

[Supreme Court - Ruling on Civil Proceeding - Article 386 LCP - award of damages - revision of judgment -request accepted - retrial ordered - article 395 (2) LCP]

The respondent filed a request for revision of judgment against the decision of the Supreme Court of Kosovo, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Supreme Court of Kosovo dismissed the appeal of the respondent and approved the appeal of the plaintiff, obligating the respondent to pay compensation for non-delivery of goods.

The Supreme Court ruled that the first instance court had wrongly applied the law, due to incomplete determination of the factual situation. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.E.No.3/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Bexheti, presiding judge, Mr. Rifat Zylfiu, Gjuran Dema, Osman Tmava and Zait Xhemajli members, in the legal case of the plaintiff Electronic Music Enterprise "Korabi", in Gjilan, represented by Iljaz Ramajli, attorney at law, against the respondent NTP "Nderi", with its headquarters in the village of Tern, Municipality of Ferizaj, seeking award of damages in the amount of 8.876,62 €, based on the request for revision filled by the respondent, against the judgment of the Supreme Court of Kosovo Ae.No.82/2004 dated 31.01.2005, in the session held on 21.07.2005, rendered the following:

RULING

To accept the revision of the respondent and annul the judgment of the Supreme Court of Kosovo, Ae.No.82/2004 dated 31.01.2005 as well as the decision of the District Commercial Court of Prishtina C.No.275/2003 dated 02.09.2004, and remand the case to the first instance Court for retrial.

REASONING

With the judgment issued by the Supreme Court Ae.No.82/2004 dated 31.01.2005, the appeal of the respondent has been dismissed as unfounded, reaffirming the judgment of the District Commercial Court of Prishtina C.No.275/2003 dated 02.09.2004, and approving the appeal of the plaintiff, obligating the respondent to pay compensation for non-delivery of goods in the amount of 8.876,62 €, with an interest rate of 3% *per annum*, in accordance to the interest rate of the Commercial Bank, for a time period of more than one year, starting from 13.10.2003 until final payment, also requesting an award of incurred expenses in Court proceedings in the amount of 1.103,20 €, all of which has to be paid within 8 days after the judgment is rendered, under the threat of compulsory execution of the ruling.

The respondent filed a request for revision of the judgment against the ruling of the second instance in due time, on the grounds of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the judgments of the lower courts be annulled and the case is remanded to the first instance Court for retrial.

The plaintiff filed a response against the appeal of the respondent, proposing that the respondents' request for revision be dismissed as unfounded.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the LCP, held that the request for revision is found.

The case files indicate that the plaintiff in his claim requests compensation for non-delivery of goods in the amount of 8.876,62 €. The submissions of the UNMIK Customs Service, Investigation Section, dated 27.04.2004, show that the respondent did not declare the real value of the goods transported, since during the inspection of the goods the Customs Service found the original receipts of the goods in dispute sound and lightning equipment, showing an amount of 5.468,82€, while according to the specifications declared to the customs service, it can clearly be determined that the respondent only declared a part of the disputed goods, thus the Customs Commission for Offences

has fined the respondent and also seized the goods.

The first instance Court after administering the evidence, found that the claim of the plaintiff is founded and obligated the respondent to pay the plaintiff compensation in the amount of 8.876,62 €. Deciding on the appeal of the plaintiff, the Supreme Court of Kosovo dismissed the appeal of the respondent, reaffirming the judgment of the Court of the first instance.

Having in mind the above said, the Court of revision deems that the first instance Court has wrongly applied the law, due to incomplete determination of the factual situation, based on which the Court of revision annuls both of the judgments and remands the case to the first instance Court for retrial.

The first instance Court has concluded that between the parties there is no dispute regarding the fact that the plaintiff has in advance paid the transportation expenses for the transportation of the disputed goods in the amount of 1000 CHF, which converted into Euro equals the value 600€, while the issue in dispute is, who is responsible for covering the expenses incurred by the seizure of goods by UNMIK Customs Service, due to non declaration of the real value of goods by partially declaring the goods (music equipment) due to which the Customs Commission for Offences has fined the plaintiff on the basis of false declaration of the goods.

The first instance Court was obligated to request the files from the Customs Service regarding the overall procedure and request the evidence in regards to fine issued to the respondent due to non-declaration of the real value of the goods. However the current case files do not contain the submission of the Customs Commission for Offences, only a letter from the Customs Offence Commission No.172 dated 18.10.2003, based on which the Court can not determine the measure issued to the respondent. Besides this, the first instance Court was obligated to listen to the testimonies of the witness B.I., who was acting as a manager of the plaintiffs' company in regards to the transportation of the goods.

The first instance Court during the retrial procedure is obligated to remove the above mentioned deficiencies, request the additional case files from the Customs Commission for Offences, and is

obligated to listen to the testimonies of the witnesses B.I and all others involved in transportation of goods from Zurich to Gjilan, determine the declaration of goods in regards to its value, and administer all the other relevant evidence in order to correctly determine the facts, and only after that render a just decision.

As stated above, pursuant to article 395 paragraph 2 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.E.No.3/2005, on 21.07.2005

Presiding Judge,
Meleqe Behxheti

[Supreme Court - Ruling on Civil Proceeding - Article 386 LCP reinstatement of working position - compensation of the salaries revision of judgment - request accepted retrial ordered - resumption of employment - article 9, 11 UNMIK Regulation 2001/7 - Labour Law in Kosovo]

The respondent filed a request for revision of judgment against the decision of the District Court of Prishtina, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District court of Prishtina obligated and ordered the respondent to ensure the resumption of employment for the plaintiff. The Supreme Court ruled that the first instance court had wrongly applied the law, due to incomplete determination of the factual situation. The Supreme Court ruled that the circumstances describing the duties and tasks of the plaintiff were not determined; respectively it was not determined whether the conditions on the establishment of labour relations have been fulfilled, as required by UNMIK Regulation 2001/27 on Essential Labour Law in Kosovo. The Supreme Court ruled that the first instance and second instance courts did not determine what were the actions that resulted in violation of the labour law and how the violation was committed. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.18/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Mr.Sc. Rifat Zylfiu, presiding judge, Shahdane Agani, Meleqe Behxheti, Vjosa Nimani, and Osman Tmava, members, in the legal case of plaintiff F.D., from Hani i Elezit, represented by attorney at law Ilaz Ramajli from Prishtina, against the respondent Sharr Beteiligungs GmbH, Cement Factory "Sharcem", from Hani i Elezit regarding the plaintiffs' request for reinstatement in his previous working position and compensation of the salaries, initiated based on revision of the respondent, against the judgment of the District Court of Prishtina, Ac.No.464/2003 dated 8 November 2004, in the session held 20 July 2005, rendered the following:

RULING

To accept the revision of the respondent and annul both the judgment of the District Court of Prishtina, Ac.No.464/2003 dated 8 November 2004, and the judgment of the Municipal Court of Kaqanik, C.No.78/2002 dated 27 June 2003, and remand the case to the Court of the first instance for retrial.

Reasoning

With the judgment of the District Court of Prishtina, Ac.No.464/2003 dated 8 November 2004, the appeal of the respondent was accepted only partially, in that way that, the part in paragraph I of the enacting clause of the judgment of the Court of the first instance C.No.78/2002 dated 27 June 2003 that has to do with the Decision of the respondent on termination of employment of the plaintiff No.LA/862 dated 3 June 2002 is denied, obligating and ordering the respondent to ensure the resumption of employment for the plaintiff as a Technical Director with all the rights and privileges arising from employment within 15 days, from the day this decision is rendered. On the other hand accepted the appeal of the plaintiff, by partially annulling the judgment of the Court of the first instance under paragraph II of the enacting clause, under which the respondent was released from the obligation to compensate the plaintiff for his personal income with interest, and released under paragraph III of the enacting clause, in regards to the compensation of the procedural cost, and the case has been remanded for retrial to the Court of the first instance.

The respondent filed a request for revision against the judgment of the second instance in due time, on the grounds of essential violation of the provisions the contested procedure and wrongful application of substantive law, proposing that the judgments of the lower courts be annulled, and that the case is remanded to the Court of the first instance for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the LCP, held that the request for revision is founded.

The case files show that the Court of the first instance with the administered evidence has determined that the plaintiff, without an employment contract has been working in the company of the respondent, from 13 of June 2000, in the position of Technical Director. The plaintiff worked there until 3 June 2002 when with the Decision of the respondent LA/862 dated 3 June 2002, the plaintiff was terminated from his position due to non completion of tasks and duties in a timely manner, which the plaintiff was obligated to do so. The respondent had commercialized the Cement Factory in Hani i Elezit in accordance to the agreement which foresees the obligation of the plaintiff to improve the products and investments of the factory. The plaintiff did not fulfill these contractual obligations and was warned from the respondent. This lead to the worsening of the relations between the plaintiff and the respondent, however the respondent did not undertake the disciplinary measures toward the plaintiff due to violation and non completion of tasks and duties, but because of the critics made by the plaintiff toward the respondent. Before the disciplinary measures were issued toward the plaintiff, the responded did not conduct any procedures to verify the violations and non completion of the tasks and work obligations as claimed in order to justify and explain what are these violations and with what they are related to. The Court of the first instance, in determining the facts related to the labour obligations took into consideration the employment contract, which is within the files, however this contract was not signed by either the parties in dispute, establishing relations as employer and employee, which according to statement of the plaintiff, was not signed due to the fear of decrease of salary and decrease of various contribution that he was receiving.

Having in mind the above mention, the Court of the first instance has concluded that the decision on termination of the employment contract of the plaintiff is in violation of the provisions foreseen in section 11, item 11.5 and 11.5 item b of UNMIK Regulation, and as such it considers it unlawful and therefore annuls it, deciding as in the enacting clause under paragraph I, to reinstate and ensure the resumption of employment of the plaintiff as a Technical Director with all the rights and privileges arising from employment.

The Court of the second instance, deciding on the appellate procedure, has accepted the factual assertions and the legal position of Court of the first instance when it determined that the appeal of the plaintiff regarding the request for resumption of employment is

founded, and based on this rendered a judgment that the first instance Court had determined correctly and completely the factual situation dismissing the appeal of the respondent, by reaffirming the judgment of the first instance.

Having in mind the above mentioned, the Supreme Court can not accept such legal position as the lower courts, since based on the evaluations of this Court, due to wrongful application of the substantive law by the lower Courts, which as a consequence resulted in non determination of the factual situation, thus due to these reasons, there is no possibility to amend the decisions of the mentioned courts, based on which the Supreme Court annuls both judgments.

With the request for revision, the judgments of the lower Courts are disputed on the basis of essential violation of applicable provisions of contested procedure, however not mentioning specifically what are these violations. This Court of revision evaluates that there are no violations, because pursuant to article 386 of the LCK, this Court scrutinizes the appealed judgment within the reasoning provided in the revision, identifying possible violations *ex officio*, as foreseen in article 354 paragraph 2 item 11 of the LCP based on the request of the parties, based on which this Court believes that in this concrete case there are no such violations.

The wrongful application of the substantive law, which as a consequence resulted in the inability to determine the factual situation, since the Court of the first instance during the trial found that between the parties there was no employment contract, and on the other hand the contract found in the case files has not been signed by either party, however such contract foresees the labour obligations and rights of the parties, since pursuant to article 9 paragraph 9.3 of the UNMIK Regulation No.2001/27, on Essential Labour Law in Kosovo, it is foreseen that an employee means a natural person employed to perform work or services for an employer, under the latter's authority and control. An employee performs his/her obligations, and may exercise his/her rights, in accordance with the applicable law, labour contract, and, where applicable, collective agreement. The case files, indicate that the plaintiff did not sign such a contract due to the fear of loss of contributions from the salary. However it is not contested that from 13.06.2000 until the day of the Decision of the respondent to terminate the employment of the plaintiff, that the plaintiff was working and

generating income, which brings up the question in front of this Court, if there was a contract accepted by both parties silently under which both parties were performing, the question to be answered is, is there a contract or not. If there is no contract, the question that follows is, can a legal labour relation exist between the plaintiff and the respondent, and depending on the answer, how can a factual working contract be terminated toward a person who is factually employed. In the procedure of the first instance, it was not determined that besides the mentioned contract, what other documents foresee the obligations and tasks of the plaintiff, since the plaintiff as a Technical Director in the company of the respondent, should have clearly defined tasks specified in a contract or some other legal document, since he in his working relations, thus having right and obligations in those relation. Depending on the determination of the facts, related to what were the plaintiffs' obligations, depends the determination of the fact whether the plaintiff, with his actions at his working place conducted a violation of the provision of the Law on Labour Relations and violations of the employment contract, whereas only after that determination, the Court can decide, whether the plaintiff should suffer any disciplinary actions or not.

The termination of the labour relation pursuant to article 11 paragraph 11.1 besides other reasons, can be terminated on the basis, foreseen under (d) on the grounds of unsatisfactory performance by the employee, and also pursuant to article 12.2 a labour contract can be terminated in on the grounds of serious misconduct, where paragraph 11.4 defines what unsatisfactory performance means. On the other hand, article 11.5 foresees the cases when section 11.2 applies: (a) the employer shall notify the employee in writing that it intends to terminate the labour contract. Such notice shall include the grounds for termination, and (b) a meeting shall be held between the employer and the employee, and at such meeting the employer shall provide the employee with an oral explanation of the grounds for termination. If the employee is a member of a union, the employee shall be entitled to have a union representative present at such meeting.

The above provisions show that the respondent does not need to conduct other procedures for termination of the contract besides the above mentioned, therefore during the procedure of the Court of the first instance, the circumstances describing the duties and tasks of the plaintiff were not determined, respectively it was not determined

whether the conditions on the establishment of labour relations have been fulfilled in accordance to the above mentioned provisions of the UNMIK Regulation, it was not determined what were the actions that resulted in violation of the labour law and how the violation was committed, respectively where and on what is the unsatisfactory performance of the plaintiff is based on, due to which, a review of he decision can not be conducted, since the Courts of the lower instances have found that the appeal of the plaintiff in the part that has to do with his reinstatement in his position is founded, and requested the respondent to reinstate the plaintiff to his position.

The Court of the second instance was obligated *ex officio*, to insure a just execution of substantive law, however failed to do so, due to which this Court of Revision, pursuant to article 395 paragraph 2 of LCP, annuls both of the judgments and remands the case to the Court of the first instance for retrial.

The Court of the first instance during the retrial procedure is obligated to remove the above mentioned deficiencies, discover new evidence and determine the disputed facts, listen to the testimonies of the parties and only after the evaluation of the evidence, render a just decision.

As stated above, pursuant to article 395 paragraph 2 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTNA
Rev.No.18/2005, on 20.07.2005

Presiding judge,
Mr.sc.Rifat Zylfiu

[Supreme Court - Ruling on Civil Proceeding - real estate - annulment of contract - 354 (2) ((14)), 356 LCP revision of judgment request accepted retrial ordered]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Peja, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Peja accepted the appeal of the plaintiffs, annulling the purchase contract, between the plaintiffs, on the one side as seller, and the respondents. The respondents were obligated to vacate the plaintiffs house and business facilities

The Supreme Court of Kosovo ruled that the lower instance courts committed essential violations of the provisions of the contested procedure, as required by 354 paragraph 2 item 14 of LCP, because the enacting clause of the Court of the first instance is ambiguous and as such not executable. The courts had not clearly determined which of the plaintiff is obligated to vacate which part of the property and submit to the plaintiff. The Supreme Court ruled that the obligatory judgment must contain not only the decision on the legal relations between the parties but also the rights and obligations in that relationship. Accordingly, the Supreme Court ruled that the plaintiff's appeal was founded.

Rev.No. 43/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Osman Tmava, Meleqe Bexheti and Vjosa Nimani-Zylfiu, members, in the legal case of the plaintiffs M.P., Gj.P., F.A. born in P., M.T. born in P., M.L. born in P. and N.P. born in P., all of them from Vodnja, Republic of Croatia, represented by attorney at law Ferid Gjikolli from Peja, against the respondents A.K. and T.K. born in P., with a temporary residence in Switzerland, Z.Sh., J.K. and T.K., all of them from Peja, represented by attorney at law Bekë Lajçi, from Peja, for the annulment of the contract and submission of the real estate in accordance to respondents request for revision, filled against the both the judgment of the District Court of Peja Ac.No.238/2003 dated 18.11.2003 and against the judgment of the Municipal Court of Peja,

C.No.537/2001 dated 19.05.2003, in the session held on 28.07.2005, rendered the following:

RULING

To accept the revision of the respondents and annul both the judgment the District Court of Peja, Ac.No.238/2003 dated 18.11.2003 and the judgment of the Municipal Court of Peja, C.No.537/2001 dated 07.04.2003, and remand the case for retrial to the Court of the first instance.

Reasoning

The Municipal Court of Peja, with its judgment C.No.537/2001 dated 19.05.2003, in part I of the enacting clause accepted the appeal of the plaintiffs, annulling the purchase contract, dated 21.07.1994, between the plaintiffs: M.P., F.A. born in P., M.T. born in P., M.L. born in P., N.P. e born in P., all of them from Vodnja, Republic of Croatia, on the one side as seller, and the respondents A.K. and T.K. born in P., both from Peja, with a temporary residence in Switzerland, on the other side as purchaser, due to non fulfillment of the terms in the contract from the respondents side. In the II part of the enacting clause the respondents A.K., T.K. born in P., Z.Sh., J.K. and T.K., all of them from Peja, are obligated to vacate the plaintiffs house and business facilities, built in the cadastral parcel No.2773 and in the cadastral parcel No.4153, certificate number No.834 kk Peja, vacate from from the occupants and hand over all the property, within 15 days from the day this judgment is rendered under the threat of compulsory execution of the ruling. In the III part of the enacting clause, the respondent were ordered to jointly pay to the plaintiff the Court procedural expenses in the amount of 1.816 €, within 15 days after the judgment is rendered, under the threat of compulsory execution of the ruling.

With the judgment of the District Court of Peja, Ac.No.238/2003 dated 18.11.2003, the appeal of the respondents were dismissed, while the judgments of the Municipal Court of Peja C.No.537/2001 dated 07.04.2003 and the additional judgment C.No.537/2001 dated 19.05.2003, were reaffirmed.

The plaintiffs filed a request for revision of the judgment, against the ruling of the Municipal Court of Peja C.No.537/2001 dated 19.05.2003 and the judgment second instance, in due time on the grounds of violation of applicable essential provisions of contested procedure, wrongful application of substantive law, and proposed to annul the rulings of the lower Courts and return the case to the Court of the first instance for retrial.

Upon reviewing the appealed ruling pursuant to Article 386 of the Law on Contested Procedure (LCP), the Supreme Court held that the request for revision of judgment was unfounded.

The case files indicate that the procedure held in front of the Court of the first instance, it was clearly determined that the plaintiffs sold to the respondents A.K. and T.K. born in P. the real estate written in the enacting clause of the Court of the first instance, which is identical to the same real estate described in the purchase contract reached between the parties on 21.07.1994, located in Peja on the former street "APJ" No.26, which consist of one house with one basement, one bakery and two apartments. The price determined, in item 2 of the contract is 560.000 DM, which the purchaser is obligated to pay in several parts, meaning 200.000 DM until 31.12.1994, while the other amount of 36.000 DM, within a time period of 3 years, respectively until the 31.12.1997 and item 5 of the contract specifies that the purchaser has immediate ownership over the property, from the moment that the contract is signed. In the procedure in front of the Court it is clear that, the two first respondents have paid the plaintiff the amount of 160.000 DM, while owing them 400.000 DM. Also it is clear the fact that, from the day the contract was signed, the real estate was in the ownership and in use by the respondent A.K. and T.K. born in P., who rented the real estate premises to the other respondents Z.Sh., J.K. and T.K.

The Supreme Court of Kosovo, considers the claims in the revision as founded, since the Courts of the lower instances have committed essential essential violations of the provisions of the contested procedure pursuant to article 354 paragraph 2 item 14 of LCP, because the enacting clause of the Court of the first instance is ambiguous and as such not executable. The II part of the judgment is ambiguous, since it is not clearly determined which of the plaintiff is obligated to vacate which part of the property and submit to the

plaintiff. The obligatory judgment must contain not only the decision on the legal relations between the parties but also the rights and obligations in that relationship. Thus the enacting clause must clearly specify what are the responsibilities of each of the respondents and identify the parts that are to be vacated by them; which house and which apartments are located in the cadastral parcels No.2772 and No.4153 from the ownership certificate No.384 kk Peja; the address of the house, its surface and from what it consist of; the address of business facilities, separately for each of them as well as the area and from what it consist of. This is required since based on the contract between the parties on 21.07.1994 established between Gj.P. from Vodnja, M.P., F.A., M.T., M.L. and N.P. as sellers on one side, and A.K. and T.K. from Peja, as purchasers on the other, was signed only by the sellers and not signed by the purchasers, which is not disputed, specified in item 1 located in the former street "APJ" No.26, which consist of one house one basement, one bakery and two apartments. A judgment which does not contain such description is ambiguous and therefore not suitable for execution, and represents essential essential violations of the provisions of the contested procedure pursuant to article 354 paragraph 2 item 14 of LCP, which is in nature obligatory, due to which the judgments are annulled.

Since the judgment of the Court of the first instance has committed essential essential violations of the provisions of the law on contested procedure, which are of a obligatory nature, for which the Court of the second instance was obligated *ex officio*, to insure a just applicability of substantive law, but failed to do so, also the Supreme Court deems that the Court of the second instance also committed a essential violations of the provisions of the law on contested procedure based on article 354 paragraph 1 in conjunction with article 356 paragraph of 2 of LCP, for which reasons the appealed judgment is annulled.

Due to the existence of essential violations of the contested procedure which are of absolute nature, due to which the judgment of the Courts of lower instances must be annulled, the Court can not evaluate the judgment.

The Court of the first instance during the retrial is obligated to remove the above mentioned deficiencies, and through administering the evidence determine the factual situation and when deciding upon the issue, and in the enacting clause clearly determine the rights and

obligations of the parties in dispute, determine all other relevant fact and render a just decision.

As stated above, pursuant to article 394 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTNA
Rev.No.43/2004, on 28.07.2005

Presiding Judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding - compensation of personal income - reinstate in working position - revision of judgment - request denied]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Prizren, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Prizren did not approve the request of the plaintiff to obligate the respondent to reinstate the plaintiff in his working position.

The Supreme Court ruled that the lower courts had fully and rightfully determined the factual situation, had correctly applied the substantive law because in this case we were dealing with a probation contract of three months and with the expiration of the probation period, labour relation also discontinued to exist. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.49/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Osman Tmava, Vjosa Nimani-Zylfiu, and Dr.Hamdi Podvorica members, in the legal case of the plaintiff V.D., from Prizren, represented by attorney at law Zef Delhysa, from Prizren, against the respondent American Bank of Kosovo in Prishtina, for annulment of the decision and compensation of his personal income, filed against the judgment District Court of Prizren Ac.No.408/2003 dated 27.01.2005, in the session held on 28.07.2005, rendered the following:

JUDGMENT

To deny the plaintiffs' request for revision as unfound, filed against the District Court of Prize Ac.No.408/2003 dated 27.01.2005 as unfound.

Reasoning

The Municipal Court of Prizren, with its judgment, C.No.632/2002 dated 16.05.2003, in part I of the enacting clause rejected the appeal of the plaintiff as unfound, and did not nullify the decision of the respondent dated 13.09.2002, not approving the request of the plaintiff to obligate the respondent to reinstate the plaintiff in his

working position in accordance to her professional skills within of 8 days, with all the rights and responsibilities and did not compensate her for the procedural expenses of the Court. In the II part of the enacting clause, the Court rejected the alternative claim of the plaintiff, to obligate the respondent to pay compensation for the loss of 5 monthly salaries, and in part III part of the enacting clause, the Court decided that each party should cover their own procedural expenses.

The District Court of Prizren with its judgment Ac.No.408/2003 dated 27.01.2005, has dismissed the appeal of the plaintiff and reaffirmed the decision of the Municipal Court of Prizren, C.No.632/2002 dated 16.05.2003.

The plaintiff filed a request for revision against the judgment of the second instance in due time, on the grounds of essential violation of the provisions of contested procedure and wrongful application of substantive law, proposing that the judgment of the Court of the second instance in part II of the enacting clause is amended and that the plaintiff claim be approved as found, or annul that part of the judgment and remand the case to the Court of the first instance for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is unfounded.

The case files indicate that the plaintiff by the labour contract dated 20.06.2002 has established labour contract with the respondent American Bank of Kosovo in Prishtina for a probation period of 3 months, starting from the date as stipulated in article 3 of the labour contract. Article 31 item 1 of the contract stipulate, that the contract may be terminated with one month notice written notice, without any reasoning provided from the employer nor the employee.

The Court of the second instance, deciding on the appellate procedure, has found that the Court of the first instance has fully and rightfully determined the factual situation, has correctly applied the substantive law when it determined that the appeal of the plaintiff is unfounded, concluding that there was no violation of the essential provisions of contested procedure which the Court of the second instance is obligated to observe *ex officio*.

The Supreme Court of Kosovo evaluates that the lower Courts, have fully and correctly determined the factual situation, thus rightfully applied the law, when they have determined that the appeal of the plaintiff is unfounded.

The Supreme Court of Kosovo evaluated the claims in the request for revision as unfounded, since based on the evaluation of this Court, the parties have signed a contract between themselves for probation period of 3 months, starting from the date as stipulated in article 3 of this contract and agreed to the terms, that anytime during the probation period the employer the respondent or the employee-the plaintiff has the right to annul the contract, with a written resignation 24 hour in advance, without requesting any compensation or compensation, exempt the income generated for the days worked until the day of the contract termination. Based on this it is clear that the contracting parties have signed the contract which defines their labour relations, and have accepted the terms in stipulated in the contract. Thus, the respondent was not obligated to conduct any procedure for termination of the plaintiff from her position, exempt notifying the employee in written, one month in advance, prior to the expiration of the probation period with the American Bank of Kosovo.

Since in this concrete case, we are dealing with a probation contract of three months, with the expiration of the probation period, labour relation also discontinue to exist, due to which this Court believes that the Court of lower instances have rightfully decided when they have found that the alternative claim of the plaintiff is unfounded, with this denying the claim of the plaintiff to be compensated for the monthly salaries, since this claim directly depends from the existence of the labour relations.

The other claims in the request for revision, according to the legal evaluation are not influential in the decision making process in this case.

As stated above, pursuant to article 393 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.49/2005, on 28.07.2005

Presiding Judge
Shahdane Agani

Supreme Court - Ruling on Civil proceeding - annulment of the vacancy announcement - article 354 (2) ((14)) 365, 375 LCP - revision of judgment request accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Gjilan, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Gjilan had partially accepted the claim of the plaintiff by annulling the announcement in the daily newspaper, including the decision on hiring the candidate F.K in this position, by obligating the respondent to announce a new vacancy for the position.

The Supreme Court ruled that the decisions of the lower instances courts contained essential violations of the provisions of the contested procedure, as required by article 354 paragraph 2 item 14 of the LCP. The Supreme Court ruled that the reasoning did not contain justification based on key fact for rendering a just and legal decision. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.54/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani presiding judge, Mr. Sc. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava members, in the legal case of the plaintiff J.B., from Gjilan, against the respondent the Municipality of Gjilan, for the annulment of the vacancy announcement and the decision on hiring the candidate, based on the request of the respondent against the judgment of the District Court of Gjilan Ac.No.296/2004 dated 23.12.2004, in the session held on 28.07.2005, rendered the following:

RULING

To accept the revision of the respondent and annul both the judgment of the District Court of Gjilan, Ac.No.296/2004 dated 23.12.2004 and the judgment of the Municipal Court of Gjilan, C.No.389/2001 and 221/2002 dated 16.09.2004, in part I of the

enacting clause and remand the case to the first instance Court for retrial.

The Part II of the enacting clause of the judgment of the first instance Court was not reviewed by this Court.

Reasoning

With part I of the enacting clause of the judgment of the Municipal Court of Gjilan C.No.398/2001 and C.No.221/2002 dated 16.09.2004, this Court has partially accepted the claim of the plaintiff by annulling the announcement in the daily newspaper "Rilindja" dated 23 May 2001, for the position of Security Community Officer, including the decision on hiring the candidate F.K in this position, by obligating the respondent to announce a new vacancy for the position, within a time period of 8 days from the moment this judgment is rendered. In part II of the enacting clause regarding the request of the plaintiff for the annulment of the vacancies announced in the daily newspaper Rilindja" dated 23 May 2001, for the position of the Technical Assistant and Security Officer, as well as the request for the annulment of the internal vacancy announcement dated 25.03.2002, for the position of the Treasurer, Technical Secretary, Building Maintenance and Registration Officer and Building Maintenance Assistant, including the decisions on hiring the candidates in this positions, and selecting the plaintiff in one of these position, was dismissed as unfounded and in part III of the enacting clause it was decided that each party should pay its own Court procedural expenses.

The District Court of Gjilan, with its judgment Ac.No.296/2004 dated 23.12.2004, has dismissed the claim of the plaintiff and the respondent and has reaffirmed the judgment of the Municipal Court of Gjilan.

The respondent filed a request for revision against the judgment of the second instance Court in due time, on the grounds of essential violation of the provisions of contested procedure and wrongful application of substantive law, proposing that the judgment of the second instance Court be annulled and the case is remanded to the first instance Court for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is founded.

The case files show that the respondent on 23.05. 2001 has announced a vacancy on the daily new paper "Rilindja" Security Community Officer, for which position the candidate should possess a secondary school diploma, computer skills and knowledge of the Serbo-Croatian language. In this position the Municipality hired candidate, F.K., who has completed the Secondary School of Economics. On the other hand the plaintiff has completed the Secondary School of Economics, possesses a certificate which proves his knowledge of Albanian and Serbo-Croatian language and has working experience within the Municipality.

The first instance Court concluded, as stated in the reasoning of the appealed judgment, that the appeal of the plaintiff is partially founded in regards to the position of Security Community Officer, published in the daily newspaper "Rilindja" dated 23 May 2001, for which position the candidate should possess a secondary school diploma, computer skills and knowledge of the Serbo-Croatian language. In this position the Municipality hired candidate, F.K., who only has completed the Secondary School of Economics, while on the other hand, the plaintiff has completed the Secondary School of Economics, possesses a certificate which proves his knowledge of Albanian and Serbo-Croatian language and has working experience within the Municipality. Based on this, the other candidate lacks evidence in proving knowledge on computer skills. The plaintiff further claims that based on the above, that he is a better candidate for the position, in which the other candidate was chosen instead of him.

Having in mind the above said, the first instance Court found that the appeal of the plaintiff is partially founded, and decided as in the part I of the enacting clause of the appealed judgment.

The District Court of Gjilan in the appellate procedure found that the first instance Court has fully and rightfully determined the factual situation, has rightfully applied the substantive law, when concluded that the appeal is partially founded in regards to the announced position of Security Community Officer in the daily newspaper "Rilindja" on 23 May 2001.

The Supreme Court of Kosovo, taking into consideration the current stage of the case, can not accept such legal item of view as in the conclusions of the lower Courts and consider such a view as legal and just, since according to the evaluation of this Court, the judgment of the first instance Court contains essential violations of the provisions of the contested procedure pursuant to article 354 paragraph 2 item 14 of the LCP, for which reasons it dismisses it.

This Court believes that there are contradictions between the reasoning provided in the enacting clause and the reasoning, further that the reasoning does not contain justification based on key facts, and that the reasoning given is ambiguous and contains contradictions. This is because, in the reasoning provided by the first instance Court it is stated that: "the conditions of the announcement for hiring employees in the administration of Municipality should be in compliance with the conditions set forth in the internal act of organization of the Municipal administration, while in the concrete case, it can not be determined whether these conditions are in accordance with the internal act of the organization, because this act was not presented as evidence", based on which, the Supreme Court annuls the announcement, published in the daily news paper "Rilindja" dated 23.05.2001 for the position of Security Community Officer, and the decision on hiring candidate F.K. and obligated the respondent the Municipality of Gjilan, the Directorate on Security and Emergency to re-advertise the position.

Considering such factual situation, the first instance Court even though it concludes that the hired candidate does not fulfill the conditions as requested in the announcement, and at the same time annuls the decision in hiring the candidate in the position of Security Community Officer this Court does this without determining the conclusive key facts whether the candidate has indeed fulfilled the conditions required and whether the announcement was done in accordance to the internal work regulation of the respondent.

Due to the above reasons, the Supreme Court of Kosovo considers that the claims in the request for revision that contain essential violations of the provisions of the contested procedure foreseen in article 354 paragraph 2 item 14 of the LCP, are founded. The judgment of the second instance Court also contains essential violations of the provisions of the contested procedure pursuant to article 354 paragraph 2 item 14 in conjunction with article 365 paragraph 2 and article 375 of

the LCP because the reasoning provided in the judgment does not contain justification based on the key facts for rendering a just and legal decision and also in regards to the appeals of the respondent the second instance Court did not observe the violations of the applicable provisions which this judgment contains for which the second instance Court is obligated to observe *ex officio* pursuant to the above mentioned article 365 paragraph 2 of the LCP, based on which the Supreme Court of Kosovo annuls the appealed judgment.

Due to the above mentioned violations of the contested procedure, this Court can not evaluate the just application of the law.

Part II of the enacting clause was not appealed, thus this Court did not render an opinion

The first instance Court during the retrial is obligated to remove the above mentioned deficiencies, administer the evidence and prove all relevant facts related to the case and only after rightful administering of evidence, render a decision.

As stated above, pursuant to article 394 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTNA
Rev.No.54/2004, on 28.07.2005

Presiding judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding - compensation for immaterial damages 200 (1) (2) Law on the Obligation Procedure revision of judgment - request partly accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Prishtina, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Prishtina, approving the appeal of the plaintiffs, obligated the respondent to compensate the plaintiff for immaterial damage.

The supreme Court ruled that the lower instances courts, had correctly applied the law having in mind the nature of the bodily injuries sustained by the plaintiffs, as well as the intensity and the length of the pain when applied the measure on compensation of immaterial damages, as required by article 200 paragraph 1 and 2 on the Law on the Obligation Procedure (LOP). The Supreme Court ruled that the decision of the lower instance courts contained essential violations of the provisions of the contested procedure, that there are contradictions between the reasoning and the evidence, as required by article 354 paragraph 2 item 14 of the LCP. Accordingly, the Supreme Court ruled that the respondent's appeal was partly founded.

Rev.No.59/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Vjosa Nimani-Zylfiu, presiding judge, Mr.Sc. Rifat Zylfiu, Shahdane Agani Meleqe Behxheti and Osman Tmava members, in the legal case of the plaintiffs S., A. and S.K., all from the village of Sillovi, represented by attorney at law Zaim Istrefi, from Prishtina against the Insurance Company "Insig" in Prishtina, represented by the authorized representative Nysret Mjeku, in the case of compensation, based on the request for revision of the respondent, arguing against the decision of the District Court judgment in Prishtina, Ac.No.63/2003 dated 08.12.2003, in the session held on 26.07.2005, rendered the following:

JUDGMENT

To dismiss the request for revision of the respondent against the judgment of the District Court of Prishtina, Ac.No.63/2003 dated 08.12.2003, only in that extent that has to do with the obligation of the respondent award compensation for immaterial damages, while the Court accepts other parts of the revision and annuls both judgments of the District Court judgment in Prishtina, Ac.No.63/2003 dated 08.12.2003 and the judgment of the Municipal Court of Lipjan, Ac.No.63/2003 dated 08.12.2003, that has to do with the obligation of the respondent to pay compensation for material compensation to the plaintiff S.K.

Reasoning

The District Court judgment in Prishtina, with its judgment Ac.No.63/2003 dated 08.12.2003 dismissed the appeal of the respondent as unfounded, and reaffirmed the judgment of the Municipal Court of Lipjan, Ac.No.63/2003 dated 12.11.2003, approving the appeal of the plaintiffs, obligating the respondent to compensate the plaintiff for immaterial damage, respectively for the bodily injuries as stated below: Compensation for plaintiff S.K., for the physical pain, in the amount of 500 € and compensate the plaintiff for the fear in the amount of 500 €; Compensation for plaintiffs A.K. and S.K., for the physical pain inflicted by paying each the amount of 1.000 €, and compensation for the fear inflicted by paying each the amount of 1.000 €; Compensation for the plaintiff S.K., for the material damages of the vehicle, in the amount of 780,90 € and compensation for the procedural expenses for all the other plaintiffs the amount of 952 €.

The respondent filed a request for revision against the judgment in due time, on the grounds of essential violation of the provisions of contested procedure and wrongful application of substantive law, proposing that the Supreme Court annuls both the judgment of the District Court in Prishtina, Ac.No. 380/2003 dated 08.12.2003 and the judgment of the Municipal Court of Lipjan, No.118/2003 dated 04.06.2003, and remand the case the Court of the first instance for retrial.

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), after the review of the appealed decision, the case files and the claims in the revision, held that the

request for revision is unfounded.

The case files show that on the 13.07.2004, in the local road Lipjan-Sillovi a traffic accident accrued, during which a vehicle type "Audi 80" with the license plate 165-KS-394, driven by the plaintiff S.K., collided with the vehicle type "Pollo", with the license plate 281-KS-830, driven by B.D., from the village Gadime e Epërme. In this traffic accident the plaintiffs S.K., A.K. and S.K. suffered light body injuries and damaged the vehicle. The accident according to the evaluation of the traffic experts Arif Krasniqi, graduated engineer, and Yll Koshi graduated engineer, was caused with the contribution and the blame of both drivers of the above mentioned vehicles. At the moment of accident, the vehicle driven by the plaintiff S.K. was insured for third party liability at the respondents company.

Based on this determination of the factual situation, The Court of the first instance concluded that the claims of the plaintiffs were founded, and decided as in the enacting clause of its judgment.

The Court of the second instance, in the appellate procedure held that the Court of the first instance has fully and rightfully determined the factual situation, has correctly applied the law, and that the reasoning provided by the first instance is sufficiently based on conclusive facts, which are also accepted by the Appellate Court, based on which dismissed the appeal and reaffirmed the decision of the Court of the first instance.

As far as the obligation of the respondent to pay compensation to the plaintiff for the immaterial damage, the Supreme Court evaluates that the claims contained in the revision are unfounded arguing that the appealed judgment contains essential violations of the provisions of the contested procedure since the appeal does not specify any concrete violations if the provision of the LCP, and because in the opinion of this Court, this part of judgment does not contain such violations.

The claims in revision, that the judgments of the lower Courts that have decided on awarding compensation for the immaterial damages have wrongfully applied the law, are also deemed unfounded.

The case files show that with the purchase contract No.141/202, dated 12.06.2002, the plaintiff S.K. bought the vehicle

from Ali Sylejmani, with which the plaintiff suffered the injuries, however this vehicle still remained registered under the registration document VRD.0249217, in the possession of the seller. The contract on the insurance of the vehicle toward third parties, was valid at the moment of the accident. The BPK Regulation on Mandatory Insurance for Third Party Liability (Article 1.4) foresees that the vehicle insurance covers the insurance holder and any other person that with the permission of the insurance holder uses the vehicle. On the day of the accident the plaintiff was using the vehicle with the permission of the insurance holder. From the above said, the claim in the revision, that the Courts of the lower instances have wrongfully applied the provisions of the Administrative Instruction No. 2001/2, dated 29.06.2001, article 1.5 of the BPK Regulation dated 05.10.2001, are deemed unfound. The Court, when determining the immaterial damages caused, did not overstep the boundaries set by the UNMIK Administrative Instruction No.2001/2 which foresees the minimum sums of obligatory insurance.

The Court of lower instances, having in mind the nature of the bodily injuries sustained by the plaintiffs, as well as the intensity and the length of the pain, have correctly applied article 200 paragraph 1 and 2 on the Law on the Obligation Procedure (LOP), when applied the measure on compensation of immaterial damages. The determined amounts of compensation represent just compensation for the injuries sustained.

Taking into consideration the obligation of the respondent toward the plaintiff regarding the material damages caused by the vehicle damage, the Supreme Court can not accept the view of the Courts of the lower instances, since this part of the judgment contains essential violations of the provisions of the contested procedure as foreseen in article 354 paragraph 2 item 14. This Court believes that there are contradictions between the reasoning provided by the Court of the first instance and the evidence in the case files and the reasoning provided for the judgment. The accident according to the traffic experts Arif Krasniqi, graduated engineer, and Yll Koshi graduated engineer, happened with the contribution and the negligence of both drivers of the above mentioned vehicles, however as it is stated in the experts opinion "the first act of negligence was caused by the driver of Audi 80". The Courts of the lower instances, with the application of the provisions in article 205 of LOP, in conjunction with article 192 of the same Law, awarded compensation of damages based on the level of shared

responsibility of each driver, awarding 50% to each driver.

The Court of the second instance in the appellate procedure, pursuant to article 365 paragraph 2 of the LCP was obligated *ex officio*, to observe the violations of the applicable provision of the contested procedure. However failing to act pursuant to this article, the judgment of the Court of the second instance contains essential violations of the provisions foreseen in article 354 paragraph 1 in conjunction with article 365 paragraph 2 of the LCP.

The Court of the first instance must, during the retrial procedure, to remove the above mentioned deficiencies, and only then render a just decision.

As stated above, pursuant to article 393 and 394 paragraph 1 of the LCP, the Supreme Court decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.59/2004, on 26.07.2005

Presiding judge,
Vjosa Nimani-Zylfiu

Supreme Court - Ruling on Civil proceeding payment of personal income revision of judgment request dismissed- UNMIK Regulation 2001/27]

The plaintiffs filed a request for revision of judgment against the decision of the District Court of Mitrovica, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Mitrovica dismissed the claim of the plaintiffs to obligate the respondent to pay the plaintiffs on behalf of personal income

The Supreme Court ruled that the lower instances courts had rightfully applied the substantive law since the establishment of the labour relations was conducted through announcement of the position which determines the criteria. The Supreme Court ruled that the labour relations are established through an announcement, interview as required by UNMIK Regulation 2001/27 on the Establishment of Labour Relations. The Supreme Court ruled that, the plaintiffs were entitled to personal income from the day of the establishment of the labour relation, while for the disputed period, the plaintiffs had not fulfilled the above mentioned conditions respectively there was no establishment of the working relation. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.70/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and dr. Hamdi Podvorica, members, in the legal case of the plaintiffs A.F., M.M. and H.H., all from Vushtrri, represented by the first plaintiff A.F, against the respondent the Municipality of Vushtrri, claiming payment of personal income, based on the revision of the plaintiffs against the judgment of the District Court of Mitrovica, Ac.No.126/2001 dated 30.12.2004, in the session held on 28.07.2005, rendered the following:

JUDGMENT

To dismiss the plaintiffs request for revision against the

judgment of the District Court of Mitrovica, Ac.No.126/2001 dated 30.12.2004 as unfound.

Reasoning

With the judgment of the District Court of Mitrovica, Ac.No.126/2001 dated 30.12.2004, the decision of the Municipal Court of Vushtri, K.No.64/2001 dated 27.06.2001, was amended dismissing the claim of the plaintiffs to obligate the respondent to pay the respondent on behalf of personal income for the first plaintiff the amount of 9.065 DM, for the second the amount of 6.919 DM and for the third plaintiff the amount of 4.302 DM for the time period from 01.09.1999 until 31.03.2001 with a interest rate of 2% calculated from 27.06.2001 until the final payment, and 10 DM for the Court procedural expenses.

The plaintiffs filed a request for revision against the judgment of the Court of the second instance in due time, on the grounds of violation the essential provisions of contested procedure and wrongful application of substantive law, proposing that the Supreme Court remands the appealed decision for retrial.

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), after the review of the appealed decision, held that the request for revision is unfounded.

The case files indicate that the plaintiffs contracts were terminated based on the decisions which are in the case files, while with the part III of the enacting clause of the final judgment of the Municipal Court of Vushtri, K.No.76/2000 dated 03.07.2000, the respondent was obligated to reinstate all the plaintiffs in their working positions or other position that match with their professional qualification with all the rights and privileges, however it was not determined whether the plaintiffs were employed by the respondent, and the part on annulment of the decision (does not contain numbers and dates) including the compensation for the personal income, due to which the judgment was dismissed and the case was remanded for retrial.

The Court of the first instance has concluded that the petition of

the plaintiffs is founded, obligating the respondent to pay the amount as stated in the enacting clause of its judgment.

The Court of the second instance in the appellate procedure has evaluated that the Court of the first instance, in terms of determination of the factual situation, has wrongly applied the substantive law, when it concluded that the plaintiff's petition is found. Due to the above, the Court of the second instance pursuant to article 373 paragraph 1 item 3 and 4 changed the judgment of the Court of the first instance dismissing the plaintiffs' petition as unfound.

Considering the above stated, the Supreme Court of Kosovo evaluated that the Court of the second instance has rightfully applied the substantive law when it concluded that the plaintiffs' petition is unfounded, since the establishment of the labour relations is conducted through announcement of the position which determines the criteria, respectively labour relations are established through an announcement, interview and in accordance to the Regulation on the Establishment of Labour Relations. In this concrete case, also according to the evaluations of this Court, the plaintiffs are entitled to personal income from the day of the establishment of the labour relation, while for the disputed period, the plaintiffs has not fulfilled the above mentioned conditions respectively there was no establishment of the working relation.

Pursuant to article 386 of the LCP the Court of revision examines the appealed judgment, only for the part of the judgment for which it is appealed and within the boundaries of the reasoning stated in the request for revision. The statement in the plaintiffs request for revision that "the judgment of the District Court contains violation the essential provisions, since in the reasoning provided no bases for the judgment were provided" is unfounded, since the request for the revision does not contain the details of which reasoning and what bases that the plaintiffs are disputing as mentioned in the revision, due to which, this Court is of the opinion that the District Court has rightfully applied the law when it held that the plaintiffs petition is unfounded.

The judgment of the Court of the second instance does not contain essential violation of the provisions of contested procedure pursuant to article 354 of the LCP, thus the claims contained in the revision that the District Court in its judgment has harmed the essential

legal provisions are not founded, while this Court acting *ex officio* observes only the violations pursuant to article 354 paragraph 2 item 10 of the LCPLPK.

As stated above, pursuant to article 393 and 394 paragraph 1 of the LCP, the Supreme Court decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTNA
Rev.No.70/2005, on 28.07.2005

Presiding Judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding changing working position revision of judgment - request accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Prishtina, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Prishtina accepted plaintiffs' appeal and obligated the respondent to reinstate the plaintiff in her former job.

The Supreme Court ruled that the first instance court had wrongly applied the law, due to incomplete determination of the factual situation. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.91/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti, presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Dr.Hamdi Podvorica, members, in the legal case of the plaintiff Sh.B. from Prishtina, represented by attorney at law Ali Qosaj from Prishtina, against the respondent Public Housing Enterprise, for the annulment of the decision on changing the working position, based on the respondents request for revision against the judgment of the District Court of Prishtina Ac.No.248/2002 dated 24.08.2004, in the session held on 26.07.2005, rendered the following:

RULING

To accept the revision of the respondent and annul both the judgment of the District Court of Prishtina Ac.No.248/2002 dated 24.08.2004 and the judgment of the Municipal Court of Prishtina C.No.421/2001 dated 01.03.2002, and remand the case to the Court of the first instance for retrial.

Reasoning

With the judgment of the District Court of Prishtina Ac.No.248/2002 dated 24.08.2004 the appeal of the respondent was dismissed and the judgment of the Municipal Court of Prishtina C.No.421/2001 dated 01.03.2002, was reaffirmed, accepting the plaintiffs' petition as founded and annulling the decision of the respondent No.01-933/1 dated 04.07.2000, as unfounded and obligating the respondent to reinstate the plaintiff in her former job as a staff in the buffet, and compensate her for the difference in her personal income from 31.01.2002, in the amount of 1.551 €, with the calculation of interest and reimburse the plaintiff for Court procedural expenses in the amount of 457 €, all in the time period of 8 from the moment the final decision is rendered, under the threat of compulsory execution of the ruling.

The plaintiffs filed a request for revision against the judgment of the Court of the second instance in due time, on the grounds of essential violation of the provisions of contested procedure and wrongful application of substantive law, proposing that the Supreme Court annuls the appealed judgments of the lower courts and remand the case to the Court of the first instance for retrial.

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), after the review of the appealed decision, held that the request for revision is founded.

The case files indicate that the plaintiff established labour relations with the respondent 06.11.1981 for an indefinite time as a janitor. With the decision dated 07.11.1984 she was reshuffled in the working position of a waitress in the buffet, where she worked until 04.07.2000. With the decision No.01-933/1 dated 04.07.2000 on temporary reshuffling she was again put in the position of the janitor until 31.12.2000. The plaintiff has submitted a complaint against the reshuffling, which was denied by the respondents decision No.01-1109/1 dated 24.07.2000 as unfounded.

The Court of the first instance, having in mind such factual situation, has found that the decision of the respondent on temporary reshuffling No.01-933/1 dated 04.07.2000, for temporary reshuffling of

the plaintiff as a janitor, is not based in any legal provision nor any internal regulation of the respondent, thus finding that the plaintiffs' submission is founded, and decided as in the enacting clause of its decision.

The Court of the second instance, deciding on the appellate procedure, has fully accepted the factual assertions and the legal position of Court, dismissing the appeal of the respondent as unfounded, with a justification that the Court of the first instance has determined that the decision making procedure on changing the working position of the plaintiff was not in accordance with the article 28 paragraph 2 and paragraph 3 of the Law on Establishment of Essential Labour Relations in Kosovo.

Taking into account the current stage of the case, the Supreme Court of Kosovo for now can not accept the point of view of the lower Court as a correct one, due to wrongful application of the law, further the factual situation is not clearly and completely determined, because the plaintiff with the decision of the respondent dated 02.11.1981 was hired in the working position of the janitor until 1984, when she was reshuffled as a waitress in the buffet until June 2000, then again reshuffled temporarily again until 31.12.2000 as a janitor, however in the case files the Court found one contract on the establishment of labour relations No.01-2146/1 dated 11.09.2001, signed by the plaintiff, for a time period of 6 months starting from 10.09.2001 until 10.03.2002, in the working position of the janitor, which circumstance was supposed to be verified by the Court of the first instance, since in the judgment of the Municipal Court there is no reasoning provided based on the labour contract.

The Court of the first instance during the retrial procedure is obligated to remove the above mentioned deficiencies, to verify the fact of acceptance of the contract in the position of janitor from the plaintiff, verify the fact whether the plaintiff has been employed from the beginning, respectively for 1981 in the position of janitor, whether she posses the necessary qualifications for the position of the waitress in the buffet, in accordance to the Interim Regulation on Working Positions, and verify all other relevant facts that will contribute to rendering a just decision in this case.

As stated above, pursuant to article 395 paragraph 2 of the LCP, it is decided as in the enacting clause of this decision.

SUPREME COURT OF KOSOVO, PRISHTNA
Rev.No.91/2005, on 26.07.2005

Presiding judge,
Meleqe Behxheti

[Supreme Court - Ruling on Civil proceeding - determination of ownership - article 366 LCP- revision of judgment request accepted]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Prizren, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Prizren denied the appeal of the plaintiff determining his ownership over the cadastral parcels.

The Supreme Court ruled that the first instance court had wrongly applied the law, due to incomplete determination of the factual situation. The Supreme Court ruled that the second instance Court instance had mistakenly applied the law on contested procedure when it dismissed the appeal of the plaintiff as time lapsed, as required by article 366 paragraph 1 of the LCP. Accordingly, the Supreme Court ruled that the plaintiff's appeal was founded.

Rev.No.112/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti, presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff M.R. from the village of Duhel, represented by attorney at law Bajram Hamitaga, from Suhareka, against the respondents the municipality of Suhareka and NBI "Suhareka" from Suhareka, in the case of determination of ownership based on the plaintiffs request for revision against the District Court of Prizren, Ac.No.259/2001 dated 19.11.2001, in the session held on 20.07.2005, rendered the following:

RULING

To accept the revision of the plaintiff and annul the ruling of the District Court of Prizren, Ac.No.259/2001 dated 19.11.2001 and remand the case to the same Court for retrial to decide upon the appeal of the plaintiff.

Reasoning

With the ruling of the District Court of Prizren Ac.No.259/2001 dated 19.11.2001, the appeal of the plaintiff was denied as time lapsed, filed against the judgment of the Municipal Court of Suhareka, Ac.No.259/2001 dated 19.11.2002, where the Court found that the plaintiffs' petition is unfound in determining his ownership over the cadastral parcels as described in the enacting clause of the judgment of the Municipal Court of Suhareka, C.No.90/2001 dated 26.09.2001.

The plaintiff filed a request for revision in due time, against the judgment of the Court of the second instance in due time, on the grounds of wrongful application of the law, proposing that the judgment of the Court of second instance is annulled and that the case is remanded to the same Court for retrial.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 and article 400 paragraph 4 of the LCP, found that the request for revision is founded.

The case files indicate that the plaintiff has filled an appeal against the judgment of the Municipal Court of Suhareka, C.No.90/2001 dated 26.09.2001. Further, the District Court of Prizren founded that the appeal against the Municipal Court judgment is submitted late and is time lapsed, and as such in accordance to article 366 paragraph 1 of the LCP, has dismissed it.

In the reasoning provided it is stated, that the plaintiff has received the judgment of the first instance on the 19.10.2001, and submitted an appeal against this judgment on 06.11.2001, with priority mail.

Having in mind the above stated, the Court of the second instance has concluded that the appeal against the judgment of the Court of the first instance was filed after the deadline of 15 days, and by applying article 366 paragraph of the LCP dismissed the appeal of the plaintiff as unfound.

The Supreme Court of Kosovo upon its evaluation deems that the conclusion of the Court of the second instance is legally unfound,

since based on the case files evidence it can be determined that the plaintiff has appealed the judgment of the Court of the first instance on 02.11.2002 with priority mail R.No.502, based on mail delivery, and not as this Court claims to be, on the 06.11.2002.

The Supreme Court of Kosovo deems that the claims contained in the appeal for revision on the grounds of wrongful application of the law which resulted in an wrongful determination of the factual situation are founded, since according to the evaluation of this Court, the Court of the second instance has mistakenly applied article 366 paragraph 1 of the LCP, when it dismissed the appeal of the plaintiff as time lapsed, due to which the judgment is dismissed and the case is remanded to the Court of second instance for retrial based on the appeal of the plaintiff.

As stated above, pursuant to article 383 and article 400 paragraph 4 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.112/2005, on 20.07.2005

Presiding Judge,
Meleqe Behxheti

[Supreme Court - Ruling on Civil proceeding - existence of labour relation article 10 UNMIK Regulation 2001/27 - Essential Labour Law - revision of judgment - request dismissed]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Peja, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Peja dismissed the plaintiffs' appeal in determining the existence of the working relation in the respondents Factory.

The Supreme Court ruled that the labour relations between the plaintiff and the respondent after the expiration of the contract does not presume the fact of extension of labour relations, as required by article 10 of the UNMIK Regulation on the Essential Labour Law in Kosovo. The Supreme Court ruled that the plaintiffs' contract in the respondents factory was for a limited time period. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.115/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff B.G., from the village of Perqeve, Municipality of Klina, represented by attorney at law Xhafer Maloku, from Klina, against the respondent NIT "Mirusha" from Klina, on determining the existence of the labour relations, filled against the judgment of the District Court of Peja Ac.No.19/2003 dated 07.04.2005, in the session held on 28.07.2005, rendered the following:

JUDGMENT

To dismiss the revision of the plaintiff, filled against the judgment of the District Court of Peja, Ac.No.19/2003 dated 07.04.2005, as unfounded.

Reasoning

With the judgment of the District Court of Peja, Ac.No.19/2003 dated 07.04.2005, the judgment of the Municipal Court of Klina C.No.22/2002 dated 01.10.2002, was amended, dismissing the plaintiffs' petition in determining the existence of the working relation in the respondents Factory of Concrete Elements in Vollujake, in the position of security guard, with which the Court obligated the respondent that within 8 days from the moment this decision is rendered to reinstate the plaintiff in his former position, and if this is not possible in some other position that matches his qualifications and compensate him for the procedural expenses in the amount of 150 €, was denied.

The plaintiff filed a request for revision, in due time, on the grounds of wrongful application of the law proposing that the appeal judgment is amended and the judgment of the first instance Court be reaffirmed.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 of the LCP, found that the request for revision is unfounded.

The case files indicate that the plaintiff has worked in the respondents' factory, with a limited labour contract on services NR.163/3 dated 08.09.2000, by engaging the plaintiff based on the need of the respondent to perform security services, as a security guard for a limited period, starting from 04.08 until 4.09.1999. Also the parties have signed another contract on services, the plaintiff as executor of the work and the plaintiff as requestor of the work engaging the plaintiff to work as a security guard, for a limited period, starting from 11.10. until 11.11.1999. These contracts also contain the price on services.

The first instance Court has concluded that the plaintiffs' petition is founded, by determining that the plaintiff is in regular working relation in the respondents Factory of Cement Elements in Vojllak, and obligated the respondent to reinstate the plaintiff in his former position within 8 days from the moment this decision is rendered, and if this is not possible in some other position that matches his qualifications and compensate him for the procedural expenses in the amount of 150 €.

The second instance Court in the appellate procedure has evaluated that the first instance Court, in terms of determination of the factual situation, has wrongly applied the substantive law, when it concluded that the plaintiffs' petition is found. Due to the above, the Court of the second instance pursuant to article 373 paragraph 1 item 3 and 4, amended the judgment of the first instance Court, dismissing the plaintiffs' petition as unfound.

Having in mind the above stated, the Supreme Court of Kosovo evaluates that the judgment of the second instance Court was rendered in accordance with the applicable law, when the District Court concluded that the plaintiffs' petition is unfound since the establishment of labour relation is done through the announcement of the position, respectively the labour relation is established through the announcement, interviews and fulfillment of the requirement criteria for the position and in accordance to the Regulation on the Establishment of Essential Labour Relations. In the concrete case, the parties have signed a contract for the time period of 04.08. until 04.09.1999 and from 11.10. until 11.11.1999, thus the labour relations between the plaintiff and the respondent after the expiration of the contract does not presume the fact of extension of labour relations, since in accordance to article 10 of the above mentioned Regulation, it is clearly foreseen how labour relation are established, while on the other hand the plaintiffs' contract in the respondents factory was for a limited time period.

Thus, according to the opinion of this Court, the second instance Court has rightfully applied the applicable law when it decided that the appeal of the plaintiff was unfounded.

As stated above, pursuant to article 393 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.115/2005, on 28.07.2005

Presiding judge,
Shahdane Agani

Supreme Court - Ruling on Civil proceeding - reinstatement in the working position - disciplinary panel - article 75 UNMIK Regulation 2001/27 Essential Labour Law - revision of judgment request accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Peja, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Gjakova obligated the respondent to reinstate the plaintiff in his position of the Milling Machine Operator, and compensate him for the procedural expenses.

The Supreme Court ruled that if an employee is absent from work for more than 5 continuous days without justification, his contract is terminated, as required by article 75 paragraph 2 item 3 of the applicable Law on Essential Labour Relations. The Supreme Court ruled that having in mind that in the concrete case the plaintiff did not come to work from 01.05.2000 until 25.01.2002, for which reason the disciplinary procedure was conducted, issuing the plaintiff a disciplinary measure with termination of his contract. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.117/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti, presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Dr.Hamdi Podvorica, members, in the legal case of the plaintiff S.Q. from Gjakova, represented by attorney at law Agim Haraqia from Gjakova, against the respondent the Industry of Construction Material, for the annulment of the decision and reinstatement in the working position, based on the respondents request for revision, filled against the District Court of Peja, Ac.No.239/2004 dated 25.01.2005, in the session held on 26.07.2005, rendered the following:

JUDGMENT

To accept the revision of the respondent and amend both the judgment of the District Court of Peja, Ac.No.239/2004 dated 25.01.2005 and the judgment of the Municipal Court of Gjakova, C.No.545/2003 dated 22.04.2004, dismissing the plaintiffs' petition as unfounded, with which the respondent requests the annulment of the decision Disciplinary Panel of the respondent No.214-3 dated 24.08.2000, with which the plaintiff has been issued a disciplinary measure, seizure of the labour relation starting from 01.01.2000 and requested that the Court obligates the respondent to reinstate him in his position of the Milling Machine Operator, and compensate him for the procedural expenses in the amount of 505 €.

Reasoning

With the judgment of the Municipal Court of Gjakova, C.No.545/2003 dated 22.04.2004, the plaintiffs' petition was accepted as found, annulling the decision Disciplinary Panel of the respondent No.214-3 dated 24.08.2000, with which the plaintiff has been issued a disciplinary measure, seizure of the labour relation starting from 01.01.2000, obligating the respondent to reinstate the plaintiff in his position of the Milling Machine Operator, and compensate him for the procedural expenses in the amount of 505 € within 15 days.

The District Court of Peja with its judgment Ac.No.239/2004 dated 25.01.2005 dismissed the appeal of the respondent, reaffirming the decision of the Municipal Court of Gjakova.

The respondent filed a request for revision against the judgment in due time, on the grounds of wrongful application of substantive law, proposing that the Supreme Court amends both judgments of the lower courts, and annul the petition of the respondent as unfounded, or annul both judgment and remand the case for retrial.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 of the LCP, found that the request for revision is founded.

The case files indicate that that the plaintiff was in working relations in the company of the respondent from 02.05.1972

until 19.12.1999. During this period the plaintiff has completed various duties, however his last position was as Milling Machine Operator. In November of 1999, due to the threats received from unknown persons, for the work completed during the war in Kosovo, the plaintiff in fear and with the permission of his supervisor H.D. has taken leave for several days, however with the permission of his supervisor extended the leave, acting the same even after one month, while starting from 01.05.2000 until 25.01.2002, did not come to work.

Taking into account the above stated, the Court of the first instance is of the opinion that the labour relation of the plaintiff was not terminated with the his leave, since he was not granted leave with pay, and because the respondent was not sent a invitation for participation in the review procedure of the disciplinary measure which resulted in the termination of his working contract due to his absence for more than 7 days from work, thus according to the Court, the respondent is obligated to reinstate the plaintiff in his working position.

The Court of the second instance found that the Court of the first instance, during the evaluation of the factual situation with the evidence available, has rightfully applied the law, when it determined that the plaintiffs' petition is found.

According to the evaluation of the Supreme Court of Kosovo, the legal item of view of the Courts of the lower instances represents wrongful application of the law, since based on the fact that the plaintiff in the time period from 01.05.2000 until 25.01.2002, did not report to work, a circumstance which is not disputed by the parties, thus both Courts of the lower instances have wrongfully concluded when they determined that the plaintiffs' request is found. The respondent has rightfully applied article 75 paragraph 2 item 3 of the applicable Law on Essential Labour Relations which foresees that if an employee is absent from work for more than 5 continuous days without justification, his contract is terminated, having in mind that in the concrete case the plaintiff did not come to work from 01.05.2000 until 25.01.2002, for which reason the disciplinary procedure was conducted, issuing the plaintiff a disciplinary measure with termination of his contract.

The case files contain the evidence from which it can be clearly determined that the plaintiff could not be found in the provided address, thus his address was unknown in order to insure the delivery of the

invitation for the disciplinary procedure. The relevant and undisputed fact is that the plaintiff did not come to work during the above mentioned period thus according to the opinion of this Court, both of the lower Courts have wrongfully applied the applicable law by accepting the plaintiffs' petition as found, thus the judgment of the lower courts are hereby amended and the plaintiffs' petition is dismissed as unfound.

As stated above, pursuant to article 395 paragraph 1 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.117/2005, on 26.07.2005

Pesiding Judge,
Meleqe Behxheti

Supreme Court - Ruling on Civil proceeding awarding damages court competence - article 354 (2) (8) (16) LCP Law - article 1, 3.1 UNMIK Regulation 2000/47, revision of judgment request accepted]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Mitrovica, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Skenderaj held that it was not competent to decide upon plaintiffs' appeal and dismissed the plaintiffs' appeal on awarding damages.

The Supreme Court ruled that the lower instances courts violated the law on contested procedure since the case files do not clearly state that the respondent is a member of UNMIK and acts on behalf of UNMIK as required by article 1 of the UNMIK Regulation 2000/47. Accordingly, the Supreme Court ruled that the plaintiff's appeal was founded.

Rev.No.118/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti, presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff I.R. from the village of Dashevce, Municipality of Skenderaj, represented by attorney at law Zenel Ademi from Mitrovica, against the respondent ACT-International, in Shipol, municipality of Mitrovica, on the claim for awarding damages, based on the request of the plaintiff against the judgment of the District Court of Mitrovica Ac.No.341/2003 dated 26.04.2005, in the session held on 20.07.2005, rendered the following:

RULING

To accept the plaintiffs' revision and annul both the judgment of the District Court of Mitrovica Ac.No.341/2003 dated 26.04.2005 and the judgment of the Municipal Court of Skenderaj, C.No.148/2003 dated 05.08.2003, and remand the case for retrial to the Court of the first instance for retrial.

Reasoning

With the judgment of the Municipal Court of Skenderaj, C.No.148/2003 dated 05.08.2003, this Court held that it is not competent to decide upon the subject matter to act based on the plaintiffs' petition and dismissed the plaintiffs' petition on awarding damages.

The District Court of Mitrovica, with its ruling Ac.No.341/2003 dated 26.04.2005, has dismissed the appeal of the plaintiff as unfounded and reaffirmed the ruling of the Municipal Court of Skenderaj.

The plaintiff filed a request for revision, in due time, against the judgment of the Court of the District Court of Mitrovica, in due time, on the grounds of violation of the contested procedure and wrongful application of the law proposing that this judgment and the judgment of the Court of first instance be annulled and the case is remanded to the Court of the first instance for retrial based on the petition of the plaintiff.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 and article 400 paragraph 4 of the LCP, found that the request for revision is unfounded.

The case files indicate that the plaintiff has filed a petition against the respondent ACT-International Shipol-Mitrovica, claiming award of damages due to non delivery of construction materials. The Court of the first instance found that pursuant to Section 3, article 3.1 of UNMIK Regulation No.2000/4, the respondent is a UNMIK staff member, thus the Court declared as having no competencies over this legal issue and dismissed the petition of the plaintiff, as absolutely non competent.

Having in mind the above stated, the Supreme Court of Kosovo evaluates that the conclusions of the Courts of lower instances contain violations of the essential provisions of the contested procedure foreseen in article 354 paragraph 1 in light of paragraph 2, item 8 of the LCP.

The Supreme Court of Kosovo evaluates that the conclusions of the Courts of the lower instances are legally unfounded since the case files

Reasoning

With the judgment of the judgment of the District Court of Peja C.No.28/2003 dated 17.10.2003, the plaintiffs' petition to obligate the respondent to reinstate the plaintiff in his former working position Professor of Albanian Language and Literacy, further, compensate him for the personal income for the period he was not allowed to complete his duties, and compensate him for the Court procedural expenses, was denied.

The plaintiff filed a request for revision, in due time, against the judgment of the Court first instance and Court of the Second instance, on the grounds of violation of the contested procedure and wrongful application of the law proposing that the judgments of the Court first instance and the judgment of the Court of the Second instance is amended in that way that plaintiff petition is accepted, or to annul both the judgments of the Court first instance and the judgment of the Court of the Second instance and the case is remanded to the Court of the first instance for retrial.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 of the LCP, found that the request for revision is unfounded.

The case files indicate that the plaintiff has established indefinite labour relations with the respondent as a Professor of Albanian Language and Literacy. According to the Administrative Instruction No.10/2002 dated 20.08.2002 of the Ministry of Education, Science and Technology, the Ministry has instructed the employees of the Ministry and notified them that in primary education a ninth grade has been added as an interim orientation class, which is going to be lectured at the facilities of the secondary education. Article 8 of this Administrative Instruction foresees that Municipal Directorates of Education in cooperation with Senior Education Officers, as well as the Directors of Secondary Educational Institution are obligated to cooperate in the selection of teaching staff in every school and in cases of dispute, the final decision is to be taken by the Ministry of Education, Science and Technology (MEST). According to the above mentioned instruction, the plaintiff was assigned to work in the Secondary School

“Ali Hadri” in Peja, which he has refused to do so. The plaintiff has complained against this decision, however with the decision of the Ministry of Education, Science and Technology, dated 10.01.2003 has appeal was denied and the decision of the Officer for Education Development in Peja, No.244/2002, was affirmed.

Having in mind this factual situation, the Court of the first instance has found that the plaintiffs' petition is unfounded and as such, denied the petition.

The Court of the second instance in the appellate procedure fully accepted the reasoning and the conclusion regarding the fact and legal item of view of the Court of the first instance. The Court of the second instance has found that the judgment of the Court of the second instance does not contain any violations of the essential provisions of the contested procedure. Thus, it has dismissed the appeal and reaffirmed the decision of the Court of the first instance.

Having in mind the above stated, the Supreme Court of Kosovo evaluates that the courts of lower instances has rightfully applied the law when determining the factual situation and when they found that the plaintiffs' petition is unfounded. This is because based on article 8 and 9 of the Administrative Instruction No.10/2002 of the Ministry of Education, Science and Technology, which entered into force on 20 August 2002, the plaintiff, has been assigned to work in the Secondary Economic School “Ali Hadri” in Peja. According to the UNMIK Regulation No. 1999/24 dated 24 December 1999, article 1 (a) foresees that the applicable law in Kosovo are the Regulations promulgated by the Special Representative of Secretary General and other additional instruments issued in accordance to this Regulation, as well as the law in force in Kosovo until 22 mars 1989-article 1.1 (b) of the above Regulation. This means that the above mention Administrative Instruction of the Ministry of Education, Science and Technology is issued in accordance to UNMIK Regulation 2001/19 dated 13 September 2001, gives this Administrative Instruction the virtue of additional instrument which is executed by Senior Education Officers and Secondary School Senior Officers, thus it can not be said that in this particular case the law has wrongly applied.

Having in mind the above said, the Supreme Court of Kosovo evaluates that the appealed judgment does not contain essential

do not show that “the plaintiff is an organization within UNMIK “as evaluated by the courts of the lower instances.

Since, the case files do not clearly state that the respondent is a member of UNMIK and acts on behalf of UNMIK in accordance to resolution 1244 (1999), in accordance to article 1 of the UNMIK Regulation 2000/47, it is the opinion of this Court, that in this concrete case the lower Courts have wrongly applied the provisions of the contested procedure, foreseen in article 354 paragraph 1 in conjunction with article 16 of the LCP, which were of the essence in rendering a legal decision with subject matter jurisdiction by these Courts, however they did not do so, thus based on the above reasons this Court annuls both decisions. Such justification is ambiguous and in contradistinction with Section 3 article 3.1 and 3.3 of UNMIK Regulation No.2000/47. According to article Section 3 article 3.1 of this regulation it is stated that the UNMIK, its property, funds and assets shall be immune from any legal process, while article 3.3 defines the persons immune from such legal process. In fact the respondent is a international organization, with a international character, however this organization conducts business in Kosovo, thus the Court of the first instance is obligated in the retrial procedure to verify the fact whether the respondent as a legal entity has immunity toward local jurisdiction or is like any other legal entity local or international, and verify whether the respondent is an organization within UNMIK or independent body, with international character which conducts business in Kosovo.

The Court of the first instance is obligated to remove the above mentioned violations of the contested procedure during the retrial and having in mind the claims in the revision and the rightful application of the law decide based upon the law.

As stated above, pursuant to article 395 paragraph 1, in conjunction with article 400 paragraph 4 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.118/2005, on 20.07.2005

Presiding judge,
Meleqe Behxheti

[Supreme Court - Ruling on Civil proceeding - reinstatement working position article 8, 9 UNMIK administrative instruction 2002/10 - revision of judgment request denied]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Peja, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Peja obligated the respondent to reinstate the plaintiff in his former working position and compensate him for the personal income for the period he was not allowed to complete his duties.

The Supreme Court ruled that the lower instances courts had reviewed the claims in light of the evidence available and provided sufficient reasoning of its decision. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.120/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff R.D., from Peja, against the respondent Secondary School of Medicine in Peja, for reinstatement in the former position, based on the plaintiffs' request for revision against the judgment of the District Court of Peja Ac.No.29/2004 dated 05.04.2005 and the judgment of the Municipal Court of Peja C.No.28/2003 dated 17.10.2003, in the session held on 21.07.2005, rendered the following:

JUDGMENT

To dismiss the plaintiffs' request for revision as unfound and reaffirm the judgment of the District Court of Peja, Ac.No.29/2004 dated 05.04.2005 and the judgment of the Municipal Court of Peja, C.No.28/2003 dated 17.10.2003.

violation of the provisions of the contested procedure since the Court of the second instance has reviewed the claims in light of the evidence available and provided sufficient reasoning of its decision which is also accepted by this Court.

As stated above, pursuant to article 393 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.120/2005, on 21.07.2005

Presiding judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding - determining the right of ownership 37 (2) Law on Essential Legal - Property Relations - revision of judgment request denied]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Gjilan, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Kamenica denied the appeal of the plaintiff determining that he is the owner of the cadastral parcel.

The Supreme Court ruled that the owner is obligated to prove the ownership rights and the right to use the property for which he claims, as required by article 37 paragraph 2 of the Law on Essential Legal - Property Relations. The Supreme Court ruled that the lower instance courts correctly applied the law considering the fact that the plaintiff did not provide legal found evidence legally of the right of ownership or the right of use over property. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.126/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti, presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff R.K. from village of Rogaqica, represented by attorney at law Mustafë Musa, from Gjilan, against the respondents R.G. and T.G. both from Prishtina, , S.G. from Gjilan, and L.K. from Rogaqica, where the second and the third respondent is represented by the first respondent R.G. from Prishtina, in the case of determining the right of ownership, based on the request for revision of the plaintiff against the judgment District Court of Gjilan, Ac.No.25/2004 dated 19.02.2004, in the session held on 20.07.2005, rendered the following:

JUDGMENT

To dismiss the revision of the plaintiff against the judgment District Court of Gjilan, Ac.No.25/2004 dated 19.02.2004 as unfound.

Reasoning

In part II of the enacting clause of the judgment of the Municipal Court of Kamenica C.No.28/2003 dated 29.09.2003, the part of the appeal of the plaintiff in determining that he is the owner of the of the cadastral parcel No. 1948 was denied, as described in part II of the enacting clause and to determine that this surface is part of the cadastral parcel No.1947, property of the plaintiff based on the purchase and prescription ownership right against the respondent L.K. It was decided that each party will bear its own court procedural expenses.

The District Court of Gjilan with the judgment Ac.No.25/2004 dated 19.02.2004, has dismissed the claim of the plaintiff as unfound, reaffirming the judgment of the Municipal Court of Kamenica.

The plaintiff filed a request for revision, in due time, against the judgment of the Court of the District Court of Gjilan in due time, on the grounds of violation of the contested procedure and wrongful application of the law proposing that the judgment of the Court of the first instance and the judgment of the Court of second instance be annulled and the case is remanded to the Court of the first instance for retrial or that part II of the enacting clause is amended and that the plaintiffs' petition is accepted as founded.

The Supreme Court of Kosovo, after the review of the appealed judgment pursuant to article 386 of the LCP, found that the request for revision is unfounded.

The case files indicate that the plaintiff with the petition request to be verified as a rightful owner of one cadastral parcel No. which is in possession of the respondent L.K. (the brother of the plaintiff) since the boundary that exist between two cadastral parcel No. 1947 and 1948 has been destroyed from the plaintiff L. without any legal justification and continues to use this part of parcel No.1948.

The Court of the first instance, in accordance to the determined facts, has concluded that the cadastral parcels No.1947 and 1948 have border lines, whereas the cadastral parcel No. 1948 in the eastern part No. 1948 borders with cadastral parcel No. 1947 property of the plaintiff, while the other part (the half of the parcel) No. 1948, according to the ownership certificate No.32, is evidenced under the name of respondent L.K.

According to the conclusion of the expert geometrician, in accordance to the documentation available in the Directorate in Kamenica, from 1962 until now the boundary between the cadastral parcels No.1948 and 1947 did not change, thus in the concrete case there are no changes concerning the boundaries between the cadastral parcels No.1948 and 1947 since according to the expert, the penetrable cadastre does not determine the size of the cadastral parcels in accordance to their length and wideness.

The Court of the first instance based on the determined factual situation and through administering the relevant evidence, found that the plaintiffs' petition is unfound. The same legal point of view regarding the application of the legal provisions is shared by the Court of second instance which also dismissed the claim as unfound.

Having in mind the above stated, the Supreme Court of Kosovo evaluates that the Courts of lower instances have rightfully applied the provisions of the contested procedure and the applicable law, when they found that the plaintiffs' petition is unfound. The above judgment contains sufficient justification based on relevant fact, which this Court also accepts.

Pursuant to article 37 paragraph2 of the Law on Essential Legal - Property Relations, the owner is obligated to prove the ownership rights and the right to use the property for which he claims, thus considering the fact that the plaintiff did not provide legal found evidence legally of the right of ownership or the right of use over property, and also taking into consideration the fact that ½ of the cadastral parcel is property of the respondent and does not border with the cadastral parcel 1947 property of the plaintiff, leads to the conclusion that the plaintiff was not using this land and that both Court have rightfully applied the law when deciding upon the issue.

In the request for revision filed by the plaintiff, it is stated only in a general manner that the judgment of the lower Court contain essential violation of the procedural provision without concretely identifying them, thus having in mind article 386 of the LCP, according to which the appealed judgment is only reviewed within the claim contained in the request for revision, the Court of revision concludes that the claims contained in the revision regarding the violation of the essential provision of the contested procedure, are unfound.

In regards to the claims contained in the revision, that the Court of the first instance did not act pursuant to article 377 of the LCP, respectively according to the instructions in the ruling of the District Court of Gjilan, Ac. No.190/2002 dated 29.11.2002, is deemed unfound, thus the experts was recalled to testify in regards to the disputed parcel, who stated that the boundaries between the cadastral parcel 1948 and 1947 are existent, and that such a conclusion is based on the complete documentation available in Directorate for Geodesy, Cadastre and Property in Kamenica from 1962, therefore according to the evaluation of this Court, the claim that the procedure should be discontinued until the documentation is brought from Serbia, is unfound.

Also, the claims contained in the revision that the judgment of the second instance did not provide sufficient explanation of the claims contained in the appeal, is unfound. It is the apposite, the judgment of the second instance has evaluated all the claim of the plaintiff contained in the revision and provided sufficient reasoning for the claims made in the appeal, which this Court evaluated as unfound.

As stated above, pursuant to article 393 of the LCP, it was decided as in the enacting clause of this ruling.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.126/2004, on 20.07.2005

Presiding judge,
Meleqe Behxheti

[Supreme Court - Ruling on Civil proceeding - vacating occupied apartment - article 20, 37 (2) Law on Essential Legal Ownership Relations - article 1.2UNMIK Regulation No.1999/23 - UNMIK Regulation No.2000/60 - revision of judgment - request denied]

The respondent filed a request for revision of judgment against the decision of the District Court of Mitrovica, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Mitrovica approved the plaintiffs' appeal and obligated the respondent to vacate the plaintiff's apartment.

The Supreme Court ruled that lowers courts correctly applied law and determined the factual situation. Accordingly, the Supreme Court ruled that the respondent's appeal was unfounded.

Rev.No.135/2003

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Rexhep Haxhimusa, presiding judge, Mr. Sc. Rifat Zylfiu, Shahdane Agani, Hamdi Podvorica and Mr. Sc. Fejzullah Hasani, members, in the legal case of the plaintiff S.Th., from Skenderaj, on vacating the occupied apartment, based on the request for revision of the respondent and the intercessor from Post and Telecom of Kosovo in Prishtina, represented by the authorized staff member S.B., arguing against the judgment of the District Court of Mitrovica, Ac.No.340/03 dated 22 August 2003, in the session held on 8 September 2005, rendered the following:

JUDGMENT

To dismiss the revision of the respondent and the intercessor, filed against the judgment of the District Court of Mitrovica, Ac.No.340/03 dated 22 August 2003, as unfound.

Reasoning

With the judgment of the District Court of Mitrovica, Ac.No.340/03 dated 28 August 2003, the appeal of the respondent and the intercessor has been dismissed as unfounded and the judgment of the Municipal Court in Skenderaj C.No.40/2003 dated 4 June 2003, was denied, approving the plaintiffs' petition and obligating the respondent to vacate the plaintiffs apartment, located in Skenderaj, street "Adem Jashari" No.67/7, consisting of 2 rooms, 1 kitchen, 1 pre-living room area, 1 hallway, 1 bathroom, 1 washroom, terrace with basement, with the surface of 81 m², and compensate him on behalf of procedural expenses the amount of 880 €, within 15 days, from the moment the judgment is rendered, under the threat of compulsory execution of the ruling.

The respondent filed a request for revision of judgment against the judgment of the second instance Court in due time on the ground of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that both judgments of the lower courts be annulled and the case is remanded to the first instance Court for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is found.

The case filed show that the first instance Court through administering the evidence has determined that Gj.Ç., from Skenderaj, based on his labour relations enjoyed the right of use of the apartment and according to the ruling of the Municipal Court of Skenderaj Nd.No.85/99 dated 12.02.1999, which is a substitute of the purchase contract, has been awarded the right of ownership over the disputed apartment. Afterward, the plaintiff based on the contract for exchange established with the former owner Gj.Ç., a contract verified in the Municipal Court of Mitrovica, Leg. No. 710/2002 dated 28 May 2002, obtained the right of ownership over the disputed apartment.

The respondent has settled in the above mentioned apartment, refusing to vacate the apartment to the plaintiff, claiming that the apartment is under the ownership of Post and Telecommunication of

Kosovo (PTK) which rented this apartment to him, disputing the right of ownership of the plaintiff and proposing that his petition be dismissed.

The appellate procedure was also followed by the PTK intercessor, who disputed the plaintiffs' right of ownership regarding the disputed apartment, with a justification that this apartment is the property of the intercessor, and that the plaintiff, based on the labour relations, was given the right to rent this apartment, proposing that the plaintiffs' petition is denied.

The first instance Court, by determining the factual situation has found that the plaintiff is the owner of the disputed apartment and has the right to request the possession over the disputed property, and by applying the article 20 and 37 paragraph 2 of the Law on Essential Legal Ownership Relations (LELOR), the Court decided as in the enacting clause of its judgment.

The second instance Court, deciding on the appellate procedure, has rightfully determined the factual situation and based on such factual situation, rightfully applied the provisions of the contested procedure and the law, when it found that the plaintiffs' petition was founded, dismissing the appeal of the respondent and its intercessor, and reaffirmed the judgment of the first instance.

The Supreme Court of Kosovo considering the current situation found that the Court of lower instance while determining the factual situation, have correctly applied the provisions of the contested procedure and the law, when concluded that the plaintiffs' petition is founded.

The Supreme Court of Kosovo, has evaluated the claims of the plaintiff and its intercessor as unfounded, as stated in the claim for revision that the judgment of the lower courts contained essential violations of the contested procedure foreseen in article 354 paragraph 2 item 7 and 13, in light of article 16 and 357 of the LCP, since according to the evaluation of this Court, the subject matter jurisdiction falls with the Court and not with the Housing and Property Directorate as decided by the lower Courts, since pursuant to article 1.2 under UNMIK Regulation No.1999/23, it is foreseen that as an exception to the jurisdiction of the local courts, the Directorate shall receive and register claims by natural persons who entered into informal transactions of

residential real property on the basis of the free will of the parties subsequent to 23 March 1989 until 13 of October 1999, which transaction, as foreseen by UNMIK Regulation 2000/60, article 2 paragraph 2.3, were illegal. In this particular case the plaintiff, has gained the right of ownership based on the contract of exchange, established on 27 may 2002, which means after the time period foreseen with the above legal provisions.

The claims that the cadastral parcel, No. 108, with a destination building, in which the disputed apartment is located, with the yard consisting of 2.90 acres, according to the ownership certificate No. 24 of the MA of Skenderaj is socially owned, thus according to the evaluation of the respondent and the intercessor that the legal provisions from article 20 and 37 of the LELOR are founded, since according to the evaluation of this Court, the disputed apartment based on the evidence in the case files had a primary purpose of residential area and not for the conduct of official activity as claimed in the revision, since before the right of the ownership previously belonging to the employee R.J., who lost these ownership right, and as stated before, this right of ownership was awarded to the former owner Ç.Gj. according to the final ruling, which present a legal base for obtaining ownership rights over the above mentioned apartment, which also gave him the right of use, while on the other hand the fact that the apartment is located in the cadastral parcel which is evidenced as a socially owned does not mean that the apartment is, respectively it does not mean that the apartment as part of the building can not be private property, which in fact was transferred and is private property in valid legal bases, thus any kind of decision rendered form PTK after the date of the ruling of the competent Court based on which the transformation from socially owned to privately own property was conducted, and has been finalized, is illegal. The contract on exchange of apartments between the plaintiff and the former owner Ç.Gj., from Skenderaj is valid and pursuant to article 20 of the LELOR represent a valid legal basis for obtaining the right of ownership over the apartment, since pursuant to article 37 paragraph 1 of this law it is foreseen that the owner can request, through filling a petition, the return of the rights of ownership, thus according to the evaluation of this Court, the Court of lower instances has correctly applied the law when decided that the plaintiffs' petition is founded.

The other claims contained in the revision are not of

importance to the legality of the disputed judgment.

As stated above, the Supreme Court of Kosovo, pursuant to article 393 of the LCP, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.135/2003, on 08.09.2005

Presiding Judge,
Rexhep Haxhimusa

[Supreme Court - Ruling on Civil proceeding - determination of ownership - article 29 Law on Essential Legal Ownership Relations - 354 (2) ((14))LCP - article 365 (2)LCP - revision of judgment - request accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Prizren, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Prizren plaintiff's appeal and determined that she has been awarded the cadastral parcel.

The Supreme Court of Kosovo ruled that the decisions of the lower courts contained violation of the essential provisions of the contested procedure due to wrongful determination of the factual situation, as required by article 354 paragra.2 item 14 of the LCP and article 354 paragraph 1 in conjunction with article 365 paragraph 2 of the LCP.

The Supreme Court ruled that the essential violation of the contested procedure consisted in the fact that there are contradictions between the statement in the reasoning and the evidence administered in the main trial session. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.137/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Vjosa Nimani-Zylfiu, presiding judge, Mr.Sc. Rifat Zylfiu, Shahdane Agani, Meleqe Behxheti and Osman Tmava, members, in the legal case of the plaintiff A.Ç. from Prizren, represented by attorney at law Ruzhdi Berisha from Prizren, against the respondents, N.U. and M.U. from Prizren, represented by attorney at law Ibish Çakalli from Prizren, and the respondents KBI "Progres" NSH "Lavërtaria Blegtoria" in Prizren, in the case of determination of ownership, further requesting that announcement of the execution ruling be ruled as inadmissible, based on the request for revision of the respondents N.U. and M.U., filed against the District Court of Prizren Ac.No.254/2003 dated 28 January 2004, in the session held on 21 July 2005, rendered the following:

RULING

To accept the revision of the respondents N.U. and M.U. and annul both the judgment of the District Court of Prizren, Ac.No.254/2003 dated 28 January 2004 and the judgment of the Municipal Court of Prizren, C.No.556/2002 dated 17.12.2002, and remand the case for retrial to the Court of the first instance.

Reasoning

The District Court of Prizren,, with its judgment Ac.No.254/2003 dated 28 January 2004, has dismissed the appeal of the authorized representatives of the respondents N. and M.U., the attorney at law, Ibish Çakalli from Prizren, and reaffirmed the judgment of the Municipal Court of Prizren C.No.556/2002 dated 17.12.2002, and approved the petition of the plaintiff in part one of the enacting clause, determining that she has been awarded the cadastral parcel No.6674, evidenced in the ownership certificate.8417 kk Prizren, with a surface area of 20.55 hectares on the basis of prescription, and has obligated the respondents to allow the registration of the cadastral parcels under the name of the plaintiff; with part two of the enacting clause, the execution ruled from this Court E.No.22/2001 dated 22.06.2001, was announced inadmissible.

The respondents N. and M.U., filed a request for revision through their authorized representative, attorney at law Ibish Çakall, from Prizren, on the basis of essential violation of the provisions of the contested procedure and wrongful application of the applicable law, Proposing that the Supreme Court amends the judgment of the Municipal Court and dismiss the petition of the plaintiff, or annul the appeal judgment and remand the case to the Court of the first instance for retrial.

The Supreme Court pursuant to article 386 of the Law on Contested Procedure (LCP) reviewed the appealed decision and found that the revision is founded.

The case files indicate that, the Court of the first instance has

determined that the spouse of the plaintiff N.U. respectively the father of the respondent M.U., was the owner of the parcel in dispute. He with a sale-purchase contract Leg.No.274/63 dated 21.02.1963 and with the contract Leg.No.1692/68 dated 06.12.1968 sold this property to the third respondent KBI "Progresi" Prizren. According to the contract on exchange of real estate Leg.No.349/67, dated 15.04.1967 established between the third respondent and Xh.Q., from Prizren, owner of the new owner of the disputed property was Xh.Q., who with the contract established on 11.12.1970, Leg.1441/70 sold this property to A.Q., in this case the plaintiff, who from that time uses and occupies the property. This property in the cadastral registrar is evidenced as property of the third respondent.

Tin the reasoning provided from the Court of the first instance, it is stated that, the Municipal Court of Prizren,, with its judgment C.No.69/2000, dated 01.01.2001, has annulled the contracts for the sale-purchase of the disputed parcel established between the spouse, respectively the father of the respondents and the third respondent, with a justification that these contracts are established under pressure. With the judgment of the Municipal; Court of Prizren, C.No.28/74, dated 23.06.74 the contract on exchange of the properties Leg.No.349/67, dated 15.04.1967 was annulled, established between the thirist respondent and Xh.Q. With the ruling of the Municipal Court of Prizren, E.No.22/01 dated 22.06.2001 the execution was allowed, with the aim of handing into the possession of the respondents the disputed property. Based on the objection of the plaintiff, as a third party, filled against the decision on allowing the execution, the execution procedure was halted. The plaintiff has initiated a civil dispute procedure.

The Court of the first instance has evaluated that the plaintiff is the owner of the disputed parcel based on the goodwill from 1970 since she has gained possession based on valuable legal labour the contract on sale-purchase established with Xh.Q., who was the owner at the moment when the contract was established, and that she has used the disputed parcel without any obstacles from anyone and that, the sale-purchase contract Leg.No.274/63 dated 21.02.1963 and that the contract on the gift Leg.No.1692/68 dated 06.12.1968, based on which the disputed parcel was evidenced in the cadastral registry books as a socially owned, with the judgment of the Municipal Court of Prizren C.No.69/2000 was announced nullified, that such property was never socially owned, thus has approved her petition and announced the

decision on execution as inadmissible.

The Court of the second instance, on the appellate procedure, has reaffirmed the decision of the Court of the first instance and has concluded that the judgment does not contain any violation of the essential provisions of the contested procedure, that the factual situation has been determined correctly, and that the applicable law has been applied rightfully since the Law on Amendments of Law on Essential Legal Ownership Relations (Official Gazette of Yugoslavia 29/96) article 29 of the Law on Essential Legal Ownership Relations (LELOR), has been removed, which had foreseen that Socially owned property can not be awarded through prescription, and that after this change, socially owned property can be awarded based on award prescription.

The Supreme Court of Kosovo, for now, can not accept such conclusion of the Courts of lower instances as just and rightful, since these decision, according to the evaluation of this Court contain violation of the essential provisions of the contested procedure foreseen in articles 354 paragra.2 item 14 of the LCP and article 354 paragraph 1 in conjunction with article 365 paragraph 2 of the LCP, and due to wrongful application of the law, the factual situation was not determined completely, therefore there are no conditions to amend the appealed decision, thus both decision annulled and the case is remanded to the Court of the first instance for retrial.

The essential violation of the contested procedure consists in the fact that there are contradictions between the statement in the reasoning and the evidence administered in the main trial session. The Court of the first instance has administered the following evidence: listen to the testimony of the witness Sh.Q., spouse of the plaintiff, statements of other parties, read the contract Leg.No.1441/70 dated 11.12.1970 and has reviewed the documents E.No.22/21 without any conclusion on the content of these documents. In the reasoning of its judgment, it calls upon the contract Leg.No.349/67, dated 15.04.1967, Leg.No.274/63 dated 21.02.1963 and Leg.No.1692/68 dated 06.12.1968, as well as the files of the Municipal Court of Prizren, decision C.No.28/74 and C.No.69/2000, which were not administered as evidence.

The Supreme Court can not accept the conclusion of the Court

of the second instance, that since with the G the Law on Amendments of Law on Essential Legal Ownership Relations (Official Gazette of Yugoslavia 29/96) article 29 of the Law on Essential Legal Ownership Relations (LELOR), has been removed, which had foreseen that Socially owned property can not be awarded through prescription, and that after this change, socially owned property can be awarded based on award prescription. According to the evaluation of the Supreme Court the aim of the law is to regulate legal relation in the future, unless in the law strictly stated that the law has an effect to the prior cases. The law cited above, does not foresees such reverse effect.

In the retrial the Court of the first instance should remove the violations described above, in order to insure rightful application of the law, the Court should read and compare with the originals: the sale-purchase contract Leg.1441/70 established between Xh.Q. and the plaintiff Leg.No.274/63 dated 21.02.1963, further the contract Leg.No.1692/68 dated 06.12.1968 established between the predecessor of the third respondent Leg.No.349/67, dated 15.04.1967 established between the third respondent and Xh.Q. and administer the evidence by reading the judgment of the municipal Court C.No.28/74, dated 23.06.1974 and C.No.69/2000, dated 01.01.2001, and administer all other eventual evidence and determine all relevant facts, and only after just evaluation of the evidence, issues a just decision.

The Court of the first instance should evaluate whether the legality of its judgment was influenced by the fact that they did not act pursuant to the provisions of article 29 of the Regulation 12/2002 on the Establishment of the Kosovo Trust Agency.

As stated above, pursuant to article 394 paragraph 1 and 395 paragraph 2 of the LCP, it was decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.137/2005, on 21.07.2005

Presiding judge,
Vjosa Nimani-Zylfiu

[Supreme Court - Ruling on Civil proceeding - unjust enrichment article 49, 73 Law on Essential Labour - 354 (2) ((14))LCP - article 365 (2)LCP - revision of judgment request accepted]

The respondent filed a request for revision of judgment against the decision of the District Court of Prishtina, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Prishtina obligated the respondent, to pay the plaintiff the amount of 3.500 € in the name of the unpaid salaries and for the daily meal allowance.

The Supreme Court of Kosovo ruled that the decisions of the lowers courts contained violation of the essential provisions of the contested procedure due to wrongful determination of the factual situation, as required by article 354 paragra.2 item 14 of the LCP and article 354 paragraph 1 in conjunction with article 365 paragraph 2 of the LCP.

The Supreme Court ruled that the essential violation of the contested procedure consisted in the fact that there are contradictions between the statement in the reasoning and the evidence administered in the main trial session. Accordingly, the Supreme Court ruled that the respondent's appeal was founded.

Rev.No.153/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr.Sc. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff I.K., from Prishtina, represented by attorney at law Gani Tigani, from Prishtina, against the respondent Post and Telecom of Kosovo, for unjust enrichment based on the request of the plaintiff and due respondent, filed against the decision of the District Court of Prishtina Ac.No.79/2003 dated 22.04.2004, in the session held on 20.07.2005, rendered the following:

JUDGMENT

To accept the revision of the respondent and annul both the judgment of the District Court of Prishtina, Ac.No.79/2003 dated 22.04.2004 and the judgment of the Municipal Court of Prishtina, C.No.227/2002 dated 26.11.2002, part I and III of the enacting clause of the judgment of the Municipal Court of Prishtina, and remand the case to the Court of the first instance for retrial.

The revision of the plaintiff against the District Court of Prishtina, Ac.No.79/2003 dated 22.04.2004 and the judgment of the Municipal Court of Prishtina, C.No.227/2002 dated 26.11.2002, part II of the enacting clause of judgment of the Municipal Court of Prishtina, is deemed unfound.

Reasoning

With part I of the enacting clause of the judgment of the Municipal Court of Prishtina, C.No.227/2002 dated 26.11.2002, the Court has partially accepted the petition of the plaintiff, obligating the respondent, to pay the plaintiff the amount of 3.500 € in the name of the unpaid salaries and for the daily meal allowance for the period 1.09.1999 until 30.06.2000. With part II of the enacting clause, the petition of the plaintiff, regarding the salaries and the daily meal allowance after 30.06.2000 was denied. With part III of the enacting clause, the respondent was obligated to cover the plaintiff procedural expenses, within 15 days from the moment this judgment is rendered, under the threat of compulsory execution of the ruling

Against this revision, in due time, a request for revision was filled by:

-the plaintiff, on the grounds of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the judgment of the second instance is amended and his appeal is fully accepted, or that the judgment is annulled and the case is remanded to the Court of the first instance for retrial;

-The respondent, on the grounds of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the appeal of the plaintiff be

dismissed or that the Court annuls both judgment of the lower courts, and remand the case to the Court of the first instance for retrial

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), after the review of the appealed decision, held that plaintiffs' request for revision is unfounded, while the revision of the respondent is founded.

The case files show that the Court of the first instance after administering the evidence has found that "the plaintiff after the war did not re-establish his labour relation with the respondent but just registered as former employee of the respondent in order to continue the labour relation. But since the completion of duties in labour relation represents a factual issue, which in the concrete case has been determined as done with the consent of the respondent, regardless that in regards to the work of the plaintiff there was no contract or written agreement, since the work completed was in the interest of the respondent, services which have their own price, which in the concrete case, means the monthly salary for the respective working position", thus decided as in part I of the enacting clause. While for the period from, 01.07.2000 until 19.04.2001, according to the evaluation of the Court, his presence at work, was done on voluntary basis, and the respondent did not task him with any duties and that the physical presence of the respondent, was without any basis that would provide justification for the right of compensation from the respondent, thus decided as in part II of the enacting clause of the judgment.

The Court of the second instance, deciding on the appellate procedure, has fully accepted the factual assertions and the legal position of Court, when found that judgment of the Court of the first instance does not contain any violation of the essential provisions of contested procedure and wrongful application of substantive law, thus dismissed the appeal of the plaintiff and the respondent, and reaffirmed the judgment of the Court of the first instance.

The Supreme Court of Kosovo, can not accept the conclusion of the courts of the lower instance since, the judgment of the Court of the lower instance in part I of the enacting clause contains violations of the essential provisions of the contested procedure, foreseen in article 354 paragraph 2 item 14 of the LCP, due to the wrongful application of the law, which resulted in an incomplete determination of the factual

situation, therefore there are no condition for amendment of the appeal judgment, due to which both of the above mentioned judgment regarding part I of the enacting clause of the Court of the first instance are annulled and the case is remanded to the Court of the first instance for retrial.

The judgment of the first instance does not contain information in regards to the fact whether the plaintiff left the respondents company due to the volatile measures or that during the time he was not in labour relation, his rights from the labour relation have been terminated, and with his return to the working place, he has established new labour relation and gained his labour rights from the moment he started working in the company of the plaintiff. If it is considered that his labour relation was not terminated, the return of the plaintiff in his work position represents a technical issue, however if for the return in the working position of the plaintiff a decision from the competent body is required, this is not only a technical issue, but the decision to reinstate him in his working position has a legal effect in the reestablishment of the labour relation with all the rights in accordance to the labour law from the moment the plaintiff in accordance to this decision starts to work. This results that the parties do not dispute the fact that whether the plaintiff during the disputed period with voluntarily went to work, as well as the fact whether with the illegal decision of the respondents company the plaintiff could not return to work, from which fact derives and depends the responsibility of the respondent for awarding damages for the loss of income, which if the plaintiff was working would have gained if he had worked for the period mentioned in the enacting clause of the judgment of the enacting clause of the Court of the first instance. In regards to these facts no evidence has been administered.

Pursuant to article 73 of the Law on Essential Labour Relations it is foreseen that if the person sustains any damage at work or regarding work, the employer is obligated to pay him compensation for the damage in accordance to the general principles. The damage can be cause as a result of illegal action or as a result of a civil torts action. When the Court, through administering the evidence determined that the with the illegal decision of the respondent, the rights of the plaintiff have been harmed, which made it impossible for the plaintiff to return in his working position, due to which the plaintiff was not able to gain personal income, which otherwise he would have if he had worked, the worker is entitled to compensation, respectively award of damages. .

According to article 49 of the above mentioned law, the employee is entitled to personal income pursuant to the general act in proportion with his contribution. The decision on the compensation on the contribution made by the employee is made by the employer-director in accordance to the general act and the collective contract.

During the procedure of the Court of the first instance, all this relevant fact are not explained in accordance to the above mentioned provision of the above law, from which facts depend the basis of the petition of the plaintiff, thus according to the evaluation of this Court, the law has been wrongfully when the respondent was obligated to pay the determined amount as a compensation for the personal income and the daily meal allowance, as it was decided in part I of the enacting clause of the judgment of the Court of the first instance, due to which both decision of the lower courts had to be annulled. This is because the Court of the first instance has evaluated the payment of the compensation as unjust enrichment without providing any justification on the loss cause to the wealth of the plaintiff.

The Court of the first instance after administering the evidence has found that plaintiffs' appearance at work for the period from 01.07.2000 until 19.04.2001 was done voluntarily without the existence of any legal relationship between the plaintiff and the respondent, which does not represent a basis for the plaintiff to claim compensation from the respondent due to his presence, thus the petition of the plaintiff in part II of the enacting clause was denied as unfound..

The Court of the second instance, deciding on the appellate procedure, has fully accepted the factual assertions and the legal position of Court, when found that judgment of the Court of the first instance has correctly applied provisions of contested procedure and application of the law, when found that the petition of the plaintiff in part II of the enacting clause is unfound. The Court of the second instance found that judgment of the Court of the first instance does not contain any he violation of the essential provisions of contested procedure for which the Court is obligated to observe *ex officio*, thus dismissed the appeal of the plaintiff for part II of the enacting clause of the Court of the first instance.

Taking into account the current state of the account, the Supreme Court of Kosovo has found that the Court of lower instances

during the determination of the factual situation, have correctly applied the law, when they have determined that the petition of the plaintiff for part II of the enacting clause of the judgment of the first instance is unfound. The above judgments contain sufficient reasoning, which are also accepted by this Court.

The Court of the first instance in the retrial is obligated to remove the deficiencies, as stated above and through the administration of the evidence determine all relevant fact, and only after the administration of evidence, render a just decision.

As stated above, pursuant to article 393 and 394 of the LCP, it was decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.153/2004, on 20.07.2005

Presiding Judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding award of damages article 49, 73 Law on Essential Labour - 354 (2) ((14))LCP - article 365 (2)LCP article 200 LOR - revision of judgment request accepted]

The respondent and the plaintiff filed a request for revision of judgment against the decision of the District Court of Peja, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Peja obligated the respondent to pay the plaintiffs in the name of material damages due to the damage of furniture and other goods.

The Supreme Court of Kosovo ruled that the amount determined by the Courts of the first instance, was not adequate since it was not in accordance to the nature of compensation for immaterial damage, for the suffering caused.

Accordingly, the Supreme Court ruled that the respondent's and plaintiff's appeal was partly founded.

Rev.No.186/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani, presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiffs Sh.B., S.B., F.B. and Gj.B., all from the village of Molliq, municipality of Gjakovës, represented by attorney at law Teki Bokshi, from Gjakova, against the respondent Kosovo Energy Corporation, Distribution Section in Gjakova, on awarding damages, based on the revision of the plaintiffs and the respondent filed against the decision of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004, in the session held on 20.07.2005, rendered the following:

JUDGMENT

To partially accept the revision of the second and the third plaintiff and amend the judgment of District Court of Peja, Ac.No.50/2003 dated 01.06.2004 and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, as well as obligate the

Kosovo Energy Corporation Distribution Section in Gjakova, in part III of the enacting clause of the judgment of the Municipal Court, due to the pain caused by the death of their son, to award damages in the amount of 5.000 €, within 15 days from the day this judgment is rendered under the threat of compulsory execution of the ruling, while the claims above this amount are deemed unfound.

The revision of the plaintiffs against the judgment of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004 and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, in part II of the enacting clause of the judgment of the Court of the first instance is denied.

The revision of the plaintiff Gj.B. filed against the judgment of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004 and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, in part VI of the enacting clause of the judgment of the Court of the first instance is denied.

The revision of the respondent filed against the judgment of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004 and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, in part I, III, V and VII of the enacting clause of the judgment of the Court of the first instance is denied.

The revision of plaintiffs and the respondent is accepted, and the judgment of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004 and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, that has to do with the legal interest in part I, III and V of the enacting clause of the Court of the first instance is accepted and the case is remanded to the the Court of the first instance for retrial.

Reasoning

With the judgment of the District Court of Peja, Ac.No.50/2003 dated 01.06.2004 the appeal of the plaintiffs and the respondent was denied and the judgment of Municipal Court of Gjakova, C.No.187/2000 dated 01.11.2002, was accepted, with which in part I of the judgment, the petition of the plaintiffs was partially accepted,

obligating the respondent to pay the plaintiffs in the name of material damages due to the damage of furniture and other goods the amount of 18.293 €, with legal interest starting from 28.06.2001 until final payment. In part II of the enacting clause the petition of the plaintiffs was deemed unfound, obligating the respondent to pay the plaintiffs in the name of material damages due to the damage of furniture and other goods the amount of 12.195 €. In part III of the enacting clause, the petition of the plaintiffs S. and F.B., was partially accepted, obligating the respondent that in the name immaterial damages due to the pain for the death of their son to pay the amount of 3.500 €, with the respective legal interest starting from 01.11.2002 until final payment. In part IV of the enacting clause the petition of the plaintiffs S. and F.B., was deemed unfound, obligating the respondent that in the name immaterial damages due to the pain for the death of their minor son to pay the amount of 6.500 €. In part V of the enacting clause, the Court partially approved the plaintiffs' petition Gj.B., obligating the respondent that in the name immaterial damages to pay the amount of 1.342 €, with the legal interest starting from 01.12.2002 until final payment, in the following manner: in the name of physical pain, the amount of 420 €, in the name of esthetical deformity the amount of 480 € and in the name of fear caused the amount of 440 €. In part VI of the enacting clause, the plaintiffs' petition Gj.B., was deemed unfound, obligating the respondent that in the name immaterial damages to pay the amount of 8.160 € with the respective interest and in part VII of the enacting clause the respondent was obligated to compensate the plaintiffs for Court procedural expenses the amount of 845.81 €, all within a time frame of 15 days from the moment the judgment is rendered, under the threat of compulsory execution of the ruling.

Against this revision, in due time, a request for revision was filled by:

-the plaintiffs, on the grounds of wrongful application of substantive law, proposing that the judgment of the second instance and judgment of the first instance are amended in the denying part, in the manner that the appeal is fully accepted, or that the judgment are fully annulled, and the case is remanded to the Court of the first instance for retrial;

-The respondent, on the grounds of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the judgment of the

second instance and the judgment of the first instance in the approving part are amended, in a manner that the plaintiffs' petition is dismissed as unfounded.

The plaintiffs have respondent to the revision of the respondent, proposing that the revision be denied as unfounded.

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), found that the revision of the plaintiffs and the respondent is partially founded.

The case files show that the Court of the first instance through administering the relevant evidence has found that that with the final judgment of the same Court C.No.187/2000 dated 21.09.2000, was determined that on 19.05.1992, in the village of Molliq, municipality of Gjakova, there has been a fire caused as a result of hyper tension of the electrical network of the respondent resulting in the complete burning of the house of the plaintiff, and as a consequence of the fire and gases, the death of the plaintiffs S. and F.B., was caused, also injuring the plaintiff Gj.B.. The fire also burned all the furniture, house appliances and other goods. Therefore the Court of the first instance according to the conclusion and the opinion of electronic and architectural experts found that the damage was cause as a result of electrical power, respectively from the dangerous activity of the respondent, and in accordance to article 154 paragraph 1, and article 158 and article 173 of the law on Obligations has decided as in the enacting clause of the above mentioned judgment.

Having in mind the asserted factual situation, the Court of the first instance found that the plaintiff S. and F.B. have suffered immaterial damage in the form of suffering to the loss of their child. According to the conclusion and the opinion of the medical experts, such a compensation of 3.500 €, for the immaterial damage of the plaintiff is adequate and represents a moral satisfaction, easing the pain caused. According to the conclusion and the opinion of the medical experts, in regards to the intensity, and the time of physical suffering caused, esthetic deformation, loss of abilities and skills, the Court of the first instance found that the plaintiff Gj.B. has suffered immaterial damage for every above mentioned form, thus decided as in the enacting clause of the judgment.

In regards to the plaintiffs' petition that has to do with the material compensation of the burnt furniture, house appliance and other goods, the Court of the first instance based on the opinion of the furniture experts, having in mind the testimonies of the plaintiffs that the furniture had been purchased two to three years before the house was burnt, pursuant to article 223 of the LCP, according to the random opinion, decreases the value of the furniture by 40% and accepts the claim of the plaintiff by compensating them in the amount of 18.293 €, while dismissing the other part of the partition as unfounded.

The Court of the second instance, in the appellate procedure, found that the Court of the first instance, during the evaluation of the factual situation with the evidence available, has rightfully applied the law, when it determined that the plaintiffs' petition is partially founded. The Court found that there was no violation of the essential provisions of the contested procedure for which the Court of the second instance was obligated *ex officio* to observe, thus dismissed the appeal of plaintiffs and the respondent and reaffirmed the decision of the Court of the first instance.

Having in mind the current situation of the case, the Supreme Court finds that the Courts of lower instance have correctly determined and completely determined the factual situation and rightfully applied the law, when they have determined that the petition of the plaintiffs is based on the approved petition described in part I, III and V of the enacting clause of the judgment of the Court of the first instance that has to do with material and immaterial compensation.

According to the evaluation of the Supreme Court of Kosovo, the amount determined by the Court of the first instance, in part III of the enacting clause is not adequate since it is not in accordance to the nature of compensation for immaterial damage, for the suffering caused due to the death of the minor, the son of the plaintiffs S. and F.B., having in mind the degree of the value and the aim for which this compensation serves, as foreseen in article 200 paragraph 1 and 2 of the Law on Obligatory Relations (LOR), therefore this Court, by partially accepting the revision of the above mentioned plaintiffs amends part III of judgment of the Court of the first instance, in that manner that in the name of the immaterial damage for the pain of the loss of their son, awards the above mentioned plaintiffs the amount of 5.000 €.

Taking into account the above stated, having in mind the value of the good that has been harmed, and taking into consideration the age of the minor child as well as, this Court considers that, with the assistance of the amounts determined, the plaintiff parents of the minor child, could possibly have a considerate satisfaction, which would soften the pain for the loss of their son, having in mind that the deceased L.B., was the only child of the above plaintiffs, who had great feeling and loved their child very much. However these feelings of the plaintiffs, upon the death of their three year old child resulted in great pain. This pain is not measurable and can not be removed with money compensation. However, a just financial compensation can help soften the pain and also by fulfilling some of the life's needs, to influence in establishing the equilibrium of the pain caused and the emotions of the plaintiffs.

Thus, having in mind the value of the good that has been harmed, as well as the aim of financial compensation, this Court considered that, with the amounts determined, also the plaintiffs S. and F.B., could encounter a considerate satisfaction for the pain caused from the death of their child. The award of damages in financial means for the immaterial damage, is not an aim, however it's a tool with which the injured parties, through the fulfillment of their needs which otherwise could not have, would help facilitate their life and ease the pain for the loss. The immaterial damage and the award of compensation for this damage are meant that the plaintiff reaches a balance, and that proportionality is achieved between something good - the compensation and something unpleasant - the loss of their son.

The Supreme Court of Kosovo, upon deciding on the award of damages for this immaterial damage, as well as upon deciding on the amount of compensation took into consideration the value of the good that was harmed and the aim for which this compensation serves, and considered the nature and the social fact.

According to the evaluation of the Supreme Court, the amount determined by the Court of the first instance in part V of the enacting clause, is appropriate, since it is accordance to the nature of the required compensation for immaterial damages as foreseen with article 200 paragraph 1 on the Law on Obligatory Relations (LOR).

Having in mind the value of the good harmed and taking into

consideration the age of the plaintiff, as well as the aim of financial compensation, this Court considers, with the determination of such sum, the fourth plaintiff will also encounter considerable satisfaction considering the psychological and physical pain, the deformation suffered and the fear suffered and the injuries sustained when the plaintiffs house was burned. The award of damages in financial means for the immaterial damage, is not an aim, however it's a tool with which the injured parties through the fulfillment of other needs would facilitate their life and soften the pain for the loss making it bearable.

The Supreme Court of Kosovo found that the Court of lower instance, while determining factual situation, have rightfully applied the law when decided that the plaintiffs' petition is based in the approving part of the petition - part I, III, V of the enacting clause of the judgment of the first instance and when found that the petition of the plaintiffs is unfound in the denying part - II, IV and VI of the enacting clause of the Court of the first instance.

Having in mind the current state of the case, the Supreme Court of Kosovo, evaluated the appealed judgment in part I, III and V of the enacting clause of the judgment of the Court of the first instance does not contain violations of essential provisions of the contested procedure, which this Court observes *ex officio*, and that the judgment of the Court of the second instance has rightfully applied the law when it dismissed the appeal of the plaintiffs and the respondent, and in these parts of the enacting clause reaffirmed the decision of the Court of the first instance. Thus the claims in the revision of the respondent that the Court of second instance did not review the claims in accordance to the relevant facts, and this is because the Court of second instance did not review the claims in accordance to the relevant facts and that in the reasoning provided enough justification, which are accepted by this Court, even though the revision filed does not specify which of the appeals are not reviewed by the Court of the second instance.

The Supreme Court Kosovo, for now can not accept the legal conclusion of the Court of the first instance in regards to part I, III, V of the enacting clause, which has to do with the legal interest, since in this part the appealed judgment contains violations of the essential provisions of the contested procedure foreseen in article 354 paragraph 2 item 14 of the LCP.

The essential violation of the provisions of the contested procedure consist in the fact that the judgment in part I, III and V of the enacting clause has to, with the obligation of the respondent to pay the plaintiff calculating the respective legal interest, is ambiguous and executable since it does not contain the percentage of the interest rate, for which the reasoning provided contains no explanation. This represent violation of the essential provision of the contested procedure foreseen in article 354 paragraph 2 item 14 of the LCP, which is the reason for the annulment of this judgment.

Since according to article 385 paragraph 3 of the LCP, there can not be a revision due to wrongful and incomplete determination of the factual situation, the claims contained in the request for revision in regards to the factual situation were not reviewed y the Supreme Court.

In the retrial procedure, the Court of the first instance must order the plaintiffs to determine precisely the height of the interest rate, by deterring the percentage in accordance to the bank interest rates, and then decide on the basis of this petition, taking into consideration that the interest rate on the amount awarded for immaterial damages is determined from the day the judgment of the Court of the first instance is rendered. .

As stated above pursuant to article 395 paragraph 1 in the meaning of article 395 paragraph 1 of the LCP, it is decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.186/2004, on 20.07.2005

Presiding judge,
Shahdane Agani

[Supreme Court - Ruling on Civil proceeding real estate - sale purchase annulment of contract - 354 (2) ((14))LCP - article 365 (2)LCP article 103, 104 LOR - revision of judgment request accepted]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Gjilan, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Gjilan denied the plaintiffs' appeal on annulment of the contract.

The Supreme Court ruled that the lowers courts correctly applied the law considering the fact that the sale-purchase contract was drafted in written and that the promises made from the both parties have been fully respected, meaning that the purchaser has paid the price and that the seller has handed the object of sale, such a contract was not void, as required by articles 103 and 104 of the LOR, and that such a contract represents basis for gaining ownership of respondent over the business facility which was the object of sale-purchase. Accordingly, the Supreme Court ruled that the plaintiff's appeal was unfounded.

Rev.No.198/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Mr.Sc. Rifat Zylfiu presiding judge, Shahdane Agani, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff N SH T “Turist Kosova”, represented by attorney at law Mustafë Musa, from Gjilan, against the respondent E.A., from Preshevo, with residence in Gjilan, represented by attorney at law Shabi Isufi, from Gjilan, on the annulment of the real estate sale-purchase annulment contract and verification of the right of the ownership, based on the revision of the plaintiff, against the judgment of the District Court of Gjilan, Ac.No.146/04 dated 20 April 2004, in the session held on 20 July 2005, rendered the following:

JUDGMENT

To deny the revision of the plaintiff filed against the judgment of the District Court of Gjilan, Ac.No.146/04 dated 20 April 2004.

Reasoning

With the judgment of the District Court of Gjilan, Ac.No.146/04 dated 20 April 2004, the plaintiff's appeal was dismissed as unfounded and the judgment of the Municipal Court of Gjilan was reaffirmed, denying the plaintiffs' petition on annulment of the contract No.226 established on 24.10.1995 between the plaintiff as seller and the respondent as a buyer for the sale of the business facility, with a surface area of 42 m², located in the building "28 Nëntori, cadastral parcel No.3676, ownership certificate No.3863 ZK. Gjilan, registered under the Construction Company "Soliter" in Gjilan. The Court accepted the counter petition with which the respondent was the owner of the above business facility, and obligated the plaintiff to recognize the right of ownership to the respondent and allow the registration of the property transfer in the registry books in the Directorate for Geodesy in Gjilan, within 15 days from the day this judgment is rendered, under the threat of compulsory execution of the ruling.

The plaintiff filed a request for revision of judgment against the ruling of the second instance in due time on the ground of essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the judgments of the lower courts is amended in a manner that the plaintiffs' petition is accepted or that judgments are annulled and the case is remanded to the Court of the first instance for retrial.

The Supreme Court of Kosovo, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the revision is founded.

The case files show that the Court of the first instance through administering the relevant evidence has determined that between the parties in dispute on the 24 of October 1995, in the public auction announced in the daily newspaper "Bujku" dated 27 of September 1995, the sale-purchase contract has been signed by the parties, with which the plaintiff sold to the respondent the business facility as described in the enacting clause of the judgment of that Court in the

price of 616,000 former dinars, which converted into Deutch Marks equals 220.000, an amount which has been fully paid by the purchaser in the cash box and the seller handed over the business facility to the purchaser, in accordance to the agenda determined by the representatives of the parties in dispute. The purchaser has used the disputed business facility since 1995, from the moment of purchase and currently possesses it.

The plaintiff in its petition request the annulment of the contract, since according to the plaintiffs' evaluation, it was established in violation of the articles 103 and 104 of the Law on Obligatory Relations (LOR), in violation of the statute of the plaintiff, since the provisions contained in the statute were not respected which foresaw a precondition of the sale. This precondition was the call of referendum of all the employees in the company, further that the sale-purchase contract was established in the time of violent measures from the former Serbian regime and that the public announcement regulation were not respected.

The respondent has appealed the petition of the respondent, and filled a counter petition, requesting that the plaintiffs' petition is denied, and that the Court determines that the respondent is the owner of the disputed business facility according to the sale-purchase contract.

The Court of the first instance has found that the plaintiffs' petition is unfounded, since according to this Court, the legal conditions for the annulment of the sale-purchase contract have not been fulfilled, while approving the counter petition, and deciding as in the enacting clause.

The Court of the second instance in the appellate procedure The Court of the second instance found that the Court of the first instance, has correctly and completely determined the factual situation, rightfully applied the law, dismissing the plaintiffs' petition as unfounded by reaffirming the decision of the Court of the first instance.

The Supreme Court of Kosovo having in mind the current state of the case found that the Court of the lower instances during the evaluation of the factual situation, have rightfully applied the provision of the contested procedure and correctly applied the law, when they determined that the petition is unfounded and the counter petition is founded

The Supreme Court of Kosovo has evaluated as unfounded the statement contained in the revision that: the judgment of the Court of the first instance contains violations of provisions of the contested procedure, foreseen in article 354 paragraph 2, item 14, since, as it is claimed in the revision, in the enacting clause of the judgment, under paragraph 2 it is stated that the cadastral parcel No.3676 registered in the ownership certificate No. 3863, Cadastre Zone of Gjilan, is evidenced under the name of the company “Soliter” in Gjilan, while the Court of lower instance have not explained why this business facility is evidenced under the name of that company, a company which was not a party in the procedure, and that the judgment of the first instance is ambiguous, that the Court of the second instance did not evaluate the claims accordingly, pursuant to article 18 item 14 of the respondents company Statute approved on 29.11.1992, that the transfer of the socially owned property can not be conducted without consent of the employees in a referendum, which was not done in the concrete case, further no offer was made to the Municipality of Gjilan, who had priority in the purchase of the facility, further the procedure of the public auction was violated since there were no other or, and that in that time the violation measures were in effect and that in that time the official currency was the dinar while the payment was conducted in Deutch Marks , because according to the evaluation of this Court of revision the case files do not indicate that the facility is not registered under the name of company “Soliter” in Gjilan, but the parcel in which the building is located and that the facility is located in the ground floor of the building, and that the evidencing in the ownership certificate does not mean that the facility is an ownership of that company, since according to this logic all the apartments located in that building should have been under the ownership of that company, which is not the case. The obligation of the respondent to recognize the right of the plaintiff over the facility has no influence over the legality of the judgment since the important part of the judgment is the part when the Court determines the right of ownership of the owner and that such obligation is not of importance since the changes of the property are conducted by the competent directorate of geodesy in accordance to the judgment rendered in the administrative procedure if the conditions foreseen by the law have been fulfilled regardless of the permission of the plaintiff, and that the Court does not carry such an execution. The fact that, as it is mentioned, that the contract is in contradiction with the provisions of the respondents statute, can not influence the legality of the contract, since article 22 of LOR the companies, respectively legal entities in

cases of establishment of obligatory relations, are obligated to respect the statutes and all other legal acts, however the contract that contradicts those acts remains in power, exempt only in cases when the other party was aware or should have been aware, while in this case the respondent, with the fact that he participated in the public auction, was not obligated to know the content of the legal acts of the respondent. The right of priority of the Municipality of Gjilan was not violated, since the purchase was conducted based on the public auction announced in the public media. The plaintiff can not claim in regards to the means of payment or in regards to the auction procedure, thus it is a fact that the respondent paid the price of the facility with the currency which was requested from the seller and that during the contested procedure did not forward any evidence in regards to the procedural violations of the auction, thus this Court of revision evaluated that the claim of the plaintiff in regards to the procedural violation and wrongful application of the law are unfounded.

Considering the fact that the sale-purchase contract was drafted in written and that the promises made from the both parties have been fully respected, meaning that the purchaser has paid the price and that the seller has handed the object of sale, the Court of lower instances have rightfully decided when held that such a contract is not void in accordance to articles 103 and 104 of the LOR LMD and that such a contract represents basis for gaining ownership of respondent over the business facility which was the object of sale-purchase.

As stated above, the Supreme Court of Kosovo found that there are no found reasons of the revision, neither those for which this Court is obligated to observe *ex officio*, thus pursuant to article 393 of the LCP decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.198/2004, on 20.07.2005

Presiding judge,
Mr.sc. Rifat Zylfiu

[Supreme Court - Ruling on Civil Proceeding - Article 386 LCP annulment of gift contract - revision of judgment - request accepted amendment of judgment - Article 395 (1) LCP]

The respondent filed a request for revision of judgment against the decision of the District Court of Prizren, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The Municipal Court of Rahovec determined that the contract of gift was void and that the plaintiff is the owner of the cadastral parcel.

The Supreme Court ruled that in regards to the determined factual situation the law had been wrongly applied. The Supreme Court ruled that the contract on the gift, established on 02.12.1959, based on the copy of the contract in the case files, did not allow the application of the provision of the LOR, a law which has entered into force 01.10.1978, the provisions of which, according to article 1106 of this law, can not be applied in the obligatory relations established prior to the entry into force of this law. Accordingly, the Supreme Court ruled that the respondents' request was unfounded.

Rev.No.208/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Osman Tmava, members, in the legal case of the plaintiff H.F., from Prizren, represented by attorney at law Ymer Koro, from Prizren, against the respondents the Municipality of Rahovec, represented by the legal representative, public attorney Ismet Kerqaku and NBI "Rahoveci" in Rahovec, for the annulment of gift of contract, based on the first respondent request for revision, against the judgment of the District Court of Prizren Ac.No.273/2003 dated 28.07.2004, in the session held on 20.07.2005, rendered the following:

JUDGMENT

To accept the revision of the respondent and amend both the judgment of the District Court of Prizren Ac.No.273/2003 dated 28.07.2004 and the judgment of the Municipal Court of Prizren C.No.102/1998 dated 25.03.2003, dismissing the plaintiffs' petition in determining that the contract on the gift toward the respondent - The Municipality of Rahovec is voided, established between H.F., from Prizren, as devisee, and the municipality of Rahovec as beneficiary, verified in the Municipal Court of Rahovec Vr.No.671/59 dated 02.12.1959, in determining that the plaintiff is the owner of the cadastral parcel No.226/50 in the place called "Bella-Breg", with destination: field, registered in the ownership certificate No.115 kk Bella Cërkvë-Fortesë, with a surface area of 0.20,00 hectares, which in the north western part consist of 93,62 m, in the north eastern part consist of 21,25 m, in the south eastern part consist of 94,11 m and in south western part consist of 21,25 m and obligate the respondent to hand over to the plaintiff this cadastre parcel and allow its registration in the name of the plaintiff in the Directorate of Cadastre and Geodesy in Rahovec as the owner and obligate the respondents to compensate the plaintiff for Court procedural expenses in the amount of 120 € within 15 days from the day this judgment is rendered under the threat of compulsory execution of the ruling.

Reasoning

In part I of the enacting clause of the judgment of the Municipal Court of Rahovec C.No.102/1998 dated 26.03.2003, it was determined that the contract on the gift was void, established between H.F., from Prizren, as devisee, and the Municipality of Rahovec as beneficiary, verified in the Municipal Court of Rahovec Vr.No.671/59 dated 02.12.1959, in determining that the plaintiff is the owner of the cadastral parcel No.226/50 in the place called "Bella-Breg", with destination: field, registered in the ownership certificate No.115 kk Bella Cërkvë-Fortesë, with a surface area of 0.20,00 hectares, which in the north western part consist of 93,62 m, in the north eastern part consist of 21,25 m, in the south eastern part consist of 94,11 m and in south western part consist of 21,25 m and obligate the respondent to hand over to the plaintiff this cadastre parcel and allow its registration in the name of the plaintiff in the Directorate of Cadastre and Geodesy in Rahovec as the owner.

In part II of the enacting clause the respondents were obligate to compensate the plaintiff for Court procedural expenses in the amount of 120 € within 15 days from the day this judgment is rendered under the threat of compulsory execution of the ruling.

The district Court of Prizren with its judgment Ac.No.273/2003 dated 28.07.2004, dismissed the appeal of the respondent and reaffirmed the judgment of the Municipal Court of Prizren C.No.102/98 dated 25.03.2003.

The respondent filed a request for revision against the judgment of the second instance Court in due time on the ground of essential violation of the provisions of contested procedure and wrongful application of substantive law, proposing that both judgments of the lower courts be annulled and the case is remanded to the Court of the first instance for retrial.

The plaintiff has filled a response to the revision, requesting that the Court dismisses it as unfound.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is founded.

The case filed show that there was a contract on the gift established between H.F., from Prizren, as devisee, and the Municipality of Rahovec as beneficiary on 02.12.1959, with which the devisee has given as a gift to the beneficiary the full cadastral parcel in the place called "Bella-Breg", with a surface of 0.20.00 evidenced under the name of H.F. from Bella Cërkvë verified in the Municipal Court of Rahovec Vr.No.671/59 dated 02.12.1959. This parcel, based on this contract, was transferred to socially owned property of the Municipality of Rahovec, while its user was NBI "Rahoveci" in Rahovec.

The plaintiff on 07.04.1995, has filled a petition requesting that the gift contract toward the first respondent is voided, established between the plaintiff and the first respondent and obligate the respondents to hand over to the plaintiff the cadastre parcel.226/54 evidenced according to the ownership certificate No.115 kk Bella Cërkvë as well as compensate the plaintiff for the Court procedural

expenses.

In the main session held on 26.03.2003, the plaintiff has clarified the petition, and requested that the Court finds the gift contract towards the first respondent as void established from the plaintiff as a devisee and the municipality of Rahovec as beneficiary, verified in the Municipal Court of Rahovec Vr.No.671/59 dated 02.12.1959, in determining that the plaintiff is the owner of the cadastral parcel No.226/50 in the place called "Bella-Breg", with destination: field, registered in the ownership certificate No.115 kk Bella Cërkvë-Fortesë, with a surface area of 0.20,00 hectares, which in the north western part consist of 93,62 m, in the north eastern part consist of 21,25 m, in the south eastern part consist of 94,11 m and in south western part consist of 21,25m and obligate the respondent to hand over to the plaintiff this cadastre parcel and allow its registration in the name of the plaintiff in the Directorate of Cadastre and Geodesy in Rahovec as the owner and obligate the respondent to compensate the plaintiff for the Court procedural expenses.

The first instance Court through administering the evidence-listening to the testimonies of the witnesses M.F., R.P., both from Prizren has determined that the plaintiff has established the disputed contract with the respondent under pressure since as it is mentioned in the reasoning of this Court, under the pressure of the Panel of the Municipal Committee of Rahovec in order to build the compound of collective land in social ownership otherwise they would terminate his labour contract.

Based on such factual situation, the first instance Court has concluded that the contract on the gift, established between the contracting parties in void, does not produce any legal effects and that through the application of article 103 paragraph 1 of the Law on Obligatory Relation (LOR) has decided as in the enacting clause of this judgment.

The second instance Court, deciding on the appellate procedure, has found that the first instance Court has fully and rightfully determined the factual situation, has rightfully applied the substantive law when it determined that the appeal of the respondent is unfounded, reaffirming the judgment of the first instance Court, concluding that there was no violation of the essential provisions of contested procedure

which the second instance Court is obligated to observe *ex officio*.

The Supreme Court of Kosovo, bearing in mind the determined factual situation held that such a view of the Courts of lower instance can not be accepted as a lawful and correct since according to the evaluation of this Court, in regards to the determined factual situation the law has been wrongly applied when the first instance Court held that the petition is founded. This is based on the fact the contract on the gift, established on 02.12.1959, based on the copy of the contract in the case files, in this concrete case does not allow the application of the provision of the LOR, a law which has entered into force 01.10.1978, the provisions of which, according to article 1106 of this law, can not be applied in the obligatory relations established prior to the entry of this law into force.

Considering the fact that, determined by the first instance Court, the contracting party respectively the devisee has given away the land to the beneficiary, which was done under the pressure of the former Municipal Committee, that if he does not, the plaintiff would be terminated from his working position, who at that time was working, can not be concluded that such a contract is absolutely void, since according to the evaluation of this Court, the treat was not of such nature that could have caused serious harm to the life, body or some other value of the plaintiff, since if the plaintiff was in labour relations, his position could have been terminated in accordance to the conditions and the procedure foreseen by the law, however he could have sought legal aid in the competent Court to solve such issue. Even if it is presumed that the contract was established in lack of goodwill due to the threat, aberration or fraud, according to the general rules of the civil procedure, such contract would have been considered as relatively void, however the annulment of that contract should have been requested within one year, from the day of the awareness regarding the threat, or from the day the threat seized to exist, while such a right seizes to exist within the deadline of three year.

Considering the fact that all the deadlines have expired for the claim of the contract as relatively void, which deadline are considered preclusive, in the concrete case the plaintiff can not request the nullification of the contract after the expiration of the deadline for 36 years, as done in this case.

Based on the reasoning and the evidence available in the case files, this Court found that the plaintiffs' petition is unfound and due to the wrongful application of the law from the courts of lower instance, this Court amended the judgment of the lower instances and found that the plaintiffs' petition as such is unfound.

As stated above, pursuant to article 395 paragraph 1 of the LCP, it was decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.208/2004, on 20.07.2005

Presiding Judge,
Shahdane Agani

[Supreme Court - Ruling on Civil Proceeding Article 386 LCP - handing over the real estate ownership - revision of judgment request accepted retrial ordered (without part II) Article 332 (2), 395 (1) LCP]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Mitrovica, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The District Court of Mitrovica dismissed the repetition of the plaintiff, to obligate the respondent to return to the plaintiff the ownership of the real estate.

The Supreme Court ruled that the Court should always observe whether the case is judged before, and if it determines that the dispute has been already initiated based and judged, such petition should be dismissed as required by article 332 paragraph 2 of the LCP. Accordingly, the Supreme Court ruled that the plaintiff's request was found.

Rev.No.210/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Shahdane Agani presiding judge, Mr. Rifat Zylfiu, Meleqe Behxheti, Vjosa Nimani-Zylfiu and Dr.Sc. Hamdi Podvorica, members, in the legal case of the plaintiff Sh.A., from Prishtina, represented by attorney at law Xhafer Maliqi, from Vushtrri, against the respondent I.B., from Vushtrri, represented by attorney at law Adem Vokshi, from Mitrovica, in the case of handing over the real estate ownership, based on the revision of the plaintiff against the judgment of the District Court of Mitrovica, Ac.No.195/2004 dated 04.10.2004, in the session held on 26.07.2005, rendered the following:

RULING

To accept the revision of the plaintiff and annul the judgment of the District Court of Mitrovica, Ac.No.195/2004 dated 04.10.2004, remanding the case to the same Court, for retrial.

The judgment of the second instance Court in part II of the

enacting clause was not reviewed.

Reasoning

In part I of the enacting clause of the judgment of the District Court of Mitrovica, Ac.No.195/2004 dated 04.10.2004, the judgment of the Municipal Court of Vushtri was amended, in the part I of the enacting clause dismissing the repetition of the plaintiff, to obligate the respondent to return to the plaintiff the ownership of the real estate, consisting of j 1/3 of the surface, based on the ownership certificate No.250 kk Vushtrri, respectively the cadastre parcel No..1085 in the location called "Qytet" with a destination: house and garden, consisting of 0.04.36 hectares, the cadastral parcel No/ 2034 in the place called "Selishte", 3rd class field, consisting of 0.14.10 hectares, cadastral parcel No.2445, at the same location, with the destination 2nd category field, consisting of 0.06.53 hectares, as well as the cadastral parcel No. 3496/1 in the location called "Mrtvaja" 3rd class field, consisting of 0.38.38 hectares, as well as a part of the cadastre parcel No.2034 consisting of the remaining 01.06.23 hectares, belonging to the plaintiff in accordance to the ruling on heritage T.No.65/59 dated 23.03.1961 finalized from 15.04.1961. In part II and III of the enacting clause, the judgment of the Court of the first instance was reaffirmed.

The respondent filed a request for revision of judgment against the judgment of the second instance in due time on the ground of essential essential violation of applicable provisions of contested procedure and wrongful application of substantive law, proposing that the judgment of the second instance is amended, or that the Court annuls both the judgment of the Court of the first instance and the judgment of the second instance and that the case is remanded to the Court of the first instance for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is found.

The case files indicate that the plaintiff, with the petition filed in the Court of the first instance on 02.10.1978 has requested to be

determined as the owner of the above real estate. The Court of the first instance has rendered the judgment C.No.244/2002, with which partially has approved the petition of the plaintiff, which judgment based on the appeal of the respondent, has been annulled by the Court of second instance Ac.No.356/2003 dated 10.05.2004, and the case was remanded to the Court of the first instance for retrial. The Court of the first instance in the retrial procedure after administering the evidence has rendered its judgment C.No.112/2004 dated 05.07.2004, with which in part I of the enacting clause denied the plaintiffs' petition as unfound, and in part II of the enacting clause denied the petition of the respondent as unfound.

Based on the appeal of the plaintiff against the judgment of the Court of the first instance, with the appealed judgment of the Court of the first instance, the judgment of the Municipal Court of Vushtri was C.No.112/2004 dated 05.07.2004, was amended in part I of its enacting clause, dismissing the appeal of the plaintiff and in part II and III of the enacting clause of the judgment of the Court of the first instance was reaffirmed, with the justification that the plaintiff its petition has requested the verification of the disputed property and that the property in dispute be handed over in possession based on heritage and considered that in the concrete case, the Court is dealing with a case already judged before thus in accordance to article 333 paragraph 2 of the Law on Contested Procedure, has dismissed the appeal of the plaintiff.

Considering the current state of affair, the Supreme Court of Kosovo found that the appealed judgment contains essential violation of the provisions of the contested procedure foreseen in article 354 paragraph 1 in the meaning of article 333 paragraph 2 of the LCP, due to which the Supreme Court annuls it.

Pursuant to article 332 paragraph 2 of the LCP, the Court should always observe whether the case is judged before, and if it determines that the dispute has been already initiated based and judged, such petition should be dismissed. Despite the fact of the existence of the final ruling T.No.65/59 dated 23.03.1961, in the concrete case it can not be said that we are dealing with a judged issue. This is because the final ruling issued by the Court on heritage does not exclude the right of requesting that the property be handed over for ownership. In other words, even if there are misunderstandings between the parties on the

heritage, in regards to the fact whether the heritage includes a part of wealth, and this is the reason why the parties were not instructed in the Court proceedings, the ruling on heritage does not exclude the rights of the parties in the heritage process to file petitions for receiving rights over the property. This is because, in order to consider an issue as judged with a final decision, it is required that the identity of the parties, identity of the requestor and determination of the factual situation is verified. The dispute should have been reviewed and finalized in the dispute procedure, since an issue that is finally judged is considered only the issue which in the contested procedure has been decided upon.

In the concrete case, the previous request is based on a life event from the time period ruling on heritage was rendered, while the new request is based on a new life event considering the time period that petition is filed. These life events are the same, however not identical which makes them different. Thus, in this case the new and the previous requests are not identical, therefore the Court of the second instance can not annul the decision of the Court of the first instance and dismiss the petition.

Since pursuant to article 385 paragraph of the LCP, there can not be a revision based on the wrongful and incomplete determination of the factual situation, thus the claims contained in the revision "non determination of the factual situation" were not reviewed and evaluated by the Supreme Court.

Since the judgment of the second instance in part II of the enacting clause was not appealed with a request for revision, this part of the judgment was not reviewed.

The Court of the second instance is obligated to remove the above mentioned deficiencies, and decide on the appeal based on merit.

As stated above, pursuant to article 394 paragraph 1 of the LCP it is decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINË
Rev.No.210/2004, on 26.07.2005

Presiding judge,
Shahdane Agani

[Supreme Court - Ruling on Civil Proceeding - Article 386 LCP annulment of the contract revision of judgment request rejected - Article 395 (1) LCP]

The plaintiff filed a request for revision of judgment against the decision of the District Court of Mitrovica, arguing that the Court violated the applicable provisions of the contested procedure and wrongfully applied the substantive law.

The lower Courts held that the contract of sale-purchase of the parcel was void and without any legal effect.

The Supreme Court ruled that the Court of the lower instances during the evaluation of the factual situation, have rightfully applied the provision of the contested procedure and correctly applied the law. Accordingly, the Supreme Court ruled that the plaintiff's request was unfounded.

Rev.No.211/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges, Meleqe Behxheti presiding judge, Mr. Rifat Zylfiu, Shahdane Agani, Vjosa Nimani-Zylfiu and Gjuran Dema, members, in the legal case of the plaintiffs S.Gj., F.Gj. and B.Gj., all from Mitrovica, represented by attorney at law Gani Tigani from Prishtina, against the respondent A.D., from Mitrovica, represented by A.H. who is represented by attorney at law Adem Vokshi from Mitrovica, on the annulment of the contract, based on the revision of the plaintiff filed against the judgment of the District Court of Mitrovica, Ac.No.83/2004 dated 08.07.2004, in the session held on 20.07.2005, rendered the following:

JUDGMENT

To deny the revision of the plaintiff, filled against the judgment of the judgment of the District Court of Mitrovica, Ac.No.83/2004 dated 08.07.2004, as unfounded.

Reasoning

With the judgment of the District Court of Mitrovica, Ac.No.83/2004 dated 08.07.2004, the appeal of the plaintiff against the judgment of the Municipal Court of Mitrovica C.No.398/2003 dated 16.01.2004, was denied as unfounded, to verify the contract on the sale-purchase of the parcel Vr.No.1590/2001 dated 19.11.2001 established between F.Gj., M.Gj. and the respondent and was deemed as void without any legal effect. The respondents are obligated to jointly pay the sum of 304, 20€ in the name of Court procedural expenses within 15 days.

Both respondent filed a request for revision against the judgment of the second instance in due time on the ground of essential violation of provisions of contested procedure and wrongful application of substantive law, proposing that both judgments of the lower courts be annulled and the case is remanded to the Court of the first instance for retrial.

The Supreme Court of Kosovo, after the review of the appealed decision, pursuant to article 386 of the Law on Contested Procedure (LCP), held that the request for revision is unfounded.

The case filed show that as co-owners of the cadastral parcel No. 638 with a destination house, consisting of 01, 90, hectares, with a yard consisting of 05, 00 hectares and a garden consisting of 02, 28 ha, ws inherited by: B.Gj., with 1/12, F.Gj., 1/12, S.Gj., 4/12, F.Gj., 5/12, while M.Gj. with 1/12 of the real estate, which is evidenced in the ownership certificate No.2573 KK Mitrovica. According to the sale-purchase contract certified in Municipal Court of Mitrovica Vr.No.1590/2001 dated 19.11.2001, two of the co-owners F. and M.Gj., sold their co-owned part to the respondent, as follows: F. 6/12 and M. 1/12 of the cadastral parcel with destination house, yard and garden of the 3rd class, consisting of 02,28 hectares, according to the ownership certificate No.2573 KK Mitrovica, for the price of 130.000 DM. The parties do not dispute the fact, before the war that in the land that they own existed a house which was burned during the war, and later on a new house was built. However after the verification of the sale-purchase contract, the respondent, according to the ownership certificate was evidenced as the co-owner of the same parcel 6/12. The respondents in

their petition request the annulment of the contract, since at the moment of the purchase, the house which was burnt did not exist thus claiming that the land should be exempted from the transaction, and that the contract on the sale-purchase is not valid. According to article 103 of the LOR, this contract is void and does not produce any legal effects.

The Court of the first instance, after administering the evidence has found that the contract in dispute was established in violation of article 103 of the LOR, and that through the administered evidence it was determined that at the moment of the establishment of the contract, the house that was burnt did exist, however it was demolished by the respondent and rebuilt later on.

The Court of the second instance, deciding on the appellate procedure, has found that the Court of the first instance has fully and rightfully determined the factual situation, has rightfully applied law when it determined that the appeal of the plaintiffs is unfounded, concluding that there was no violation of the essential provisions of contested procedure by the Court of the first instance, which the Court of the second instance is obligated to observe *ex officio*.

The Supreme Court of Kosovo having in mind the current state of the case, found that the Court of the lower instances during the evaluation of the factual situation, have rightfully applied the provision of the contested procedure and correctly applied the law, when they determined that the plaintiffs' petition is unfound. The judgments of the lower Courts contains sufficient reasoning, which is accepted by this Court, adding that the conditions foreseen in article 103 paragraph 1 of the LCP for the annulment of the sale-purchase contract on the real estate were not fulfilled, respectively that the contract does not contain any circumstance which would make it in violation of the above provisions and with the law. With paragraph 2 of article 103 of the LCP, it is foreseen that if the establishment of a contract has restrictions toward only one of the parties, the contract remains in force, while the party that violated the legal restriction will be faced with legal consequences. In the concrete case, if there were any restriction on the sale, this contract could have not been established and would have not existed.

In his claim the respondent argues that the judgments of the lower Court contain essential violation of the procedural provisions

without concretely identifying them, thus the Court of revision concludes that the claims contained in the revision, regarding the violation of the essential provisions of the contested procedure, are unfounded. Further, the claims that the Courts have wrongly applied the law in light of article 103 of the LCP, are unfound, since the judgments contain sufficient reasoning, thus according to the evaluation of this Court, the courts of lower instance have correctly applied the law when they found that the petition of the plaintiffs is unfound.

The claims in the revision regarding the determination of the factual situation were not evaluated by this Court, since according to article 385 paragraph 3 of the LCP, a request for revision can not be filed due to the wrongful and incomplete determination of the factual situation.

As stated above, pursuant to article 393 of the LCP, it was decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
Rev.No.211/2004, on 20.07.2005

Presiding Judge,
Meleqe Behxheti