second place,* neither NPT "F", nor KB has ever been registered in the cadastre as "*owner*" of this business premise, though without actually being its owner – the lack of such cadastral registration existing in the name of the respondent for at least 20 years automatically excludes the possibility for any property acquisition based on Article 41, first sentence LPORR. *At third*

place, pursuant to Article 40, paragraph 2 LPORR *the proprietary possessor acquires an immovable property, or a part thereof, after 10 years of uninterrupted possession, and if he is registered as its proprietary possessor in the immovable property rights register and no objection against this registration is filed during this period.* Article 40, paragraph 2 LPORR is non-applicable in this case since neither NPT "F", nor KB has ever been registered in the cadastre as *"possessor"* of the business premise – *without such formal cadastral registration of his possession, the ownership right over this real property was and is non-acquirable by the respondent based on the 10-years short positive prescription* in Article 40, paragraph 2 LPORR. *At fourth place,* with filing the revendication suit in this case on 19th September 2012 until its final resolution, all prescription periods were discontinued and thus could not run any more being *ex lege* interrupted by Article 369 LPORR. *At fifth place,* according to Article 1, paragraph 5 LPORR the provisions of LPORR *do not apply to real rights in public or common assets which are subject to specific legislation, unless otherwise provided in this law.* Therefore the SOE assets in social ownership like the contested business premise having the status of public assets being *generally* excluded from the scope of LPORR by its Article 1, paragraph 4 LPORR, and *not explicitly included* in Articles 40–41 LPORR, are non-acquirable by adverse possession. This acquisitive ground is regulated for acquiring ownership of *private* immovable properties only – arg. Article 1, paragraph 1 LPORR, being impermissible for real rights in any *public* properties – arg. Article 1, paragraphs 5 and 2 LPORR. Accordingly the Kosovo legislation on privatization does not foresee the prescription as a possible legal ground for disposal with of SOE assets in social ownership. For all these reasons, the respondent has not acquired the property ownership right over the contested business premise in any moment after 20th August 2009 till its privatization as SOE asset on 14th August 2012 or afterwards neither by the long 20-years prescription in Article 40, paragraph 1 or Article 41 LPORR, nor by the short 10-years prescription in Article 40, paragraph 2 LPORR. The main argument of the respondent reiterated in the proceedings for *having used the business premise for several years* is unfounded – this factual usage is not property right *per se*, nor *has been converted into such right* in any moment due to non-compliance with all requirements first of Article 28 LBPR and then of Articles 40 – 41 LPORR for acquisition by adverse possession (prescription), and the lack of any recognized acquisitive ground existing objectively and recognized as property title.

81. On 10th September 2012, NPT "F" as claimant filed against the PAK as respondent a claim for confirmation of ownership over the business premise in Mitrovicë/Mitrovica, "Agim Hajrizi" Square, registered as C.nr.194/2012 of the Basic

Court of Mitrovicë/Mitrovica. It *contains factual allegations and legal arguments identical* with the ones in his written reply under Article 395 LCP as respondent in C.nr.221/2012 of the Basic Court of Mitrovicë/Mitrovica of 30th October 2013. *At first place*, the claim in C.nr.194/12 of the Basic Court of Mitrovicë/Mitrovica as any other is not a property title *per se* until granted by a final judgment. However, there is no such determination in C.nr.194/12 of the Basic Court of Mitrovicë/Mitrovica as it is pending at a very initial procedural stage. *At second place,* "NRRY" L.L.C. is not a party in C.nr.194/12 of the Basic Court of Mitrovicë/Mitrovica and shall not be bound by the judgment in it, whenever rendered with finality - Article 167, paragraph 1 LCP. This is why C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica was not suspended pursuant to Article 278, paragraph 1, item a) LCP – due to the difference of the parties in the two sets of proceeding, the judgment in C.nr.194/12 of the Basic Court of Mitrovicë/Mitrovica could not form *res judicata* between the litigants in C.nr.221/12 and hence could not be prejudicially taken into account in the present case. *At third place*, insofar the resolution of this delivery claim in C.nr.221/12 of the Basic Court of Mitrovicë/Mitrovica depends on prior determination of existence/non-existence of entitlement of NPT "F" - KB to lawfully possess the business premise, *inter alia* as its pretended owner, without any decision already taken by any court on this prejudicial matter, it is to be decided in the present proceeding with legal effect within its limits according to Article 13, paragraphs 1 and 2 LCP. Hence, analyzing the reply of the respondent, which in its content is almost a literal copy of the claim in C.nr.194/12, and checking his passive legitimacy as *"illegal possessor",* this court in paragraphs 76 – 80 above *has excluded his entitlement to possession, accessorial to ownership.*

82. To conclude the post-privatisation current possession of NPT "F" - KB is not based on any property right under Article 1, paragraph 2 LPORR, derogating the Leasehold rights of "NRRY" L.L.C. to possess and use without obstruction the contested business premise-subject of its Leasehold, acquired by regular privatization according to Section 2, paragraph 1, second sentence, item (a) of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45.

83. ***Lack of contract.*** The respondent is not entitled to possess the claimed object based on any contract, currently in force.

84. All contacts on lease and commercial lease agreements listed in paragraphs 15 - 18 above between SOE "TH" as *Lessor* and SUPERMARKET "F"- KB as *Lessee* for Restaurant "Y" (former Restaurant "Z") consecutively concluded every trimester from 1st April 2004 till 1st April 2012 were terminated with the expiry of their 3-months

term according to Article 595, paragraph 1 LCT. The last such Commercial lease agreement was signed on 1st April 2012 for a definite period from 1st April to 30th June 2012. Prior to its expiry on 30th April 2012 *the privatization of the leased business premise was launched* by PAK as part of Wave 55 (paragraph 20 above). Consequent to its entering in this privatization process the Commercial lease agreement, dated 1st April 2012 was terminated, as explicitly provided in the second sentence of its Clause 1.2 and the remark to its Clause 5.4. The first text states that the lease *"ends by launching of privatization process"*, while the second text stipulates that *"the agreement is terminated by entering of the business premise in the privatization process"*. Thus the Commercial Lease Agreement of 1st April 2012 before expiry of its term was terminated according to Clause 5.1, second hypothesis in conjunction with Clause 1.2, second sentence and the remark to Clause 5.4 with entering of the leased business premise in privatization process on 30th April 2012. Being thus terminated, it could not and was not extended by the contracting parties in writing, nor was it automatically renewed based on the applicable law. Insofar the Commercial Lease Agreement, dated 1st April 2012 was included in the Declaration on Transfer of Assets and Determined Obligations of SOE "TH" to "NRRY" L.L.C., according to its Annex 4 since it had expired and was nor renewed, the privatized property was transferred *with the usurpation of the ex-Lessee*, while conveyed were only the rights and obligations of the SOE – ex-Lessor related to the lease termination. Hence, Annex 4 of this Declaration explicitly stated that it is the responsibility of "NRRY" L.L.C., not of PAK/SOE "TH", to deal with any usurpers, *inter alia,* requesting the object with terminated lease to be restored by the respondent as *ex-Lessee* according to Article 585, paragraph 1 LCT.

85. The respondent explicitly admitted in the main hearing on 12th December 2013 (page 7 of the minutes) that *all his lease contracts and agreements* with SOE "TH" for the contested object, including the last, dated 1st April 2012, *have been terminated with its privatization and now are not in force*. Further, he acknowledged that now *there is no contract whatsoever signed between him and any third person*, related to this object. "NRRY" L.L.C. is not legally bound by any such obligational relationship and must not in its fulfillment endure the challenged usurpation. The respondent, being *ex-Lessee* of the object with lease terminated long ago is obliged to vacate it immediately - Article 585, paragraph 1 LCT. As any other *former Lessee*, the respondent may not keep the rented object after the lease termination, and refusing *de facto* its return illegally usurps it.

86. ***Investments***. The lawfulness of this challenged possession is not justifiable with the investments allegedly made by respondent in the object since 2004, as argued in his reply to the claim. *At first place,* these investments are fully non-concretized – in the case they have not been specified by type, subject, moment and/or amount. As non-proven by the respondent according to Article 322, paragraph 3 LCP they shall be considered inexistent. *At second place*, according to all lease contracts between SOE "TH" and Supermarket "F" concluded every trimester from 1st May 2004 till 1st January 2012, all renovations in the object made by the *Lessee* in agreement with *Lessor* had to be borne by the *Lessee*. Through this clause the respondent preliminary renounced his right to be compensated for all these renovation expenses. Similarly, all his commercial lease agreements signed with SOE "TH" on 1st January 2011, 1st April 2011, 1st July 2011, 1st October 2011, 1st January 2012 and 1st April 2012 in Clause 2.61 state that all changes/accompaniments made by Supermarket "F" as *Lessee* in the business premise without the prior written consent of PAK shall be *excluded from compensation by the Lessor, PAK or any other third person to whom the agreement might be transferred in the privatization as per Clause 2.5.* PAK has never granted its written approval for any reconstructions, refurbishments and/or other changes in the object. Without this prior consent of PAK, these expenditures, regardless of their precise legal qualification and amounts, are generally and in advance excluded from *reimbursement to the respondent*-Clause 2.6.1 of the Commercial Lease Agreements. *At third place*, regardless of this concrete exemption for all investments made by the respondent without the written authorization of the PAK, in principle all *necessary expenditures* of the possessor to maintain the possessed property, and all *useful (beneficial) expenditures* increasing its value may only produce *entitlement to monetary compensation.* It may cover these two categories of expenditures if the possessor is *conscientious, bona fide* - Article 38, paragraphs 3 and 4 LBPR till 20th August 2009, and Article 96, paragraphs 1 – 3 LPORR after 20th August 2009, or only the first category of necessary expenditures if the possessor is *unconscientious, male fide* - Article 39, paragraph 4 LBPR till 20th August 2009, and Article 99, paragraph 2 LPORR after 20th August 2009. In all possible hypotheses, the compensation due to the possessor for such expenditures could be *only monetary, in money*, and never real (*in natura*), expressed in ownership, co-ownership, or other limited real right. Therefore, all investments, pretended by the respondent, save for being excluded from compensation as non-authorized by PAK by the pre-privatization lease contracts, *even theoretically could not make him owner, co-owner, or any other property right holder of the contested object.* Neither Articles 38 –41 LBPR, nor Article 95–100 LPORR

foresee such conversion as pertains from the principle of legality in property relations set out in Article 7 LBPR and Article 1, paragraph 3, first sentence LPORR, respectively. This is why, reimbursable or not, the investments in Supermarket "F" do not at all reason the post-privatization possession of the respondent and does not legalize it in any way. *At fourth place*, the Declaration on Transfer of Assets and Obligations of SOE "TH" to "NRRY" L.L.C., dated 13th August 2012 does not transfer any liabilities of this SOE to this NewCo for expenditures made by the respondent in the object. Without such transfer under Article 8, paragraph 2, first sentence LPAK, "NRRY" L.L.C. has no responsibilities in this regard, and could not be denied delivery of the object for non-settlement of such pre-privatization pretences. *At fifth place*, the representative of the respondent expressly refused in the preliminary hearing on 19th November 2013 (page 7 of the minutes) to invoke formal objection under Article 96, paragraph 4 LPORR for retaining the business premise until compensated for the investments made. Without such objection of the party, entitled to call upon it, any *ex officio* application of Article 96, paragraph 4 LPORR by the court would be impermissible. Apart, the respondent is *mala fide* possessor as per Article 96, paragraph 5 LPORR *who knows or should have known that he is not entitled to further possession* of the business premise after losing its tender on 30th May 2012, the end of the privatization on 14th August 2012, the notices of PAK to vacate the property in the second half of August 2012 and the claim filed against him on 19th September 2012 for its release. The respondent has no right to retain under Article 94, paragraph 2 LPORR as he is not *bona fide* possessor; while as *male fide* possessor he is explicitly denied by Article 99, paragraph 2 LPORR such right to retain the object until compensated for any expenditures. Or, all pretences of NPT 'F" and/or KB for his investments are to be filed for adjudication with a claim in separate, new contested procedure within 3 years after the delivery. These pretences could not be decided in this case without counterclaim filed by the respondent as per Article 256 LCP or his set-off compensation objection as per Article 166, paragraph 3 LCP. Regardless of their existence, types as expenditures and amounts, these investments, due or undue, could not cure the post-privatization possession of the respondent since they are non-transformable into any property right over the object, and do not produce a contractual ground for its further use.

87. ***Employees.*** The fact that currently in Supermarket "F" there are 20 workers, earning the income of their families, apart from being *non-proven* in the case with their written employment contracts, is legally *irrelevant* in this property dispute. Each one of these employment relationships is binding between NPT "F" - KB as *Employer*

and the respective natural person as *Employee*, having no legal effect to "NRRY" L.L.C. as a third legal person, that has acquired only Leasehold over the object – their working place. Therefore none of these employment relationships is a source of any obligation for "NRRY" L.L.C., *inter alia,* for tolerance of the further business operation of Supermarket "F" with its staff. The rights and obligations of SOE "TH" transferred to "NRRY" L.L.C. in the privatization process were explicitly *limited* to the contested business premise as a physical structure – part of a building, without being extended to the personnel working in it. The *spin-off in question was not special* – there were no conditions attached to the privatization transfer, e.g. for *maintaining a minimum level of employment.* For comprehensiveness it should be mentioned that the said employees have been always working for NPT "F" and never for SOE "TH"- hence, they are not entitled to any of the rights set out in Section 10 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45, related to the privatization of this business premise. Terminated or not the labour contracts of these workers with NPT "F", due to their relative effect, are not legally opposable to "NRRY" L.L.C. and do not hinder the post-privatization delivery of the litigious immovable property to this limited liability company as its legitimate Leasehold acquirer.

88. ***Tradition.*** According to Article 2, paragraph 2 LCP the court shall render its judgment applying the rules set out by the *substantive law.* Contrariwise, the court is not permitted and/or empowered to resolve the dispute applying any *traditions and/or customs,* unincorporated in the legislation. Any exception in this regard will inevitably lead to erroneous non-application of the applicable substantive law as per Article 184 LCP, vitiating the rendered judgment and constituting a ground for its challenging and annulment through all regular and extraordinary legal remedies. Hence, the stance of the respondent that *"according to the tradition"* the business premise belongs to him is his *subjective perception*, non-based on any objectively existing property title.

89. ***Negotiations.*** The fact that the respondent contacted the claimant and they held negotiations regarding the business premise after its privatization is *legally irrelevant* since the parties have not reached any agreement, *inter alia*, transferring the 99-years Leasehold over this property as per Section 2, paragraph 1, second sentence, item (b) of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No.2004/45, from "NRRY" L.L.C. to NPT "F" - KB. These negotiations by themselves, non-finalized with any contract, are without legal value and do not make the unlawful possession of the respondent lawful. As to the decision of "NRRY" L.L.C. to preserve

the Leasehold for itself without conveying it to NPT "F", it is fully legitimate - it is up to this Leaseholder to unilaterally decide whether to exercise or not its right to transfer the Leasehold to a third party according to Section 2, paragraph 1, second sentence, item (b) of UNMIK Regulation No.2003/13, amended by UNMIK Regulation No. 2004/45.

90. ***Written notice.*** According to Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 in conjunction with Article 93 LPORR, the Leaseholder is *ex lege* entitled in any moment directly to request delivery of the property, subject to Leasehold, *without being obliged prior to that to give any notice, verbal or written, to its illegal possessor*. Since there is *no such statutory requirement*, the lack in this case of out-of-court written notice for voluntary release of the property sent by "NRRY" L.L.C. to NPT "F" does not formally impede its judicially sought revendication. Besides, PAK *de facto* sent to the respondent two letters to vacate the object after its privatization; though the claimant extended the time limit given by PAK with two weeks up to 10th September 2012, the respondent did not re-locate the supermarket neither within this extended deadline, nor after its expiry. Therefore, though not *de jure* mandatory the respondent was given the opportunity for voluntary fulfillment before the claim, however, with no result. His subjective unwillingness to move Supermarket "F" in other premises and the objective difficulties in the logistics of such re-location do not entitle him to usurp the object–current location of this store.

91. After this analysis the court finds the post-privatization current possession of the business premise in litigation by the respondent *unlawful* as required by Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No.2004/45. The respondent is *not the owner or the holder of any limited real right* under Article 1, paragraph 2 LPORR, ever acquired on any ground, authorizing him to possess and use this property today. He has *no contract whatsoever with whomever*, effective today, giving him the right to hold this business premise. The respondent may not refuse delivery pursuant to Article 94, paragraph 1 LPORR since he is not entitled to possess it personally, while all rights, titles to and interests in property of his ex-Lessor SOE "TH" as indirect possessor have been terminated consequent to their privatization transfer to "NRRY" L.L.C. Hence, non-applicable is the delivery configuration set out in Article 94, paragraph 2 LPORR. On the other hand, his challenged possession has not been terminated in the course of the proceedings as the respondent has not given up, nor has he lost otherwise material control over the object as per Article 107, paragraph 1 LPORR.

VI. CONCLUSIONS. COSTS OF THE PROCEEDINGS

92. This revendication claim filed by the claimant as *Leaseholder* of the pretended property – subject of its Leasehold, fully deprived of its possession, shall be granted by removal of the respondent as its *current illegal possessor* according to Section 4 of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45 in conjunction with Article 93 LPORR. The respondent shall be obliged to release this property, continuously usurped without any legal ground, with its handing over to the claimant as its officially registered Leaseholder, legitimated to use and to possess it according to Section 2, paragraph 1, second sentence, item (a) of UNMIK Regulation No. 2003/13, amended by UNMIK Regulation No. 2004/45.

93. Considering the outcome of the case, the respondent as the losing party shall be obliged to reimburse the procedural costs of the claimant according to Article 452, paragraph 1 LCP. Such special request under Article 463, paragraph 1 LCP is made by the claim and in the final speech of the authorized representative of the claimant in main hearing within the deadline under Article 463, paragraph 3 LCP, accompanied with specification under Article 463, paragraph 2 LCP, dated 16th December 2013.

94. As per Article 449 LCP, these procedural expenses shall include the court fee – **500 €** (20 € paid on 19th September 2012 and 480 € paid on 4th October 2013).

95. Based on Article 449, paragraph 2 LCP the expenses for the lawyer–authorized representative of the claimant shall be reimbursed according to Article 453, paragraph 2 LCP and the Tariffs for the remunerations and compensations of expenses for the work performed by lawyers adopted by the Assembly of the Kosovo Chamber of Advocates on 1st December 2012 ("Tariff"). *At first place*, for preparation of the claim filed on 19th September 2012 for initiation of the present proceedings with value of 211 111 €, over the threshold of 500 € for small value disputes under Article 485, paragraph 1 LCP – point 2 of the specification, the lawyer's enumeration due is **154 €** (80 € basis and 24 € as 30 % lump sum - table - Tariff 6 with 50 % increase - Section 6, paragraph 3 of the Tariff for more applications involved in the lawsuit). Lawyer's remuneration on the same legal ground in the same amount - **154 €** is due for drafting the Submission for supplementation, precision and regularization of the claim, dated 7th October 2013 – point 9 of the specification. *At second place*, for review on 15th September 2012 of the case documents to the claim - point 1 of the specification, the lawyer's remuneration due according to Section 14, paragraph 1, item a) of the Tariff is **40 €**. The same lawyer's remuneration - **40 €** is due for review of the respondent's reply to the claim on 4th November 2013 - point 10 of the specification, plus **40 €** for

review of the PAK file on 27th November 2013 - point 12 of the specification. *At third place,* for representation in the sessions pursuant to Tariff 7 the lawyer's remuneration due for the preliminary hearing on 19th November 2013 is **184.60 €**, and for the main hearing on 12th December 2013 - **184.60 €** - points 11 and 13 of the specification. Composed of the elements listed in this paragraph, the total amount of the lawyer's remunerations of the authorized representative of the claimant, due for compensation according to Article 449, paragraph 1 and Article 453, paragraph 2 LCP, is **797.20 €.**

96. The other expenses pretended by the claimant's specification under Article 463, paragraph 2 LCP shall not be refunded as costs of the proceedings. *At first place*, the urgency submission, dated 1st October 2013 – point 2 of the specification is not enclosed in case file, delivered to EULEX. Additionally, seen from its description it is not filed for *initiation* of the proceedings and does not contain a "*request*", i.e. an interlocutory procedural motion, different from the *petitum* of the claim that has to be decided by a ruling of the court. As additional application after the lawsuit, it must be compensated by the 50 % increase in Section 6, paragraph 3 of the Tariff, as already awarded in paragraph 95 above. *At second place*, the urgency submission, dated 5th October 2013 – point 3 of the specification in its prevailing part reproduces the claim, dated 19th September 2012 and does not contain a new procedural request, as required in Tariff 6. In general, there is no rule in LCP or the Tariff for lawyer's remuneration payable for each submission filed to the case. *At third place,* the urgency submission, dated 19th November 2012 - point 5 of the specification is not enclosed in the case; seen from its description it is not addressed to this court but to the Kosovo Judicial Council for disciplinary proceedings against the Kosovo judge, initially assigned to the case, because of procedural delays, not fault of the respondent. *At fourth place*, the documents in points 6 - 8 of the specification are complied for *taking over of the case* pursuant to Article 5, paragraph 7 of the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. This taking over phase does not fall within the scope of Article 1 and Article 2, paragraph 1 LCP and the expenses incurred in it cannot be reimbursed according to the rules in Chapter XXV LCP. *At fifth place,* the travel expenses of NK from Finland to Kosovo for presence in the main hearing sought in the amount of 543.79 €, are *not being evidenced* in the case by any flight ticket(s) as required by Article 463, paragraph 2 LCP. Contrary to Article 449, paragraph 1 LCP they do not constitute *costs incurred during the proceedings*. Further, as *claimant* is "NRRY" L.L.C. only this legal person as *party* in the proceedings has the right to reimbursement - Article 452, paragraph 1 LCP. NK as a natural person - *legal representative* of the claimant has no such right –

firstly, he is not a party contrary to Article 452, paragraph 1 LCP; *secondly*, according to Article 449, paragraph 2 LCP the costs of the proceedings comprise expenses of a lawyer and *other persons entitled to remuneration by law* – there is no such provision entitling a legal representative of litigant – legal person to any repayable sums paid in the case. Contrary to Article 453, paragraph 1 LCP the pretended travel expenses *were not necessity to pursue the case*, namely for *representation* of "NRRY" L.L.C. since during the entire proceedings the claimant had a *duly authorized representative* – Lawyer RD, present in all sessions. Insofar the examination of the parties for collection of evidence in the main hearing on 12th December 2013 was proposed in the preliminary hearing on 19th November 2013 by *both parties* according to Article 373 LCP, *each party had to bear its own expenses* for this examination under Article 430 LCP – arg. Article 451, paragraph 1 and Article 452, paragraph 2 LCP. This is why Article 451, paragraph 1 LCP does not require their pre-payment, limiting the pre-paid deposits of litigants to witnesses, experts and site inspection. This is why, Articles 373 – 378 LCP do not foresee any entitlement of a *party* to reimbursement of its travel expenses for examination under Article 430 LCP, like the one provided by Article 355 LCP for witnesses. Therefore, all travel expenses related to the participation of NK in the session on 12th December 2013 for his hearing as a legal representative of "NRRY" L.L.C. as per Article 375, paragraph 3 LCP *should be born by the claimant*, in the way the respondent covered its transport expenses for his examination in the same session. After considering all these circumstances according to Article 453, paragraph 1 LCP, the court decides the travel expenses of NK from Finland to Kosovo for 543.79 € not to be included in the costs of the proceedings payable by the respondent. The latter has no fault for the residence of the legal representative of the claimant abroad and therefore should not be burdened with any additional sums due to this reason.

97. The claimant shall be compensated pursuant to Article 452, paragraph 1 LCP for the procedural expenses in paragraphs 96 and 97 in the total amount of **1297.20 €** with rejection of its request under Article 463, paragraph 1 LCP in its remaining part.

98. The respondent shall not be awarded any procedural expenses as pretended - being the losing party in the case pursuant to Article 452, paragraph 1 LCP he is not entitled to compensation.

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

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

THE BASIC COURT OF MITROVICË/MITROVICA
C. nr.221/2012 on 12.12.2013

EULEX JUDGE ROSITZA BUZOVA

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