Municipal Court of Prizren
P 616/10
15 December 2010

IN THE NAME OF THE PEOPLE

THE MUNICIPAL COURT OF PRIZREN

EULEX Judge Witold Jakimko as Presiding Judge,

assisted by:
Robina Struthers, Eriona Bitri Breading and Natasa Malesevic, as court recorders,

in the criminal case against:

1. the Defendant **B.K**, father's name …., mother's name …. maiden name ….., born on …… in …., Municipality of …., now residing in ……, Kosovo Albanian, married, father of two children, Law Faculty graduate, middle economic status, no known previous convictions in Kosovo, currently still in freedom,

2. the Defendant **Xh.D**, father´s name …., mother´s name …. maiden name ….., born on …. in …, now residing in …., widower, father of three children, Law Faculty graduate, middle economic status,

charged as
per in the Indictment PP.no.2549-15/08 dated 4 June 2008**,** with which the Defendant Xh.D was charged with criminal offence of Abusing official position or authority under Article 339 par.2, and criminal offence falsifying official documents under Article 348 par.2 of the Provisional Criminal Code of Kosovo, the Defendant B.K was previous charged with criminal offence Issuing Unlawful Judicial Decisions under Article 346 of the Provisional Criminal Code of Kosovo,

as described below:
The Defendant Xh.D,

I/a

On 6 September 2207 in an office no.4 of the District Court in Pristina, acting as an official person, Public Prosecutor in the District Public Prosecution in Pristina, during the confirmation session of the Indictment of District Public Prosecution in Pristina PP.no.855-2/07, abused official position and exceeded official authorization in order to inflict damage to the damaged E, A, B. G and M. D, to deny their right for pursuing criminal charges, in violation of provisions of Article 313 of the Provisional Criminal Procedure Code of Kosovo, driven by the second accused, amended the mentioned indictment so that it no longer charged the accused Q.B and I.B for a criminal offence grievous bodily harm under Article 154 par. 1 item 5 of the Provisional Criminal Code of Kosovo, for which he was charged in written delivered to the court on 19 July 2007.

Wherewith he committed a criminal offence Abusing official position or authority under Article 339 par.2 of the Provisional Criminal Code of Kosovo,

I/b

On the same day, same date and in the same capacity of an official person used the falsified official document as an original– indictment PP.no.855-2/07 wherein the third accused had previously written the false information as if it was delivered to the court on 19 July 2007 at 15:20hrs under reference number 617 and submitted it to the second accused who delivered it as an original into the case files of the District Court in Pristina KAQ.no.375/07.

Wherewith he committed a criminal offence falsifying official documents under Article 348 par.2 of the Provisional Criminal Code of Kosovo, in real association with a criminal offence stipulated under item I/a of this enacting clause,

II. - The Defendant B.K

On 6 September 2007 at place and time as described under I/a of this enacting clause, acting as a Judge of District Court in Pristina, in the confirmation session of the Indictment PP.no.855-2/07 dated 19 July 2007, which he chaired as a judge for confirmation of indictment, in order to inflict damage to the damaged E, A, B.G and M.D, to deny their subsidiary claimant right, failed to summon the Defendant I.B and the damaged pursuant to provisions of Article 313 par. 2 of the Provisional Criminal Procedure Code of Kosovo, issuing unlawful decisions by confirming with Ruling KA.no.357/07 dated 6 September 2007 the new indictment submitted by the first Defendant, if it was delivered to the court on 19 July 2007 which did not include the accused Q.B and I.B charged for a criminal offence grievous bodily harm under Article 154 par. 1 item 5 of the Provisional Criminal Code of Kosovo, and failed to inform the damaged on the right of pursuing criminal charges pursuant to Article 62 par. 1 of the Provisional Criminal Procedure Code.

Wherewith he committed a criminal offence Issuing Unlawful Judicial Decisions under Article 346 of the Provisional Criminal Code of Kosovo

having held the trial sessions
on 13 and 15 December 2010, in the presence of the Defendant Xh.D, his Defence counsel, Ymer Osaj, the Defendat B.K his Defence counsel Fazli Balaj, and the Municipal Public Prosecutor of Prizren, Arijana Shajkovci,

issues the following:

JUDGMENT

1.Pursuant to Article 390 paragraph 3 of the Kosovo Code of Criminal Procedure (hereinafter KCCP), the Defendants Xh.D and B.K **are not found guilty** for the criminal offence abusing official position or authority under Article 339 par.2 as read with Article 23 of the CCK. That on 6 September 2007 at the building of the District Court and that of MPP in Pristina in co-perpetration, acting in the capacity of official persons the first in the capacity of a District prosecutor in Pristina and the second in the capacity of a judge of the District Court in Pristina abuse official position and exceed official authorizations in order to inflict damage to the damaged E, A, B.G and M.D by denying their right to pursue criminal charges as subsidiary claimants, so that in the office no.4 of the District Court in Pristina in confirmation session chaired by Judge B.K prior the beginning of a session, the accused B proposes to amend the Indictment PP.no.855-2/07 which was delivered to court on 19 July 2007, where Is.B, Q.B and I.B were accused, and after the achieved agreement between them the accused Xh takes the indictment at hand goes to offices of DPP in Pristina, to whom later joins also the accused B so that they draft another indictment wherein the accused Q and I.B are no longer charged for a criminal offence grievous bodily harm under Article 154 par. 1 item 5 of the CPCK, which indictment the accused Xh signs and through a legal secretary processes to court, which is later confirmed by the accused B.K,

Thus in co perpetration they allegedly committed a criminal offence abusing official position or authority under Article 339 par.2 as read with Article 23 of the CCK;

2. The Defendant **Xh.D is found guilty** because on the same day and time in DPP offices in Pristina in the capacity of an official person of prosecution before DPP in Pristina, after drafting uses as an original the document-new indictment PP.no.855-2/07 which he signs with an official stamp and delivers it to the Court, so that through third accused A.H who on this indictment notes down a false information as if it was delivered to the court on 19 July 2007, is submitted to the office of the second accused B.K who delivered this indictment as an original into the case files of the District Court in Pristina with KAQ no.375/07 which is confirmed later on,
thus he committed a criminal offence falsifying official documents under Article 348 par.2 of the CPCK, therefore, pursuant to Article 348 par.2 of the CCK read with Articles 3, 34, 42, 43, 44, 64 of Criminal Code of Kosovo, this Court announces a **suspended sentence** imposing a term of imprisonment of 3 (three) months, whose execution shall not apply if the Defendant does not commit a new criminal offence in the time period of 1 (one) year, from the date the judgment becomes final;

3. Pursuant to Article 103 of the KCCP this costs of criminal proceedings under Article 99 paragraph 2 subparagraphs 1 through 5 of KCCP, the necessary expenses of the Defendant B.K and the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources;

4.Pursuant to Article 102 para 4 of the KCCP this court relieves the Defendant Xh.D of the duty to reimburse entirely the costs of criminal proceedings as provided for in Article 99 paragraph 2 subparagraphs 1 through 6 of the present Code;

5. Pursuant to Article 391 par.1 subparagraph 5 of the KCCP this court includes the time spent in imprisonment under earlier 1st instance sentence which was annulled by the Supreme Court judgment Pkl-Kzz 103/09 dated 22nd April 2010;

6. Pursuant to Article 391 Par.1 subparagraph 6 of the KCCP court decides that the purpose if the punishment imposed on Xh.D, does not require the final judgment to be announced in the press or radio or television.

REASONING

I. Composition of the Court

1. According to Article 459 §1 and § 4 of KCCP during retrial the Court in rendering a new decision shall be bound by Article 417 of KCCP. In other words the Court has to go back to the indictment but in the scope in which the case had not been previously legally finalized in absolute terms. The judgment of the first instance court, in the part in which it was not appealed by the Municipal Prosecution Office, became final. The appeal of MPO was filed only in regards to the punishment. It means that the qualification of an offense as the Issuing of unlawful decision was effectively, in its legal meaning removed from the description of the offense provided in the act of indictment. Public Prosecutor had no objection in relation to this issue. This stand was explicitly expressed by her in the main trial on 13th of December 2010.

2. Because of the above mentioned circumstances and according to the principle of the prohibition of *reformationis in peius* the Court is now handling the offences of Abusing official position or authority and of Falsifying official documents, and not any more the offence of Issuing unlawful judicial decisions (Article 346 of the PCCK). These offences are only punishable by fine or by imprisonment of up to three years and so they shall be considered by an individual judge. According to Article 22 § 3 of the KCCP criminal offences punishable by fine or by imprisonment of up to three years shall be considered by an individual judge of the municipal court.

3. The Defense counsel of Xh.D advocate Ymer Osaj proposed at the beginning of the main trial to hold it in absence of the Defendant Xh.D was duly summoned according to

Article 472 paragraph 1 of KCCP. According to Article 572 §1 of KCCP the Presiding Judge decided to conduct the trial in absence of the Defendant Xh.D, taking into consideration the provisions on summary proceedings.

II. Procedural background

1. Dated 04 June 2008, an Indictment was filed against the Defendants B.K, Xh.D and A.H (PP. No. 2549/08), which by ruling KA. No. 168/08 was confirmed by the Municipal Court of Prishtinë/Pristina on 26 June 2008.

2. On 16 January 2009, the Municipal Court of Prizren under registration number P. No. 874/08 announced a Judgment, within which B.K was found guilty for having committed the criminal offense of Abusing Official Position or Authority, in co-perpetration with the accused Xh.D contrary to Article 339 paragraph 2 as read with Article 23 of the Criminal Code of Kosovo (CCK) and thus was sentenced 5 (five) months of imprisonment.

3. The Defendant Xh.D who in the respective context was acting in his capacity as District Prosecutor was additionally found guilty for the use of the new Indictment with registration number PP. no. 855-2/07 as genuine and sealed by sending it to the Defendant B.K in his capacity of a Confirmation Judge. The Defendant received an aggregate sentence of 6 (six) months of imprisonment, which consists of 5 (five) months for the criminal offense of Abuse of Official Position contrary to Article 339 paragraph 2 of the CCK as committed in complicity with the Defendant B.K and of 3 (three) months "for the criminal offense as in item II of the enacting clause of this judgment".

4. On 24 February 2009 the previous Defense Counsel of the Defendant Xh.D timely appealed the 1st Instance Judgment and proposed to either acquit the Defendant or annul the respective Judgment and send the case back to the Municipal Court for re-trial. Another appeal was filed by another Defense Counsel on 04 March 2009, thus also requesting to either acquit the Defendant or annul the respective Judgment and send the case back for re-trial.

5. The 1st Instance Judgment was timely appealed by the Defense Counsel of the accused B.K. Whilst dated 02 March 2009 the Defense Counsel filed an appeal thus proposing to either acquit the Defendant B.K or annul the 1st Instance Judgment and send the case back to the Municipal Court for re-trial.

6. Also the Municipal Prosecutors Office timely filed an appeal dated 20 March 2009 and requested a more severe punishment for all three Defendants.

7. On 02 July 2009, the District Court in Prizren as a 2nd Instance Court announced its Judgment AP. No. 35/2009, thus rejecting the appeals filed the Defense Counsels of the three Defendants and fully affirming the 1st Instance Judgment.

8. Dated 31 August 2009, the Defense Counsel of the Defendant B.K filed a Request for Protection of Legality to the Supreme Court of Kosovo for violation of the criminal law and essential violation of provisions of the criminal procedure thus proposing to either acquit the accused B.K or annul completely the Judgment rendered by the 1st Instance Court and that of the 2nd Instance Court and to return the case for re-trial to the 1st Instance Court.

9. Dated 12 April 2010, the Office of the State Prosecutor of Kosovo (OSPK) submitted its opinion thus proposing that the request of the Defendant B.K is partially granted in terms of the requested annulment of the 1st Instance Judgment and the order on re-trial of the case and that the Supreme Court decision is extended, according to Article 454 paragraph 2 of the KCCP to the Defendant Xh.D.

10. Dated 25 March 2010 the Defense Counsel of the Defendant B.K filed a request to the President of the Assembly of the EULEX Judges (PEJ) and asked for adjudication of the case by EULEX Judges, which was granted. None of the other Defendants and/or their Defense Counsels proposed for this as well, but on request of the Supreme Court, the Defense Counsel of the Defendant A.H explained on the telephone that he had filed a request for Protection of Legality only to the Supreme Court and would not mind whether EULEX or Kosovo Judges will handle the case. He underlined his sole interest to have a fast and proper decision.

11. On 22.4.2010 the Supreme Court of Kosovo by ruling Pkl-Kzz 103/09 gave the following judgment in regards to two Defendants in the present case:

- The Judgments of the 1st Instance Court dated 16 January 2009, P. No. 874/08 and the 2nd Instance Court dated 02 July 2009, Ap. No. 35/2009 against the Defendant B.K was annulled and the case was sent back to the Municipal Court of Prizren for re-trial.
- The decision on annulment of the 1st and 2nd Instance Judgments and sending back the case to the Municipal Court of Prizren for re-trial was extended to the co-accused Xh.D according to Article 455 para 2 of the KCCP.
- The enforcement of the final decision of the Municipal Court in Prizren dated 16 January 2009, P. No. 874/08, thus being affirmed by the Judgment of the District Court in Prizren dated 02 July 2009, Ap. No. 35/2009 against the Defendants B.K and Xh.D was terminated in accordance with Article 454 para 4 of the KCCP.

12. On 13th December 2011 the Court of the First Instance started the Main Trial. According to Article 572 paragraph 1 of KCCP the Presiding Judge decided to conduct the trial in absence of the Defendant Xh.D.

13. The proceeding in the case restarted with a preliminary hearing was held on 30 November 2010 and the main trial on 13 and 15 December 2010.

III. Administered evidence.

1. During the trial sessions, witnesses Q.B and I.B testified on 13 December 2010. The Defendant B.K was heard on 13 December 2010 and the Defendant Xh.D on 15 December 2010.

2. The court admitted as evidence the following documents and the statements of the following witnesses that were read out during the main trail according to the Article 368 para 3 of the KCCP:

i) Exhibit A1: The indictment against Is, Q and I.B (PP. no. 855-2/2007, 19.7.2007)
ii) Exhibit A2: The indictment against Is.B (PP. no. 855-2/2007, 19.7.2007)
iii) Exhibit A3: The subsidiary claim of the damaged party
iv) Exhibit A4: The ruling of the pre-trial judge of the District Court of Prishtina on the confirmation of the indictment (KA no. 375/07, 6.9.2007)
v) Exhibit A5: Ruling of the same judge on the confirmation of subsidiary claim (KA no. 375/07, 26.12.2007)
vi) Exhibit A6: Copies of stamps of receipt of the above mentioned indictments by the District Court of Prishtina
vii) Exhibit A7: KAQ registry of the District Court of Prishtina
viii) Exhibit A8: The judgement of the District Court of Prishtina (P. no. 409/7) against Is, Q and I.B
ix) Exhibit A9: Medical documents of Xh.D
x) Statement of the witness Q.T
xi) Statement of the witness Bu.K
xii) Statement of the witness A.A
xiii) Statement of the witness Sh.K
xiv) Statement of the witness Xh.Z
xv) Statement of the witness E. B
xvi) Statement of the witness A.I.
xvii) Statement of the witness S.M
xviii) Statement of the witness B.G
xix) Statement of the witness E.G
xx) Statement of the witness M.D

4. The evidence which influences on Court's findings is explicitly elaborated in subsequent paragraphs. Other evidence had no direct impact on the final content of the enacting clause.

IV. Factual and legal findings.

1. None of the witnesses has ever noticed any irregularity or potential misconduct committed by the Defendant B.K as a judge during the adjudication of criminal cases.

2. The injured party E.G in relation to the offense of art.339 CCK stated that she suspected that there might have been corruption relating to Xh.D because he had always persisted in releasing the Defendants in without any charges by removing their names

from the act of indictment. She stated that she we believed the he had taken money from the people who had murdered her brother and who had wounded her. At the same time, being asked by the Judge, she answered that she was not able to provide any proof of this thesis. This statement was not included into the body of evidence and it represented only a personal opinion which had not been grounded by any substantive evidence.

3. The intent provided by the law which is supposed to be taken by the Defendants was to take action to obtain an unlawful material benefit or to cause damage The Defendants did not obtain any material benefit, they did not cause any material damage, and their actions were not aimed on obtaining benefits neither on deliberately causing damages, including these non-material ones, to other persons. The Prosecution did not submit any particular direct evidence (including witnesses to be heard) on this specific intent (as described above) of the Defendants as to the offense of Abusing official position or authority with which both were accused. Therefore the Court was obliged to take into consideration only the evidence being in its disposal. The statements of witnesses which were read out and those given during the main hearing had a supplementary character to the documents included into the body of evidence However the Court included into the body of evidence as a Exhibit A8 the very important judgment of the District Court of Prishtina (P. no. 409/7) against Is, Q and I.B which proves that all those defendants were successfully convicted with participation of the injured parties.

4. The documents included to the body of evidence did not provide any argument to find both Defendants guilty of Abusing official position or authority. There is no doubt that analyzing state of mind of the Defendants were not allowed to base only on documents. In the disposal of the Court there was no other at least circumstantial evidence reflecting on existence of specific intent in their mind while issuing the decision which is under question. The above assessment is made and applicable to all evidence *en bloc.* In the court's opinion, errors or mistakes may occur during a case adjudication or during an investigation, notably when the prosecutors have a high workload and work under pressure. Any mistake or error made of a judge or prosecutor during the exercise of his/her functions can not necessarily lead to the initiation of criminal investigation under Article 339 CCK. Such misinterpretation or wrongful application of legal provisions may be settled by the second instance court during the appeal procedure. In the present instance, it has not been established that both Defendants had acted with the intent to obtain an unlawful material benefit for himself, herself or another person or cause damage to another person, as required in Article 339 CCK. The Court perused the evidence in the light of Article 339 CCK that states as follows and has not found any factual arguments supporting the indictment in regards in the offense of Abusing official position.

5. The Defendant B.K had not known the injured party neither the Defendants in the case in which the indictment was filed until the proceedings started before the Municipal Court in Prizren. Injured party was represented by S.M and she was notified of the confirmation hearing and together with the summons. The indictment was forwarded accordingly. The Court gave a full credibility to this declaration because of lack of any opposite evidence.

6. The Court assessed the declaration of the Defendant B.K as a trustworthy. He explained the proceedings to the Public Prosecutor and in the same time he warned him that in the factual description of some elements of the criminal offence was not accurate: gravies bodily harm according to Article 155 sub paragraph 5, the place of the incident nor the means that were used, neither the circumstances where the incident took place. The Defendant suggested to the Prosecutor to amend the indictment. The suggestion did not include the information on how to do it. The purpose of the amendment was to avoid any missing elements of the indictment and in order to be compiled according to the law. It was the intent of B.K's performance. The Court's grounded belief is that it was a real intention of B.K's action and his testimony was fully accepted in this subject. The Defendant B.K presented the view that he had never been involved in compiling this indictment neither in technical nor substantive way. According to what B.K said he as a judge was many times obliged to send the indictment back for amendments as it had not been drafted with accordance to the law. Both judges and prosecutors were overwhelmed with work and had a huge backlog. It was with other Public Prosecutor of that office as well and there were certainly such occasions with others as well. There is no objective reason to call it into question.

7. B.K claimed he had never socialized with Xh.D and he had not even had a coffee with him. This claim was assessed as fully credible.

8. The Defendant Xh.D pleaded not guilty of Falsifying official documents neither of Issuing of unlawful decision. Xh.D stated that he inherited the case from his colleague who had changed her workplace. According to the information from the contents of the case file, he submitted the indictment. Subsequently he received the summons from the Confirmation Judge. Xh.D had the consultations with the judge. Xh.D stated that by the amendments he had made he had no intention to cause any damage to anyone neither to make it impossible for someone to realize his rights according to the law. That time he was in charge of over 700 cases. He completed 430 out of 490 cases. Based on the nature of the cases, they had to do with trafficking in human beings and drugs. After the second indictment had been compiled Xh.D's secretary submitted the indictment.

9. In the opinion of the Court the above version is credible except of the fact that according to the documents included to the body of evidence there is no doubts for the Court that the Defendant had committed the crime of Falsifying official documents. Bad practices adopted in the Prosecution Office even if this approach was a very common habit do not change the fact that the Defendant's deed constitutes a criminal offense. Compared the Exhibit A1 and the Exibit A2 the Court notices the obvious differences between them in their substance. On the other side it is impossible for one indictment dated with the same day to be legally valid in two versions. The Court believes that there is no need to be a jurist to be aware of the abovementioned circumstance. Moreover there is no possibility for the prosecutor to change the legal content of the previous indictment by simply removing part of it (two Defendants!) and filing it with the same date and reference number directly to the judge without even submitting it to the Court's Registry. Except of the excuse that the Defendant Xh.D was overloaded with work the defense did

not supplied the Court with other possible scenario or explanation of Defendant's performance in this matter. The Court shares the view that even the high incidence of this type of performance is not a sufficient excuse which could have an exculpatory effect in regards to the offense of Falsifying official documents the Defendant was charged with. Moreover it has to be emphasized that the offense of Falsifying official documents is a formal offense and does not require any special intent of defendant's action.

10. The administered evidence leads the Court to the conclusion that Xh.D in the capacity of an official person of prosecution before DPP in Pristina, after drafting used as an original the document-new indictment PP.no.855-2/07 which he signed with an official stamp and delivered it to the Court, so that through third accused A.H who on this indictment noted down a false information as if it had been delivered to the court on 19 July 2007, was submitted to the office of B.K. The indictment with KAQ no 375/07 was confirmed later on. In the opinion of the Court the above findings satisfactorily describe the offense committed by the Defendant.

11. The offense of Falsifying official documents under Article 348 par.2 of the CPCK constitutes special liability of a person who is responsible or official and uses a false official or business document as if it were true in his or her duty or business activity or who destroys, hides, damages or in other way renders unusable the official or business document. Xh.D from this perspective was an active subject of the offense.

12. As to the punishment for the offense of Falsifying official documents imposed on the defendant Xh.D it should be raised as follows. First of all we have to answer the question about the purpose of the punishment to be achieved. The purpose of punishment is retribution in the sense of the principle of justice and proportionality and it have to accomplish the objectives of the general prevention. The important parameters of the calculating of punishment, including mitigating and aggravating circumstances accordingly to the art.64 and following of Criminal Code of Kosovo are analyzed below. The punishment has to be proportional to the degree of the criminal responsibility of the offender and the graveness of the committed act.

13. *Degree of criminal liability*. The intensity of acting of the offender was not on the level that requires a sanction more severe from than the imprisonment of 3 (three) months. The degree of criminal liability of Xh.D is average especially taking into consideration the high incidence of this kind of approach. Defence Counsel brought into attention to the Court in the subject case is dealing with two indictments. He emphasized that as to the summary indictment, PP. number 2549-15/08 dated 04/06/2008 against Xh.D, B.K and A.H related to the same case with the same reference number we have 2 indictments one summary indictment and the other one is just indictment and both are from 4 June 2008. He stressed that in the factual description of the offences, which were identical to the factual description of the offence bearing the same prosecution number against the same defendants. The above-mentioned documents constitute a part of the main file. There was no need to put those into the body of evidence as additional evidence. It has to be said that as to the indictment brought against Xh.D and B.K there

no ground to treat it as a falsified or issued with the abuse of official authority. In some extent it shows a mechanism of filing indictments and document's flow standards.

14. *Motives for which the act is committed.* In the opinion of the Court the probable motive for Xh.D was to get rid of the case from the Prosecution Office as soon as it was possible. Instead of time consuming procedure in conformity with law he has chosen unlawful shortcut by falsifying previously submitted document. The legal sanction has to comply with evidence gathered in the case. Punishment imposed in the enacting clause is proportionate and accurate having regard to the defendant's motives.

15. *Intensity of criminal danger or injury to the protected value.* The negative impact of this offense to a proper functioning of the judiciary can make the court arrive at the conclusion of the degree of danger caused by such act especially from the point of view of the protected value is relatively high. This assessment is understandable and essential for principle of criminal justice protection.

16. *Previous life of offender*. Regarding this circumstance, before the commission of the criminal act the defendant had never broken the law before. He was a jurist by profession. These two arguments establish strong mitigating circumstances that have to be taken into consideration on calculating punishment.

17. *Personal status of offender*. The court took into consideration as an extenuating circumstance the fact that the defendant is seriously sick. He provided the Court with a medical certificate. The Court has come into direct contact with the defendant. The health condition of the Defendant was very poor and he barely was able to stand, he walked with difficulty. He has given his statement in a sitting position.

18. *Offender's attitude upon committing the criminal act.* The offender's behaviour as the accused in the course of the whole criminal proceeding was proper, he presented a cooperative approach. The Defendant Xh.D has not denied to any factual element established in the case. He did not plead guilty because he assessed differently his role in the offense.

19. The punishment of imprisonment calculated according to the content of the art.64 of CCK the above mentioned conditions and according to the purposes mentioned in the Article 34 of CCK, especially preventing the perpetrator from committing criminal offenses in the future and rehabilitating the perpetrator, has been established with a period of three months as the most adequate, proportionate and accurate.

20. In the opinion of the Court Xh.D deserves the application the Suspended sentence to him. The Suspended sentence gives the Defendant a reprimand and achieves the purpose of a punishment by pronouncing a sentence without executing it (arg. ex. Art. 42 of CCK). Previous life of the offender proves that he will not commit another criminal offense (arg. ex. Art.43§2 of CCK). The court determined the vacation period of 1 year which is satisfactory. The other conditions provided by the Art. 44 of CCK are also met. The criminal offense constituted in the Article 348 par.2 of the CCK is punishable up to 3

years. The past conduct of perpetrator neither his behavior after the offense nor the degree of criminal liability do not oppose imposing the Suspended sentence on the Defendant D. All these conditions have been previously profoundly analyzed by the Court. The goals of a general prevention can be reached by moral-ethic function of the criminal law. Consequently a suspended sentence, since it has socio-ethic assessment of the committed crime incorporated within it, may contribute in achieving the above mentioned objectives. The Court perceives the possibility of those goals to be reached by the suspended sentence in the subject-matter.

21. The Defendant B.K was acquitted therefore all his necessary expenses as well as the remuneration and necessary expenditures of defense counsel shall be paid from budgetary resources according to the legal basis provided in the enacting clause.

22. The Court relieved the Defendant Xh.D of the duty to reimburse entirely the costs of criminal proceedings due to his poor financial and health condition.

23. The Court included the time spent in imprisonment under earlier 1st instance sentence which was annulled by the Supreme Court judgment Pkl-Kzz 103/09 dated 22nd April 2010.

24. The Court decided that the purpose if the punishment imposed on Xh.D, does not require the final judgment to be announced in the press or radio or television and has not ordered on this issue.

LEGAL REMEDY: Pursuant to Article 473(3) of the KCCP, the authorized persons may file an appeal of this Judgment within eight (8) days of the day the copy of the judgment has been served.

Witold Jakimko
Presiding judge

Natasa Malesevic
Court recorder