

[Supreme Court-Ruling on Administrative Disputes - appeal dismissed-eligibility for disability pension-article 40 (1) LAD - Article 1.5; 3 Law No.2003/23 on the Disability Pensions in Kosovo]

The plaintiff appealed the decision of the Department of Pension Administration of Kosovo, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his serious health condition and his inability to work.

The Department of Pension Administration of Kosovo refused to award the disability pension to the plaintiff because the doctor's commission concluded that the plaintiff does not suffer from full and permanent disability.

The Supreme Court ruled that both, the first and second instance authorities, during determination of the factual situation, correctly and completely applied the general provisions of the administrative procedure and the substantive law, when they determined that the plaintiff did not fulfil the foreseen criteria, pursuant to Article 3 Law No. 2003/23 on Disability Pensions in Kosovo. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.148/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Vjosa Nimani-Zylfiu, presiding judge, Osman Tmava, and Shahdane Agani, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk, in the administrative dispute based on the action filed by the plaintiff A.L., against the decision of the Ministry of Labour and Social Welfare, Appeal Council for Disability Pensions in Prishtina, on the grounds of nullification of the decision of the second instance authority No. 5007881 dated 20.12.2004, at the hearing held on 27.07.2005, rendered the following:

JUDGMENT

To dismiss the petition.

Reasoning

Based on the decision in dispute, the plaintiffs' appeal against the decision of the Department of Pension Administration of Kosovo, No. 5007881 dated 08.10.2004, is deemed unfounded, therefore the petition of the plaintiff for receiving disability pension is denied.

The plaintiff in his petition disputes the legality of the second instance decision, arguing that the decision of the respondent is unlawful, since the Doctor's Commissions of the respondent did not consider the fact of the plaintiff's serious health condition, his inability to work and that the evidence presented was not taken into consideration, due to which the determination of the factual situation was incomplete, which resulted in the wrongful application of substantive law in his disadvantage. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), held that the petition is unfounded.

The case files indicate that the first instance authority, with its decision No. 5007881 dated 08.10.2004, based on the evaluation of the Doctor's Commission, conducted on 28.09.2004, that evaluated the disability level of the plaintiff, refused the request of the plaintiff to obtain the right to a disability pension because the Doctor's Commission who evaluated the disability level of the plaintiff, concluded that the plaintiff does not suffer from full and permanent disability.

Pursuant to Article 1.5 of the Law No.2003/23 on the Disability Pensions in Kosovo promulgated by UNMIK Regulation No.2003/40, it is foreseen that a person will be considered to be permanently and totally disabled if he or she is aged over 18 years and less than 65 years and has a medically diagnosed physical, sensory or mental condition, disease or disability rendering him or her incapable of any work for remuneration, and where the Ministry has assessed the person and subsequently decides that they fulfil the medical criteria set out in this Law. In order to be granted the status of a disabled person, the condition, disease or disability must render the person totally incapable of any

work for remuneration at the time of application and in the future. The onset of the condition, disease or disability must be no less than one year prior to the date of submitting a complete application to the Ministry.

Article 3 of the law No. 2003/24 On Disability Pensions in Kosovo foresees the criteria for determination of disability.

In the appellate procedure, the respondent has ensured both an assertion and opinion No. 1013174632, dated 20.12.2004, of the Doctor's Commission established by the Ministry of Labour and Social Welfare, and in accordance with Article 2.2 of the Law No. 2003/23 on Disability Pensions in Kosovo, which Commission accepts the assessment of the Doctor's Commission rendered on 28.09.2004, thus, the respondent, with the decision in dispute, argued that the appeal was unfounded.

The Supreme Court of Kosovo held that both, the first and second instance authorities, during the determination of the factual situation, correctly and completely applied the general provisions of the administrative procedure and the substantive law, when they determined that the plaintiff did not fulfil the foreseen criteria, pursuant to Article 3 of the Law No. 2003/23 on Disability Pensions in Kosovo.

As stated above, the Supreme Court of Kosovo, pursuant to Article 42 paragraph 1 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.148/2005, on 27.07.2005

Recording Clerk,
Ajna Gashi

Presiding Judge
Vjosa Nimani-Zylfiu

[Supreme Court - Ruling on Administrative Disputes - appeal dismissed-eligibility requirements for social assistance- UNMIK Regulation 2003/28 - article 40 (1) LAD]

The plaintiff appealed the decision of the Ministry of Labour and Social Welfare, Department of Social Welfare in Prishtina, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his poor economic condition.

The Centre for Social Welfare in Peja refused to award a social assistance to the plaintiff because he did not meet the eligibility requirements for social assistance.

The Supreme Court ruled that both, the first and second instance authorities, had confirmed that plaintiff's family did not meet eligibility criteria in order to be awarded a social assistance for the findings that the plaintiff has other family members present in the household that are able to work and exercise remuneration activity, as required by UNMIK Regulation 2003/28 on the Social Assistance Scheme. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.201/2004

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava, presiding judge, Vjosa Nimani-Zylfiu, and Shahdane Agani, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk, in the administrative dispute based on the action filed by the plaintiff R.M., from Peja, against the decision of the Ministry of Labour and Social Welfare, Department of Social Welfare in Prishtina, No. 379 dated 25.02.2005, in the case of social assistance, at the closed hearing of the panel, held on 26.07.2005, rendered the following:

JUDGMENT

To dismiss the petition.

Reasoning

Based on the decision in appeal, the plaintiffs' appeal against the decision of the Centre for Social Welfare in Peja, No. 17-2526, dated 12.12.2004, is deemed unfounded therefore the petition of the plaintiff for receiving social welfare is denied, since the plaintiff's family does not present a social case.

The plaintiff in his petition, disputes the legality of the appealed decision for violation of essential procedural rules, erroneous and incomplete determination of factual situation, wrongful application of substantive law, by stating that he and his spouse are unemployed, living with 6 (six) children, out of which 3 are adults however none of them employed, in very poor economic situation, without any source of income. The plaintiff proposed to accept the petition and annul the decision in dispute.

The respondent did not file response to the petition

The Court evaluated the legality of the decision in dispute in accordance with the claims in the petition and upon reviewing the case files, concluded that:

The petition is unfounded.

The case files indicated that administrative authorities in administrative procedure, when proving whether the plaintiff meets the requirements set forth in the UNMIK Regulation 2003/28, dated 18 August, 2003, on the Social Assistance Scheme, have determined that the family of the plaintiff does not present a social case since the plaintiff has other family members present in the household that are able to work and exercise remuneration activity.

The respondent at the appellate procedure with the disputed decision has fully accepted the determined of the factual situation and the legal position of the first fact finding instance, therefore rejecting the appeal and affirming the appealed decision.

UNMIK Regulation No.2003/28 dated 18 August, 2003 on the Social Assistance Scheme, Section 1, foresees that families at risk from

a social point of view are those families eligible for social assistance. Section 4 paragraph 1 of the present Regulation foresees that in order to be eligible for social assistance, all family members must be habitually residing in Kosovo and the families must fall within one of the following categories: a) category one, which in accordance to Article 2, paragraph 7 of the present regulation means a family where all family members are dependants, respectively incapable of any work on remuneration and b) second category - a family, where there is a family member able to work and where there is: (i) at least one child under the age of five or an orphan under the age of fifteen in its full-time care or fits the dependency criteria pursuant of Section 2.7 of the present Regulation.

Taking into account the current state of the affair, the Supreme Court concludes that the first fact finding instance and the respondent, have determined that the family of the plaintiff does not meet the foreseen legal requirements in order to be eligible for social assistance, since the plaintiff has other family members present in the household that are able to work and exercise remuneration activity, such as his spouse Z. and his daughters: L., M. and V., at the same time, the plaintiff himself who is also able to work and exercise remuneration activity.

For these reasons, the Court concluded that in this administrative case, the factual situation was determined correctly which results in non-violation of the law to the disadvantage of the plaintiff, therefore considers the claim contained in the petition as unfounded, and non influential in determining otherwise the factual situation other than what was already determined by the administrative authorities, therefore pursuant to Article 42, paragraph 2 of the LAD, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISTHINA
A.No.201/2005, on 26.07.2005

Recording Clerk,
Ajna Gashi

Presiding Judge,
Osman Tmava

[Supreme Court-Ruling on Administrative Disputes - appeal accepted-eligibility for disability pension-article 40 (1) LAD - Article 2.2 Law No.2003/23 on the Disability Pensions in Kosovo- article 61 LAD]

The plaintiff appealed the decision of the Department of Pension Administration of Kosovo, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his serious health condition and his inability to work.

The Department of Pension Administration of Kosovo refused to award the disability pension to the plaintiff considering that the plaintiff does not suffer from any disability.

The Supreme Court ruled that the disputed decision was in violation of the law to the disadvantage of the plaintiff since the decision was rendered before determining completely and correctly all the relevant facts of the case. Accordingly the Supreme Court ruled that the plaintiff's appeal was founded.

A.No.233/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava, presiding judge, Meleqe Behxheti and Vjosa Nimani - Zylfiu, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk, in the administrative dispute based on the action filed by the plaintiff H .R., from Gjilan, against the decision of the Ministry of Labour and Social Welfare - Appeals Council for Disability Pensions in Prishtina, No. 5001016 dated 04.12.2004, in a pension case, held on 26.07.2005, rendered the following:

JUDGMENT

To accept the petition.

The decision rendered by the Ministry of Labour and Social

Welfare, Department of Kosovo Pension Administration, Appeals Council for Disability Pensions in Prishtina, No. 5001016 dated 04.12.2004, is annulled.

Reasoning

Based on the decision in appeal, the plaintiffs' appeal against the decision of the Department of Kosovo Pension Administration No. 5015313 dated 26.11.2004, is deemed unfounded, therefore the petition of the plaintiff for receiving social assistance is denied.

The plaintiff in her petition disputes the legality of the second instance decision, arguing that the decision of the respondent is unlawful, since the Doctor's Commissions of the respondent did not consider the fact of the plaintiff's serious health condition, her inability to work and that the evidence presented was not taken into consideration, due to which the determination of the factual situation was incomplete, which resulted in the wrongful application of substantive law in her disadvantage. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), held that the petition is founded.

The case files indicate that the first instance authority, with its decision No. 5001016 dated 12.08.2004, has dismissed the petition of the plaintiff for receiving social assistance. The Doctor's Commission that evaluated the disability level of the plaintiff, on 05.08.2004 has concluded that the plaintiff suffers from total and permanent disability.

In the appellate procedure, the respondent has ensured both an assertion and opinion No. 1002996185, dated 04.12.2004, of the Doctor's Commission established by the Ministry of Labour and Social Welfare, and in accordance with Article 2.2 of the Law on Disability Pensions in Kosovo, this Commission has concluded that the plaintiff does not suffer from any disability, thus with the decision in dispute rejected the petition of the plaintiff as unfounded.

The Court concluded that this administrative affair contains

contradictions that were not eluded by the respondent and by the decision of the first instance authority, since the evidence found in the case files was not taken into consideration respectively. The assertions and opinions of the Doctor's Commissions contained contradictions in regards to the fact whether the plaintiff suffers from a disability. In this respect, the Doctor's Commission in the first instance authority concluded that the plaintiff has a disability, while the Doctor's Commission in the second instance authority concluded that the plaintiff does not have a disability.

Due to the stated reasons the Court concluded that the disputed decision was in violation of the law to the disadvantage of the plaintiff, since the decision was rendered before determining all the relevant facts of the case completely and correctly, which means that the decision was taken in without determining the complete factual situation and without removing the contradictions, between the evidence introduced by the plaintiff and the medical assertions and the evidence on which the decision was based concerning the right of the plaintiff which was denied.

In accordance to the above stated, the Court obligates the respondent to re-open the procedure and act in accordance to the remarks given in this judgment, bearing in mind that the factual situation was not determined properly and completely, which otherwise would have resulted in the lawful and just resolution of this administrative dispute Article 61 of the LAD.

As stated above, pursuant to Article 39 paragraph 2 and Article 42 paragraph 2 of the LAD, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISTHINA
A.No.233/2005, on 26.07.2005

Recordin Clerk
Ajna Gashi

Presiding Judge
Osman Tmava

[Supreme Court-Ruling on Administrative Disputes - appeal accepted-eligibility for disability pension-article 40 (1) LAD - Article 61 LAD]

The plaintiff appealed the decision of the Department of Pension Administration of Kosovo, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his serious health condition and his inability to work.

The Department of Pension Administration of Kosovo refused to award the disability pension to the plaintiff because the doctor's commission concluded that the plaintiff does not suffer from any disability.

The Supreme Court ruled that the disputed decision was in violation of the law to the disadvantage of the plaintiff since it has been rendered without proper evaluation of all relevant evidence in the case. Accordingly the Supreme Court ruled that the plaintiff's appeal was founded.

A.No.264/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava, presiding judge, Shahdane Agani and Vjosa Nimani-Zylfiu members, with the legal assistant Ajna Gashi, acting in the capacity of the recording, Clerk in the administrative dispute based on the action filed by the plaintiff E.K., from the village Lladovc, Municipality of Podujevo, against the decision of the Ministry of Labour and Social Welfare, Appeal Council for Disability Pensions, No.5010697 dated 12.02.2005, in the case of social assistance, at the closed hearing of the panel, held on 26.07.2005, rendered the following:

JUDGMENT

To accept the petition.

The decision rendered to the Ministry of Labour and Social Welfare, Department of Pension Administration of Kosovo, Appeal Council for Disability Pensions, Prishtina No.5010697 dated 12.02.

2005 is annulled.

Reasoning

Based on the decision in dispute, the plaintiffs' appeal against the decision of the Ministry of Labour and Social Welfare, Department of Pension Administration of Kosovo, No. 5010679 dated 02.11.2004, is deemed unfounded, therefore the petition of the plaintiff for receiving disability pension is denied.

The plaintiff in his petition, disputes the legality of the decision in dispute, arguing that the Doctor's Commissions of the respondent did not take into consideration as facts the plaintiff's serious health condition, his inability to work and that the presented evidence was not taken into consideration, due to which the determination of the factual situation was incomplete, which resulted in the wrongful application of substantive law in his disadvantage. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), and assessment of the claims and files of the case, found that:

The Petition is founded.

The case files indicate that the first instance authority, with its decision No.5010697 dated 02.11.2004, has denied the request of the plaintiff to obtain the right to a disability pension. The Doctor's Commission on 22.10.2004, has assessed and evaluated the psychiatric, physical working skills of the plaintiff, and has concluded that the plaintiff does not suffer from any (full and permanent) disability.

The Court concluded that this administrative affair contains contradictions that were not removed by the respondent and during the decision of the first instance authority since the evidence found in the case files was not taken into consideration (Decision of the "BVI"- the Kosovo Insurance for Disability Pensions, No. 7320470304, Prishtina, dated 19.09.1989, concerning the request on the disability pension. It is

asserted that the plaintiff is already a user of the Disability Pension Fund).

Due to reasons as stated above, the Court determines that the decision in dispute, is not legally founded and is in the disadvantage of the plaintiff, since it has been rendered without proper evaluation of all relevant evidence in the case, which means incomplete determination of the factual situation, still containing contradictions among the evidence presented by the plaintiff and the evidence on which the decision in dispute is founded, in regards to the rights claimed by the plaintiff, which were denied.

According to the above stated, the Court obligates the respondent to re-open the procedure and act in accordance to the remarks given in this judgment, bearing in mind that the factual situation was determined properly and completely, which otherwise would have resulted in the lawful and just resolution of this administrative dispute Article 61 of the LAD

As stated above, pursuant to Article 39 paragraph 2 and Article 42 paragraph 2 of the LAD, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.no.264/2005, on 26.07.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Osman Tmava

[Supreme Court-Ruling on Administrative Disputes - appeal accepted-eligibility for disability pension-article 40 (1) LAD - Article 2.2 Law No.2003/23 on the Disability Pensions in Kosovo]

The plaintiff appealed the decision of the Department of Pension Administration of Kosovo, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his serious health condition and his inability to work.

The Department of Pension Administration of Kosovo refused to award the disability pension to the plaintiff because the doctor's commission concluded that the plaintiff does not suffer from full and permanent disability.

The Supreme Court ruled that the disputed decision contained deficiencies which make it impossible to review its legality. Accordingly the Supreme Court ruled that the plaintiff's appeal was founded.

A.No.289/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Vjosa Nimani-Zylfiu presiding judge, Osman Tmava and Shahdane Agani members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk in the administrative dispute based on the action filed by the plaintiff S.K., from the village Malesi e Vogel, Municipality of Rahovec, arguing against the decision of the Ministry of Labour and Social Welfare, Appeal Council for Disability Pensions, Prishtina, for annulment of the decision of the second instance authority, No. 5013246 dated 17.02.2005, in the hearing held on 22.08.2005, rendered the following:

JUDGEMENT

To accept the petition.

The decision rendered by the Ministry of Labour and Social Welfare, Department of Pension Administration of Kosovo, Appeal

Council for Disability Pensions, Prishtina No. 5013246 dated 17.02.2005 is annulled.

Reasoning

Based on the decision in dispute, the appeal of the plaintiff filled against the decision of the Department of Pension Administration of Kosovo No. 5013246 dated 21.10.2004 is rejected, therefore denying the right of the plaintiff to receive disability pension.

The plaintiff in his petition, disputes the legality of the second instance authority, arguing that the Doctor's Commissions of the respondent did not take into consideration the facts of the plaintiff's serious health condition, his inability to work and that the presented evidence was not taken into consideration, due to which the determination of the factual situation was incomplete, which resulted in the wrongful application of substantive law in his disadvantage. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), deemed the claim as found.

The case files indicate that the first instance authority, with its decision No. 5013246 dated 21.10.2004, has denied the request of the plaintiff to obtain the right to a disability pension. The Doctor's Commission, who conducted the disability evaluation of the plaintiff on 14.10.2004, has concluded that the plaintiff does not suffer from full and permanent disability.

In the appellate procedure, the respondent has ensured both an assertion and opinion No. 5013246, dated 17.02.2005, of the Doctor's Commission established by the Ministry of Labour and Social Welfare, in accordance with Article 2.2 of the Law on Disability Pensions in Kosovo, which commission has concluded that the plaintiff does not suffer from any disability, and based on the decision in dispute, dismissed the appeal of the plaintiff as unfounded.

From the decision in dispute, it is clear that such a decision has deficiencies which make it impossible to review its legality.

The Court, when deciding about a dispute, decides upon facts which are determined during the administrative procedure. The Supreme Court evaluates that this dispute can not be evaluated on the basis of the already determined facts in the administrative procedure, since the determined facts in the case file contain contradictions. With the decision of the Self-Governed Unions of Interest - The Kosovo Insurance for Disability Pensions (Directorate in Prizren) No.7018594498 dated 05.10.1985, it is asserted that the plaintiff is already a user of the Disability Pension Fund, also being a disabled war veteran. The Commission of the first instance authority has concluded that the plaintiff suffers permanent disability, the reasoning provided in the disputed decision does not contain any justification in accordance with the appeal statements of the plaintiff presented in the appeal against the institution of the first instance, and neither for the course of procedure that was conducted in the second instance authority.

The above mention deficiencies are of such nature, that make it impossible to review the legality of the decision, thus with the applicability of article 39 paragraph 2, the disputed decision is annulled.

It is required that all the above deficiencies be removed in the remand procedure and only then a lawful decision can be made.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.289/2005, on 22.08.2005

Recording Clerk,
Ajna Gashi

Presiding Judge
Vjosa Nimani-Zylfiu

[Supreme Court-Ruling on Administrative Disputes - appeal dismissed- VAT-article 40 (1) LAD - UNMIK Regulation No. 2000/20 Tax and Administration Procedures - article 2, (2), (12) LAD]

The plaintiff Tax Administration of Kosovo - Prizren Regional Office appealed the decision of the Independent Review Board in Prishtina, arguing that the administrative authority had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation.

The Independent Review Board in Prishtina corrected the amount of the VAT to be paid by the respondent.

The Supreme Court ruled that the disputed decision contain no violation of the law or any other interest of the plaintiff since it can not be the bearer (holder) of rights or liabilities upon which it was decided in the conducted administrative procedure, as required by article 2, paragraph 2, and Section 12 of the LAD and UNMIK regulation 2000/20 on Tax and Administration Procedure. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.333/2003

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava, presiding judge, Meleqe Behxheti and Vjosa Nimani-Zylfiu, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk, in the administrative dispute based on the appeal filled by the Tax Administration of Kosovo - Prizren Regional Office, against the decision of the Independent Review Board in Prishtina No.63/2003 dated 07.07.2003, at the hearing held on 21.06.05, rendered the following:

RULING

The petition is dismissed.

Reasoning

Based on the decision in dispute, No.63/2003 dated 07.07.2003, the Independent Review Board in Prishtina, has partly accepted the petition of the party NPT “Pisha” with its headquarters in Prizren as partly founded, filled against the respondents decision (The Appeals Division) No. 251 dated 07/02, in value of 40.608,73 € (Euro), for which value, the party has been released to pay the Value Added Tax.

The plaintiff in his petition disputed the legality of the disputed decision, by stating that the determination of the factual situation was unjust and incomplete, which resulted in the wrongful application of law, while the disputed decision at the same time is contradictory, since its enacting clause is in contradiction with the case evidence and the statements provided. The Plaintiff proposes to accept the petition and annul the disputed decision.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Section 40 of the Law on Administrative Disputes (LAD), after the evaluation of the evidence and the statements provided in the case files, concluded that:

The Petition is denied.

The case files indicate that the respondents decision (The Appeals Division) No. 251 dated 20.12.2002, the party NTP “Pisha” with its Head Quarters in Prizren, is obligated to pay the Value Added Tax for the month 07/02 and on the other side, according to the petition of the tax paying party, the respondent in the disputed decision partially accepts the appeal of the plaintiff by correcting the amount of Value Added Tax to be paid, obligating NTP “Pisha” to pay the tax in value of 40.608,73 € (Euro) for the month 07/02.

The Law of General Administrative Procedure (Official Gazette of SFRJ, No.47, dated 16 August 1985, LGAP) in Article 1, paragraph 1, foresees that administrative authorities apply the provisions of this law, upon deciding in administrative issues regarding any administrative dispute or on other rights, liability or legal interests of any individuals or entities.

In accordance to the statement above, UNMIK Regulation No. 2000/20 dated 12 April, 2000, on Tax and Administration Procedures, in Section 7, paragraph 1, stipulates that a taxpayer who contends that a right has been violated, can request a review from the Tax Administration, (officially determined) in the Appeals Division of the Tax Administration of Kosovo.

Article 2, paragraph 2, and Section 12 of the LAD, results that government authorities, even if not considered as legal entities, have the right to initiate the appellate administrative procedure, if they are bearers (holders) of rights and liabilities for which it has been decided in a administrative procedure or if their interests have been violated in accordance with the law.

The Supreme Court of Kosovo, in this concrete case evaluates that the plaintiff pursuant to the above mentioned legal provisions of LAP and UNMIK Regulation No. 2000/20 dated 12 April, 2000, on Tax and Administration Procedures, in deciding based on the parties' request for reviewing the official evaluation, has applied the procedure and applied the legal provisions which determine the obligation of the party tax payer, while with the disputed decision, it has been determined that there has been no violation of the law or any other interest of the plaintiff since she can not be the bearer (holder) of rights or liabilities upon which it was decided in the conducted administrative procedure, in accordance to the above mentioned procedure of the LAD.

Based on the stated reasons, the Supreme Court of Kosovo, pursuant to the Article 30 paragraph 1, point 3 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.333/2003, on 21.06.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Osman Tmava

[Supreme Court-Ruling on Administrative Disputes - appeal dismissed-eligibility requirements for social assistance- UNMIK Regulation 2003/28 - article 40 (1) LAD]

The plaintiff appealed the decision of the Ministry of Labour and Social Welfare, Appeal Council in Prishtina, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his poor economic condition.

The Centre for Social Welfare in Peja refused to award a social assistance to the plaintiff because he did not meet the eligibility requirements for social assistance.

The Supreme Court ruled that both, the first and second instance authorities, had confirmed that plaintiff's family did not meet eligibility criteria in order to be awarded a social assistance for the findings that the plaintiff has other family members present in the household that are able to work and exercise remuneration activity, as required by UNMIK Regulation 2003/28 on the Social Assistance Scheme. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.356/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Vjosa Nimani-Zylfiu, presiding judge, Osman Tmava, Meleqe Behxheti, with the legal assistant Ajna Gashi, acting in the capacity of the recording, Clerk in the administrative dispute based on the action filed by the plaintiff M.F., from Vitomirica, Municipality of Peja, arguing against the decision of the Ministry of Labour and Social Welfare, Appeal Council in Prishtina, for the annulment of the second instance authority, No. 452 dated 08.04.2005 in the case of social assistance, at the closed hearing of the panel, held on 20.09.2005, rendered the following:

JUDGMENT

The petition is dismissed.

Reasoning

Based on the decision in dispute, the plaintiffs' appeal against the decision of the Ministry of Labour and Social Welfare in Peja, No.17-04076 dated 17.01.2005 is denied, therefore the decision of the first instance authority is approved, a decision with which the right of the plaintiff to receive social assistance is voided, since the plaintiffs' family does not represent a social case.

The plaintiff in the petition, disputes the mentioned decision, due to incorrect and incomplete determination of the factual situation, and incorrect application of substantive law, stating that he is unemployed, lives with his spouse who is in poor health incapable to work, and has four children, living in poor economic conditions without any source of income. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The respondent did not file response to the petition.

The Supreme Court of Kosovo evaluated the legality of the decision in dispute in the light of the claims contained in the petition, and in accordance to the foreseen legal provision Article 40 paragraph 1 of the Law on Administrative Disputes, found that:

The petition is unfounded.

UNMIK Regulation No.2003/28 dated 18 , August, 2003, on the Social Assistance Scheme, Section 4, paragraph 1, foresees that in order for families to be eligible for social assistance all family members must be habitually residing in Kosovo and the families must fall within one of the following categories: a) category one, which in accordance to Article 2, paragraph 7 of the present regulation means a family where all family members are dependants , respectively incapable of any work on remuneration and b) second category - a family, where there is a family member able to work and where there is with at least one child under the age of five or an orphan under the age of fifteen in its full-time care or fits the dependency criteria pursuant to Section 2.7 of the above mentioned regulation or to be registered as unemployed in the Employment Office of the Ministry of Labour and Social Welfare.

The case files show that the administrative authorities during the administrative proceeding during the verification, whether the plaintiff meets the requirements for eligibility for social assistance, as foreseen in UNMIK Regulation No.2003/28 dated 18 August, 2003 on the Social Assistance Scheme, have concluded that the plaintiffs' family does not meet the required criteria foreseen in the above mention scheme in order to obtain the right for social assistance.

The respondent, in the appellate procedure initiated by the filed petition, with the disputed decision has fully accepted the determined factual situation and the legal position of the first fact finding instance, and having in mind the facts that the plaintiff has other family members present in the household that are able to work and exercise remuneration activity, as is his spouse H. and the plaintiff himself, denied the appeal and enforced the decision in appeal.

The Court evaluates that in this administrative procedure the factual situation has been determined rightfully and that the law has been applied in a fair and just manner pursuant to Article 42 paragraph 2 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.356/2005, on 20.09.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Vjosa NimaniZylfiu

[Supreme Court-Ruling on Administrative Disputes - appeal dismissed-VAT-article 40 (1) LAD - UNMIK Regulation No. 2000/20 Tax and Administration Procedures - article 2, (2), (12) LAD]

The plaintiff Tax Administration of Kosovo appealed the decision of the Independent Review Board in Prishtina, arguing that the administrative authority had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation.

The Independent Review Board in Prishtina removed from the VAT calculation supplies in accordance to the Customs Single Administrative Documents, which belong to the other tax payer.

The Supreme Court ruled that the disputed decision contained no violation of the law or any other interest of the plaintiff since it can not be the bearer (holder) of rights or liabilities upon which it was decided in the conducted administrative procedure, as required by article 2, paragraph 2, and Section 12 of the LAD and UNMIK regulation 2000/20 on Tax and Administration Procedure. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.373/2003

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Vjosa Nimani-Zylfiu, presiding judge, Osman Tmava, and Meleqe Behxheti, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk in the administrative dispute based on the action filed by the plaintiff the Tax Administration in Prishtina against the decision of the Independent Review Board, in accordance to the petition of the plaintiff for annulment of the decision of the plaintiffs' decision No. 90/2003 dated 12.9.2003, in the closed hearing of the panel held on 21.7.2005 rendered the following:

RULING

The petition is dismissed.

Reasoning

The Independent Review Board in Prishtina, upon deciding on the appeal of NTP "BUJARI" from Ferizaj, has in part changed the decision of the Tax Administration - The Appeals Division in Prishtina, No. 17 dated 19.02.2003, by removing from base calculation of the tax payer the calculation of the tax (Presumptive tax and Value Added tax) the supplies in accordance to the Customs Single Administrative Documents 14439, 14387, 403,438, which belong to the other tax payer.

This decision is being disputed by the plaintiff for essential violation of the Rules of Administrative Procedure, mistaken factual determination and wrongful application of substantive law. It is proposed that the Supreme Court approves the petition, dismiss the disputed decision and remand the case to the second instance authority.

The Supreme Court of Kosovo, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), evaluated the decision in dispute, the claims in the petition, and all the case files of this legal and administrative issue, and found that:

The Petition is unfounded.

Article 12 of the LAD foresees that individuals, legal entities, organization or a group of people etc, can be plaintiffs in an administrative dispute procedure, who may consider that a violation of their rights or interests has been committed in accordance to the law.

In accordance to the foreseen provision Section 2, paragraph 2, that government authorities, even if not considered as legal entities, have the right to initiate the appellate administrative procedure, if they are holders of rights and liabilities for which it has been decided in a administrative procedure or if their interests have been violated in accordance with the law.

The plaintiff pursuant to the above mentioned legal provisions of the LAP and UNMIK Regulation No. 2000/20 on Tax and Administration Procedures, while deciding based on the parties' request for reviewing the official evaluation, has applied the procedure and

applied the legal provisions, which determine the obligation of the tax payer. The Supreme Court of Kosovo deems that with the disputed decision, there has been no violation of the law or any other interest, since she can not be the holder of rights or liabilities for which it was decided in the conducted administrative procedure.

As stated above pursuant to Article 30, paragraph 1, point 3 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.373/2003, on 21.07.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Vjosa Nimani-Zylfiu

[Supreme Court-Ruling on Administrative Disputes appeal dismissed-arbitrary socially own land occupation - Article 16 Law on Interim Measures for the Protection of Socially Owned Property]

The plaintiff M.L. from Podujevo appealed the decision of the Ministry of Environment and Spatial Planning in Prishtina, arguing that the administrative authority had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation, stating that the respective part of the cadastral parcel was never a socially owned property but his own private property.

The Directorate for Geodesy, Cadastre and Land of the Municipality of Podujevo determined that the plaintiff has occupied a part of the cadastral parcel by destination public road, which is socially owned and at the same time ordered to vacate the occupied land and return it to the previous condition.

The Supreme Court ruled that the administrative authorities have correctly and completely determined the factual situation while concluding that the above mentioned immovable property has been occupied by the plaintiff. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.382/2003

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava presiding judge, Meleqe Bexheti and Vjosa Nimani-Zylfiu members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk in the administrative dispute based on the action filed by the plaintiff M.L. from Podujevo, against the decision of the Ministry of Environment and Spatial Planning in Prishtina A.No.146/2003 dated 11.08.2003, in the case of arbitrary socially own land occupation, in the session held on 21.06.2005, rendered the following:

JUDGMENT

The petition is dismissed.

Reasoning

Based on the decision in dispute, the plaintiffs' appeal is deemed unfound, while reaffirming the decision of the Chief Executive

Officer of the Municipality of Podujevo, No.02-1/466-141 dated 29.05.2002, based on which, the appeal of the plaintiff is dismissed as unfound and the decision of the Directorate for Geodesy, Cadastre and Land of the Municipality of Podujevo is reaffirmed No. 09-466-45 dated 11.07.2001, according to which is determined that the plaintiff has occupied a part of the cadastral parcel No.2857, by destination public road, in the place called "Te qershijat", a surface of 16,00 m², evidenced according to the possession list no 1245, ZK Podujevo, and at the same time ordered to vacate the occupied land and return it to the previous condition, within the time frame of 15 days after the final decision.

The plaintiff in his petition disputes the legality of the disputed decision by arguing that the determination of the factual situation was incomplete, and that the conclusion was erroneous stating that the respective part of the cadastral parcel was never a socially owned property but his own private property, bought by H.Sh., for which as an evidence presents the purchase contract, that states that he is the rightful owner of the immovable property for more than 40 years, that a part of the land has been expropriated but not the part where he has started to build the business facility, and in that in this direction, for a just verification of the fact it would be in the interest of the Court to present the testimonies of witnesses H.Y., B.Y. and M.Sh. as evidence. The plaintiff proposes to affirm the petition and dismiss the decision in dispute.

The administrative authorities in the role respondent support the already presented conclusions in the disputed decision, by proposing that the petition be dismissed as unfound.

The Court upon evaluation of the legality of the disputed decision, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), in accordance to the claims contained in the petition, responses to the claim and the evidence in the file, concluded that

The petition is unfounded.

The administrative authorities have determined that the cadastral parcel 2857, by destination public road, a surface of 0.16, 00 m², in the place called "Te qershijat" evidenced according to the

possession list No. 1245, ZK Podujevo is socially owned is occupied by the plaintiff who has started constructing a business facility with solid material. The case files indicate that the plaintiff was taken into questioning on 15.05.2001, stating that he has not started constructing a business facility in the socially owned land but in his privately owned land, bought by H.Sh., for which as an evidence presents the purchase contract, that he is the rightful owner of the immovable property for more than 40 years, while that a part of the land has been expropriated, but not including the part where the construction is take place.

Such factual situation regarding arbitrary socially owned land occupation, in the mentioned cadastral parcel, number and surface as above mentioned, by destination public road, without doubt was also determined by the geodesy experts Fatmir Gashi and Fitim Restelica, a fact determined on 14 and 15.05.2001, and concluded in the sketch copy of the plain drafted on the spot.

Based on undisputed facts and according to the opinion of the Court, the administrative authorities in a complete and just manner have determined the factual situation while concluding that the above mentioned immovable property has been occupied by the plaintiff, who has started construction of the business facility, be returned in the previous condition in the benefit of the public road, within a time frame of 15 days after the final decision, pursuant to Article 16 of the Law on Interim Measures for the Protection of Socially Owned Property (Official Gazette of SAPK No.46/77) and article 6 of the Amended Law on Interim Measures for the Protection of Socially Owned Property from Arbitrary Occupation (Official Gazette of SAPK Np.37/88), since it was determined that the plaintiff has occupied it.

As stated above, the Court concludes that the disputed decision is rightful and based on the law, therefore considers the claim contained in the petition as unfound, non influential in determining otherwise the factual situation other than what was already determined by the administrative authorities, thus pursuant to Section 42 paragraph 2 of LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA

A.No.382/2003, on 21.06.2005

Recording Clerk,
Ajna GashiPresiding Judge,
Osman Tmava**[Supreme Court-Ruling on Administrative Disputes - appeal dismissed- no response of administration - Article 9, (1), ((1)) LAD - Article 26, (1), ((6)) LRC]**

The plaintiff M.L. from Podujevo disputes the Written Response of Kosovo Energy Corporation, Supply Division.

The Supreme Court ruled that this case is a legal- civil dispute and the competent court is the Municipal Court of Prishtina, as required by the Article 9, paragraph 1, point 1 of the Law on Administrative Disputes.

Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.392/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava presiding judge, Vjosa Nimani-Zylfiu and Meleqe Bexheti members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk in the administrative dispute based on the action filed by the plaintiff L.R., from Prishtina, against the written claim, without number, dated 09.05.2005, of the Kosovo Energy Corporation, Supply Division, in the case of no response of administration, in the session held on 29.07.2005, held the following:

RULING

Petition is denied.

The case is to be sent for retrial to the Municipal Court in Prishtina, as a competent Court.

Reasoning

The plaintiff in her petition, disputes the Written Response of the respondent, without number, dated 09.05.2005, regarding the disputed bill DPR-398 dated 31.3.2005, for a debt of 1.254,13 Euros in

energy consuming, based on the reasoning that without right she has been disconnected from the power supply in her apartment. The plaintiff proposes the approval of the petition and dismissal of the Written Response.

The Court concludes that in this particular case, the petition is denied, due to the following reasons:

Article 9, paragraph 1, point 1 of the Law on Administrative Disputes foresees that there can not be administrative dispute procedure conducted on issues for which extra judicial remedies exists outside the administrative dispute.

Pursuant to Article 26, paragraph 1, point 6 the Law on Regular Courts (Official Gazette of SAPK No.21/1978) it is foreseen that the municipal Courts are competent to judge on legal-property related disputes.

In this particular case the Court considers that the case is a legal- civil dispute for the competent Municipal Court of Prishtina.

Due to the above stated reason, the Court dismisses claim, pursuant to article 30 paragraph 1 point 5 and article 9 of the LAD.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.392/2005, on 29.07.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Osman Tmava

[Supreme Court-Ruling on Administrative Disputes - appeal dismissed-eligibility requirements for social assistance- UNMIK Regulation 2003/28]

The plaintiff appealed the decision of the Ministry of Labour and Social Welfare, Appeal Council in Prishtina, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering the fact that he does not live in a union with his father and his poor economic condition. The Centre for Social Welfare in Gjilan refused to award a social assistance to the plaintiff because he did not meet the eligibility requirements for social assistance.

The Supreme Court ruled that both, the first and second instance authorities, had confirmed that plaintiff's family did not meet eligibility criteria in order to be awarded a social assistance for the findings that the plaintiff lives in a union with his father who is a beneficiary of a pension from Germany. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.405/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava presiding judge, Vjosa Nimani-Zylfiu and Shahdane Agani members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk in the administrative dispute based on the action filed by the plaintiff A.N., from Village Vërbicë, Municipality of Gjilan, against the decision of the Ministry of Labour and Social Welfare - Department of Social Welfare, Prishtina No.02/1247 date 09.07.2004, in the social assistance case, in the closed hearing of the panel, held on 26.07.2005, rendered the following:

JUDGMENT

To dismiss the petition.

Reasoning

Based on the decision in appeal, the plaintiffs' appeal is against the decision of the Centre for Social Welfare in Gjilan, No. 04-01905, dates 13.03.2004, according to which the plaintiff is denied the right for social assistance since the plaintiff's family does not present a social case.

The plaintiff in his petition, disputes the legality of the appealed decision for violation of essential procedural rules, erroneous and incomplete determination of factual situation, wrongful application of substantive law, by stating that he does not live in a union with his father, but rather with his family of seven members in very poor economic situation, without any source of income. The plaintiff proposed to accept the petition and annul the decision in dispute.

The respondent did not file response to the petition.

The Court of Kosovo evaluated the legality of the decision in dispute in accordance to the claims contained in the petition and after the review of the case files, concluded that:

The petition is unfounded.

The case files indicate, that the administrative authorities in the administrative procedure, when proving whether the plaintiff meets the requirements set forth in the UNMIK Regulation 2003/28, dated 18 August, 2003, on the Social Assistance Scheme, determined that the plaintiff lives in a union with his father who is a beneficiary of a pension from Germany.

The respondent at the appellate procedure with the disputed decision has fully accepted the determined factual situation and the legal position of the first fact finding instance, therefore rejecting the appeal and affirming the appealed decision.

UNMIK Regulation No.2003/28 dated 18 , August, 2003, on the Social Assistance Scheme, Section 1, foresees that families at risk from a social point of view are those families eligible for social assistance Section 4 paragraph 1 of the present Regulation foresees that in order to be eligible for social assistance, all family members must be habitually residing in Kosovo and the families must fall within one of the following categories: a) category one, which in accordance to

Article 2, paragraph 7 of the present regulation means a family where all family members are dependants, respectively incapable of any work on remuneration and b) second category - a family, where there is a family member able to work and where there is: (i) at least one child under the age of five or an orphan under the age of fifteen in its full-time care or fits the dependency criteria, pursuant to section 2.7 of the present Regulation.

Taking into account the current state of the affair, the Supreme Court concludes that the first fact finding instance and the respondent, have determined that the family of the plaintiff does not meet the legal requirements in order to be eligible for social assistance, since he lives in an union with his father who is a beneficiary of a pension in Germany, has good economic conditions, new house, tractor, vehicle and a grocery store opened in his house. This information has been verified on 18.11.04, from the Commission of the fact monitoring body, contained in the form for verification of the social status of the plaintiff.

For these reasons, the Court concluded that in this administrative case, the factual situation was determined correctly, resulting in non-violation of the law to the detriment of the plaintiff, based on which it did not approve the claims in petition of the plaintiff, since it considered them as non influential in determining otherwise the factual situation, other than what was already determined by the administrative authorities, thus pursuant to Article 42 paragraph 2 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.405/2005, on 26.07.2005

Recording Clerk,
Ajna Gashi

Presiding Judge,
Osman Tmava

**[Supreme Court-Ruling on Administrative Disputes - appeal dismissed-
VAT-article 40 (1) LAD - UNMIK Regulation No. 2000/20 Tax and
Administration Procedures - article 2, (2), (12) LAD]**

The plaintiff Tax Administration of Kosovo appealed the decision of the Independent Review Board in Prishtina, arguing that the administrative authority had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation.

The Independent Review Board in Prishtina exempted the tax payer from a part of the Presumptive Tax.

The Supreme Court ruled that the disputed decision contained no violation of the law or any other interest of the plaintiff since it can not be the bearer (holder) of rights or liabilities upon which it was decided in the conducted administrative procedure, as required by article 2, paragraph 2, and Section 12 of the LAD and UNMIK regulation 2000/20 on Tax and Administration Procedure. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.414/2003

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Vjosa Nimani-Zylfiu, presiding judge, Osman Tmava, and Meleqe Behxheti, members, with the legal assistant Ajna Gashi, acting in the capacity of the recording Clerk, in the administrative dispute based on the action filed by the plaintiff Tax Administration of Kosovo, against the decision of the Independent Review Board in Prishtina for the annulment of the decision of the respondent decision No.96/2003 dated 23.9.2003, in the session held on 21.7.2005, rendered the following:

RULING

The petition of the Tax Administration of Kosovo filed against the decision of the Independent Review Board in Prishtina, No.96/2003 dated 23.9.2003 is dismissed.

Reasoning

The respondent in its decision No.96/2003 dated 23.9.2003, has partly accepted the petition of the tax payer NTSH “NIC-Holding” with its head quarters in Prishtina, filled against the Division of Appeals, Tax Administration of Kosovo, in that manner that the tax payer was subtracted from paying Presumptive tax in the amount of 2.834,19 € and Value Added tax in the amount of 30.550,95€, values which the tax payer has been exempted from, and in the second part denied the appeal and leaving the disputed decision in force.

The plaintiff in its appeal rejects the legality of the first paragraph of the decision stating that the determination of the factual situation was incomplete and wrongful which resulted in the wrongful application of substantive law, while the enacting clause of the disputed decision also is in contradiction with the case files and reasoning given. The plaintiff proposed to accept the petition and annul the decision in dispute.

The Supreme Court of Kosovo, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), evaluated the decision in dispute, the case files and the claims contained in the petition, and found that:

The Petition is denied.

The case files show that in the first paragraph of the decision No.96/2003, the respondent has partially accepted the petition of the tax payer NTSH “NIC Holding” with its head quarters in Prishtina, and has conducted a correction underestimation of tax, exempting the tax payer from a part of the Presumptive Tax, in the amount of 2.834,19 €, and from Value Added Tax in the amount of 30.550,95 €; and in the second part, denied the appeal and leaving the disputed decision in force.

The Supreme Court evaluated that the petition is unfound.

Article 12 of the LAD foresees that individuals, legal entities, organization or a group of people and similar, can be plaintiffs in an administrative dispute procedure, who may consider that a violation of their rights or interests has been committed in accordance to the law.

In accordance to the foreseen provision, Section 2, paragraph 2, it is foreseen that government authorities, even if not considered as legal entities, have the right to initiate the appellate administrative procedure, if they are holders of rights and liabilities for which it has been decided in a administrative procedure or if their interests have been violated in accordance with the law.

The plaintiff pursuant to the above mentioned legal provisions of the LAP and UNMIK Regulation No. 2000/20 dated 12 April, 2000, on Tax and Administration Procedures, while deciding based on the parties' request for reviewing the official evaluation, has applied the procedure and applied the legal provisions, which determine the obligation of the tax payer. The Supreme Court of Kosovo deems that with the disputed decision, there has been no violation of the law or any interest since he can not be the holder of rights or liabilities upon which it was already decided in the administrative procedure.

As stated above pursuant to Article 30, section 3, paragraph 1 of the LAD, decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISHTINA
A.No.414/2003, on 21.07.2005

Recording Clerk
Ajna Gashi

Presiding Judge
Vjosa Nimani-Zylfiu

[Supreme Court-Ruling on Administrative Disputes appeal dismissed-eligibility for disability pension-article 40 (1) LAD - Article 3 Law No.2003/23 on the Disability Pensions in Kosovo]

The plaintiff appealed the decision of the Department of Pension Administration of Kosovo, arguing that the administrative authorities had wrongfully applied substantive law and had erroneously and incompletely determined the factual situation while not considering his serious health condition and his inability to work.

The Department of Pension Administration of Kosovo refused to award the disability pension to the plaintiff because the doctor's commission concluded that the plaintiff does not suffer from permanent disability.

The Supreme Court ruled that both, the first and second instance authorities, during determination of the factual situation, correctly and completely applied the general provisions of the administrative procedure and the substantive law, when they determined that the plaintiff did not fulfil the foreseen criteria, pursuant to Article 3 Law No. 2003/23 on Disability Pensions in Kosovo. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

A.No.595/2005

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Osman Tmava presiding judge, Shahdane Agani and Vjosa Nimani-Zylfiu members, with the legal assistant Ajna Gashi, acting in the capacity of the recording clerk in the administrative dispute based on the action filed by the plaintiff Xh.B., from village Lubeniq, Municipality of Peja, against the decision of the Ministry of Labour and Social Welfare, Appeal Council for Disability Pensions in Prishtina, No.5011887 dated 07.04.2005, in a pension case, at the closed hearing held on 26.07.2005, rendered the following:

JUDGMENT

To dismiss the petition.

Reasoning

Based on the decision in dispute, the plaintiffs' appeal is deemed unfounded against the decision of the Ministry of Labour and Social Welfare, Department of Pension Administration of Kosovo, Prishtina No.5011887 dated 04.11.2004, therefore the petition of the plaintiff for receiving disability pension is denied.

The plaintiff in his petition disputes the legality of the second instance decision, arguing that the decision of the respondent is unlawful, since the Doctor's Commissions of the respondent did not consider the fact of the plaintiff's serious health condition, his inability to work and that the evidence presented was not taken into consideration, due to which the determination of the factual situation was incomplete, which resulted in the wrongful application of substantive law in his disadvantage. The plaintiff proposes to affirm the petition and annul the decision in dispute.

The Supreme Court of Kosovo, upon review of the decision in dispute, pursuant to Article 40 paragraph 1 of the Law on Administrative Disputes (LAD), evaluated the case files and the claims contained in the petition, and found that:

The petition is unfound.

The case files indicate that the first instance authority, with its decision No.5011887dated 04.11.2004, refuses the request of the plaintiff to obtain the right to a disability pension, since the respondent does not fulfil the foreseen criteria pursuant to Article 3 of UNMIK Regulation No.2003/40 dated Disability Pensions in Kosovo, and bases its conclusion on assertion and opinion of the Doctor's Commission evaluation of the first instance authority, dated 30.10.2004, which evaluates that the plaintiff does not suffer for permanent disability as foreseen with the above stated law.

In the appellate procedure, the respondent has ensured both an assertion and opinion No. 5011887 dated 07.04.2005, on the evaluation of the Doctor's Commission on the disability level of the plaintiff, and supports such evaluation, thus with the decision in appeal, a rejects the

petition and verifies the disputed decision.

Having in mind, that Doctor's Commission authorized by law, have determined that the plaintiff has no disabilities, the Court concludes that administrative authorities have rightfully applied Article 3 of the above mentioned law, in accordance to which also denied the right of the plaintiff for disability pension..

The Court evaluated the statement contained in the petition and concluded that, the statements provided are non influential in deciding otherwise, since the evidence administered prove that the plaintiff does not meet the legal requirements for obtaining the right claimed, therefore pursuant to Article 42, paragraph 2 of the LAD, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO, PRISTHINA
A.No.595/2005, on 26.07.2005

Recording Clerk,
Ajna Gashi

Presiding Judge,
Osman Tmava