BASIC COURT OF PRIZREN

Case Number PP. nr. 376/12

Date 21 October 2016

[The judgments published may not be final and may be subject to an appeal according to the applicable law.]

IN THE NAME OF THE PEOPLE

Basic Court of Prizren, in the trial panel composed of presiding EULEX Judge Arkadiusz Sedek along with EULEX Judge Vladimir Mikula and Local judge Valon Kurtaj as Panel members and Court Recorder Venera Hadri-Mollakuqe,

In the criminal case against:

1. **F.H**,

Father's name XXX
Date of Birth xxx
Place of Birth xxx
Gender Male
Address xxx
Nationality Albanian
Citizenship Kosovar
Employment Geodesy Expert

2. **N.U,**

Father's name xxx
Date of Birth xxx
Place of Birth xxx
Gender Male
Address xxx
Nationality Albanian
Citizenship Kosovar
Employment Lawyer, xxx

3. S.M.,

Father's name	xxx
Date of Birth	xxx
Place of Birth	xxx
Gender	Female
Address	xxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Lawyer, xxx

4. M.H-B

Father's name	xxx
Date of Birth	xxx
Place of Birth	xxx
Gender	Female
Address	xxxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Employee Sigkos Insurance Company

5. K.H,

Father's name	xxx
Date of Birth	xxx
Place of Birth	xxx
Gender	Female
Address	xxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Employed by the Municipality of Obiliq

6. K.H.U,

Father's name	xxx
Date of Birth	xxx
Place of Birth	Prishtina
Gender	Female
Address	xxx
Nationality	Albanian
Citizenship	Kosovar
Employment	-----------

7. H.M.,

Father's name	xxx
Date of Birth	xxx
Place of Birth	Prishtina
Gender	Female
Address	xxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Electronic technician Kosovo B

8. N.H.M,

Father's name	xxxx
Date of Birth	xxxx
Place of Birth	Obiliq
Gender	Female
Address	xxxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Archive officer xxx

9. I.H.C,

Father's name	xxx
Date of Birth	xxx
Place of Birth	Obiliq
Gender	Female
Address	xxx
Nationality	Albanian
Citizenship	Kosovar
Employment	Teacher, xxx

Charged in the Indictment of the Special Prosecution Office dated 14 January 2013 and the Amended Indictment dated 29 April 2014.

Under the indictment as amended, the defendants were charged with the following offences, all pursuant to the 2004 version of the Criminal Code of Kosovo (CCK) and simultaneously with Criminal Code of the Republic of Kosovo.

COUNT 1

Issuing Unlawful Judicial Decisions in violation of Article 346 of the former Criminal Code of Kosovo (hereinafter "the former CCK"), currently penalized under Article 432 of the Criminal Code of the Republic of Kosovo (hereinafter "the CCRK") against **S.M.**,

COUNT 2

Abuse of Official Position or Authority in violation of Article 339 (1-3) the former CCK read in conjunction with Article 23 the former CCK, currently penalized under Article 422 (1) and (6) the CCRK read in conjunction with Article 31 the CCK against **F.H, S.M. and N.U**,

COUNT 3

Legalization of False Content in co-perpetration in violation of Article 334 (1) the former CCK read in conjunction with Article 23 the former CCK, currently penalized under Article 403 (1) the CCRK read in conjunction with Article 31 the CCK against **K.H, K.H.-U**,

COUNT 4

Legalization of False Content in co-perpetration in violation of Article 334 (1) the former CCK read in conjunction with Article 23 the former CCK, currently penalized under Article 403 (1) the CCRK read in conjunction with Article 31 the CCRK against **K.H, K.U, M.H –B, N.M, H.M. and I.C,**

COUNT 5

Fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph 1,and with Article 23 of the former CCK, currently penalized under Article 335 paragraph 2 , in connection with paragraph 1, and in conjunction with Article 31 of the CCRK 2013 against **N.U, F.H and S.M.,**

COUNT 6

Fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph 1,and with Article 23 of the former CCK, currently penalized under Article 335 paragraph 2 , in connection with paragraph 1, and in conjunction with Article 31 of the CCRK 2013 **against K.H, K.U,**

COUNT 7

Fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph 1,and with Article 23 of the former CCK, currently penalized under Article 335 paragraph 2 , in connection with paragraph 1, and in conjunction with Article 31 of the CCRK against **K.H, K.U, M.H, N.M, H.M.**, **I.C,**

COUNT 8

Unlawful Occupation of Real Property in co-perpetration in violation of Article 259 paragraph 1, and in conjunction with Article 23 the former CCK, currently penalized under Article 332 paragraph 1 in conjunction with Article 31 the CCRK in against **K.H, and K.U,**

COUNT 9

Unlawful Occupation of Real Property in co-perpetration in violation of Article 259 paragraph 1, and in conjunction with Article 23 the former CCK, currently penalized under Article 332 paragraph 1 in conjunction with Article 31 the CCRK **against K.H, K.U, M.H, N.M, H.M.**, **and I.C,**

COUNT 10

Unlawful Occupation of Real Property in co-perpetration in violation of under Article 332 paragraph 1 in conjunction with Article 31 the CCRK against **K.H, K.U, M.H, N.M, H.M.**, **and I.C,**

COUNT 11

Organized Crime in violation of Article 274, paragraph 1 and 2 of the former CCK, currently penalized under Article 283, paragraph 1 the CCRK against **N.U, S.M., F.H, K.H**, **K.U, M.H, N.M, H.M.**, **I.C**

COUNT 12

Organized Crime in violation of Article 274, paragraph 3 of the former CCK, currently penalized under Article 283, paragraph 2 the CCRK against **N.U**

After holding a public trial on:

28 and 29 April, 15, 19 and 21 May, 9, 13, 16, 27 and 28 July,16 October ad 16 November 2015, ,21 January, 22 February , 8 and 27 April, 25 May,8 June, 6, 14 and 22 September , 5 and 18 October 2016

In the presence of:

The prosecutor**:**

Danilo Ceccarelli, EULEX Prosecutor

and the defendants:

After deliberation and voting on 19 October 2016, pursuant to article 357, paragraph 2 of Kosovo Procedure Code,

The court announced in public on 21 October 2016 the following JUDGMENT pursuant to articles 359, paragraph 1 and 366, paragraph 1of Kosovo Procedure Code:

JUDGMENT

COUNT 1, Issuing Unlawful Judicial Decisions

The charge of **Issuing Unlawful Judicial Decisions** in violation of Article 346 of the former Criminal Code of Kosovo (hereinafter "the former CCK"), currently penalized under Article 432 of the CCRK (hereinafter "the CCRK") against **S.M.**, is rejected

Because, pursuant to Article 363 1.3 of the Criminal Procedure Code , in conjunction with Article 106, paragraph 1, subparagraph 4 of the CCRK, the period of statutory limitation has expired.

COUNT 2, Abuse of Official Position or Authority

The charge **Abuse of Official Position or Authority** in violation of Article 339, paragraphs 1, 2 and 3 the former CCK read in conjunction with Article 23 the former CCK, currently penalized under Article 422 (1) and (6) the CCRK read in conjunction with Article 31 the CCRK against **F.H, S.M. and N.U** is rejected

Because, pursuant to Article 363 1.3 of the Criminal Procedure Code, in conjunction with Article 3.2 and 106, paragraph 1, subparagraph 4 of the CCRK, the period of statutory limitation has expired.

COUNT 3, Legalization of False Content

K.H and K.U, are guilty of committing the criminal offence of Legalization of False Content in co-perpetration, in violation of Article 334 (1) the former CCK read in conjunction with Article 23 the former CCK and Article 3 paragraph 1 of the CCRK

Because, the prosecutor has proved beyond a reasonable doubt that:

between 23 September 2010 and 6 October 2010, in Prishtina, Kosovo, K.H and K.U, in co-perpetration, used a document with a false content, namely a certified contract on gift (the first contract on gift) between themselves and A.H, to mislead competent authorities, namely the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, into certifying an untrue matter (namely that K.H and K.H.U become co-owners of a house and yard on Land Parcel 5602) which was designed to serve as evidence of a legal matter in a public document, register or book, that is in the Decision of the Cadastre Office of the Municipality of Prishtina of 6 October 2010 to grant a change in legal ownership of Land Parcel 5602. The documents were misleading and untrue because the defendants swore that a house and yard existed on Land Parcel 5602 in 2010, when in fact the house had been demolished in 2003/2004 and a large commercial building had been illegally built in 2004/2005 on the whole parcel, including on the no-longer existing yard.

Pursuant to Article 3 paragraph 1 of the CCRK and Article Article 334 (1) the former CCK K.H and K.U are sentenced to imprisonment of 1(one) year.

COUNT 4, Legalization of False Content

K.H, K.U, M.H–B, N.M, H.M. and I.C, are guilty of committing the criminal offence of Legalization of False Content in co-perpetration, in violation of Article 334 (1) the former CCK read in conjunction with Article 23 the former CCK and Article 3 paragraph 1 of the CCRK

Because, the prosecutor has proved beyond a reasonable doubt that:

between 21 September 2010 and 8 November 2010, in Prishtina, Kosovo, K.H, K. H.-U., M.H-B, N.M, H.M. and I.C, in co-perpetration, used a document with a false content, namely a certified contract on gift (the second contract on gift), between K.H and K. H.-U on one side and M.H, N.M, H.M. and I.C on the other side, to mislead competent authorities, namely the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, into certifying an untrue matter (namely that K.H, K.U, M.H, N.M, H.M. and I.C become co-owners of a house and yard on Land Parcel 5602) which was designed to serve as evidence of a legal matter in a public document, register or book, that is in the Decision of the Cadastre Office of the Municipality of Prishtina of 8 November 2010, to grant a change in legal ownership of Land Parcel 5602. The documents were misleading and untrue because the defendants swore that a house and yard existed on the Land Parcel in 2010, when in fact the house had been demolished in 2003/2004 and a large commercial building had been illegally built in 2004/2005 on the whole parcel, including on the no-longer existing yard.

Pursuant to Article 3 paragraph 1 of the CCRK and Article 334 (1) the former CCK K.H, K.U M.H, N.M, H.M. and I.C are sentenced to imprisonment of 1(one) year.

COUNT 5, Fraud

The charge of fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph1, and with Article 23 of the former CCK, currently penalized under Article 335 paragraph 2, in connection with paragraph 1, and in conjunction with Article 31 of the CCRK against **N.U, F.H and S.M.,** is rejected

Because, pursuant to Article 363 1.3 of the Criminal Procedure Code, in conjunction with Article 3.2 and 106, paragraph 1, subparagraph 4 of the CCRK, the period of statutory limitation has expired.

COUNT 6, **Fraud**

K.H, K.U are guilty of committing the criminal offence of Fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph1, and with Article 23 of the former CCK , Article 3 paragraph 1 of the CCRK

Because, the prosecutor has proved beyond a reasonable doubt that:

between 23 September 2010 and 6 October 2010, in Prishtina, Kosovo, K.H and K.U, in co-perpetration, with the intent to obtain a material benefit for themselves, namely the co-ownership of Land Parcel 5602, deceived another person, the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, by means of false representations contained in a certified contract of gift (first contract on gift) and thereby induced the Cadastre Office of the Municipality of Prishtina to do an act to the detriment of the Municipality of Prishtina in a sum of over 15,000 Euro, namely to grant a change in legal ownership of Land Parcel 5602. The deception involved each of the defendants falsely representing that they became co-owners of a house and a yard and by concealing that this house had been demolished in 2003/2004 and that a large commercial building had been illegally built in 2004 on the whole parcel, also covering the yard.

Pursuant to Article 3 paragraph 1 of the CCRK and Article 261 paragraph 2, in connection with paragraph1, and with Article 23 of the former CCK: K.H and K.U are sentenced to imprisonment of 10 (ten) months,

COUNT 7, Fraud

K.H, K.U, M.H, N.M, H.M., I.C are guilty of committing the criminal offence of Fraud in co-perpetration in violation of Article 261 paragraph 2, in connection with paragraph1, and with Article 23 of the former CCK , and Article 3 paragraph 1 of the CCRK

Because, the prosecutor has proved beyond a reasonable doubt that:

between 21 September 2010 and 8 November 2010, in Prishtina, Kosovo, K.H, K.H.U, M.H, N.M, H.M. and I.C, in co-perpetration, with the intent to obtain a material benefit for themselves, namely the co-ownership of Land Parcel 5602, deceived another person, the

Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, by means of false representations contained in a certified contract of gift and thereby induced the Municipal Court of Prishtina to do an act to the detriment of the Municipality of Prishtina in a sum of over 15,000 Euro, namely to grant a change in legal ownership of Land Parcel 5602. The deception involved each of the defendants falsely representing that they became co-owners of a house and a yard and by concealing that this house had been demolished in 2003/2004 and that a large commercial building had been illegally built in 2004 on the whole parcel, also covering the yard.

Pursuant to Article 3 paragraph 1 of the CCRK and Article 261 paragraph 2, in connection with paragraph1, and with Article 23 of the former CCK K.H, K.U M.H, N.M, H.M., I.C are sentenced to imprisonment of 10 (ten) months.

COUNT 8, COUNT 9 and COUNT 10, Unlawful Occupation of Real Property

Within the scope of counts 8, 9 and 10 of the indictment **K.H, K.U, M.H, N.M, H.M., and I.C** are found guilty of commission of criminal offence of Unlawful Occupation of Real Property in co-perpetration in violation of Article 259 paragraph 1, and in conjunction with Article 23 of the former CCK

Because, the prosecutor has proved beyond a reasonable doubt that:

a) Between 6 October 2010 and 8 November 2010 K.H and K.H.U, in co-perpetration, unlawfully occupied the real property, namely Land Parcel 5602 of another person, namely the Municipality of Prishtina;

b) Between 8 November 2010 and 31 December 2012 K.H, K.U, M.H, N.M, H.M. and I.C, in co-perpetration, unlawfully occupied the real property, namely Land Parcel 5602 of another person, namely the Municipality of Prishtina.

c) From January 2013 and continuing to the present date, K.H, K.U, M.H, N.M, H.M. and I.C, in co-perpetration, unlawfully occupied the real property, namely Land Parcel 5602 of another person, namely the Municipality of Prishtina.

Pursuant to Article 3 paragraph 1, Article 81 of the CCRK and Article 259 paragraph 1 of the former CCK K.H, K.U, M.H, N.M, H.M., and I.C are sentenced to imprisonment of 6 (six) months,

COUNT 11 Organized Crime in violation of Article 274, paragraph 1 and 2 of the former CCK, currently penalized under Article 283, paragraph 1 the CCRK

Pursuant to Article 364 1.3 of the Criminal Procedure Code defendants N.U, S.M., F.H, K.H, K.U, M.H, N.M, H.M., I.C are acquitted from the criminal offence of organized crime;

COUNT 12 Organized Crime

Organized Crime in violation of Article 274, paragraph 3 of the former CCK, currently penalized under Article 283, paragraph 2 the CCRK

Pursuant to Article 364 1.3 of the Criminal Procedure Code defendants N.U is acquitted from the criminal charge of organized crime.

Pursuant to 80 paragraphs 1 and 2 subparagraphs 2.2 and 2.3 of the CCRK an aggregate punishment of

a) 2 (two) years is imposed on K.H, K.U for commission of criminal offences described in count 3, count 4, count 6, count 7, counts 8,9,10;

b) 1(one) year and 10 (ten) months is imposed on M.H, N.M, H.M. and I.C for commission of criminal offenses described in count 4, count 7, counts 8,9,10

Pursuant to Article 50, 51 paragraphs 1 and 2, 52 paragraph 1 and 3 of the Criminal Code of the Republic of Kosovo aggregate punishment imposed on K.H, K.U M.H, N.M, H.M. and I.C is suspended for verification period of 2 (two) years;

Pursuant to Article 276 and 284 of the Criminal Procedure Code, the whole amount of money deposited in the bank account:

-NLB Pristina 1700100101998475

-BPB 1300003006465036 is considered as material benefit of criminal offences and as such shall be forfeited;

Pursuant to Article 275, 276 and 284 of the Criminal Procedure Code:

-Land Parcel 5602 at the location which is now called No.1 Hamdi Mramoni Street, that was previously called no.1, Skupska or Skupit Street ,

-building constructed on Land Parcel 5602 is released.

Pursuant to Article 451and Article 453 of the Criminal Procedure Code K.H, K.U M.H, N.M, H.M. and I.C are obliged to reimburse the costs of criminal proceedings in a lump sum of 50 Euro related to commission of criminal offences in count 3, count 4, count 6, count 7 , counts 8,9 and 10.

REASONING

CONTENTS

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B. Jurisdiction

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A. Procedural History

1. On 10 October 2012 the Prosecution issued a Ruling on Initiation of Investigation against F.H. The investigation was expanded on 29 November 2012 against S.M, N.U and N.K. The investigation was further expanded on 30 May 2013 against M.H, K.H, K.U, H.M., N.M and I.C ("the xxx sisters"). The investigation was expanded on 9 October 2013 and 22 November 2013 against K.U, G.G, R.P., H.J, H.A and H.P. On 23 December 2013, part of the case was severed. On 8 January 2014, the investigation against K.U, G.G and N.K was terminated.

2. On 15 January 2014 an Indictment dated 14 January 2014 was filed against all of the above defendants and for the above mentioned charges. An amended Indictment was filed on 29 April 2014. The amended Indictment rectified clerical/layout errors and inserted two new chapters. The first of the newly inserted chapters deals with post-indictment investigations. The second inserted chapter deals with the assets subject to forfeiture. The charges remain the same as the ones contained in the original indictment of 15 January 2014.

3. The Initial Hearing was held on 20 May 2014 in the presence of the parties. The Indictment was read and the defendants pleaded not guilty to all counts on the Indictment.

4. Main trial sessions were held on 28 and 29 April, 15, 19 and 21 May, 9, 13, 16, 27 and 28 July,16 October and 16 November 2015, 21 January, 22 February, 8 and 27 April, 25 May,8 June, 6, 14 and 22 September, 5 and 18 October 2016

5. Pursuant to Article 541 of the CPC, which entered into force on 1 January 2013, the Trial was conducted according to the provisions of the new Criminal Procedure Code.

B. Jurisdiction

1. The Law on Courts, Law no. 03/L-199 entered into force on 1 January 2013.

2. This Law regulates the territorial and substantive jurisdiction of the Court.

3. Under Article 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudication in the first instance all cases, except otherwise foreseen by Law.

4. Article 9 of the Law on Courts establishes that the Basic Courts are established for the territory of their respective Municipalities. The offences which are the subject of these proceedings were committed within the territorial jurisdiction of the Basic Court of Pristina. However, given two of the defendants were former judges at Municipal Court of Pristina, the Basic Court of Prizren had territorial jurisdiction pursuant to Article 13. 2 (b) of the Law on Jurisdiction[1].

5. According to Article 15 Paragraph (1) Subparagraph (1.19) of the Law on Courts, criminal offences against official duty (including but *not limited to*, abuse of official position or authority, misappropriation in office, fraud, accepting bribes, and trading in influence and related conduct) fall within the jurisdiction of the Serious Crimes Department of the Basic Court. The CPC supplements Article 15 of the Law on Courts: Article 22 Subparagraph (1.1.87) of the CPC establishes that the offence of Issuing Unlawful Judicial Decisions shall be considered a Serious Crime in accordance with Article 15 of the Law on Courts. In addition, according to Article 15 Paragraph (1) Subparagraphs (1.20) of the Law on Courts, any crime not specifically listed in Article 15 but which falls within the exclusive or subsidiary competence of the Special Prosecution Office for Kosovo[2] shall fall within the jurisdiction of the Serious Crimes Department. Therefore, the entire case was adjudicated by the Serious Crime Department of the Basic Court of Prizren.

6. In accordance with Paragraph (2) of Article 15 of the Law on Courts, and pursuant to the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03/L-053), the case was heard by a Trial Panel composed of EULEX Judge Arkadiusz Sedek, acting as Presiding Judge, and EULEX Judge Vladimir Mikula and Valon Kurtaj as Panel members[3].

7. Changes were made to EULEX competencies by the Law on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, (Law no. 04/L-273), which entered into force on 15 May 2014. As

[1] 2008/03-L-05

[2] The offences contained in indictment PPS 253/09 were deemed to come within the subsidiary competence of the SPRK as per Article 12 of the Law on the Special Prosecution Office of the Republic of Kosovo, No. 03/L-52 (13 March 2008) – decision by Chief EULEX Prosecutor dated 21 January 2014

[3] Article 3.2 of the Law no. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, stipulates that EULEX judges shall have jurisdiction over cases prosecuted by the SPRK. The SPRK has prosecuted this case.

EULEX Judges were assigned to this case prior to 15 April 2014, this case is an ‘ongoing case’ as defined by Article 1 A Paragraph (2) of L 04/L-273), and therefore EULEX judges retained competence in this case.

None of the parties objected to the competence of the Court or to the composition of the trial panel.

C. EVIDENTIARY PROCEDURE

Evidence presented during the course of the Main Trial

1. I. During the Main Trial, the following witnesses gave evidence (in order of appearance at trial):

- B.K, (called as a Witness by the Prosecution), was heard on 15 May 2015
- R.B, (called as a Witness by the Prosecution), was heard on 19 May 2015
- I.M, (a Witness for the Prosecution) was heard on 19 May 2015
- M.P, (called as Witness by the Prosecution), was heard on 21 May 2015
- L.R, (called as a Witness by the Prosecution), was heard 11 November 2015
  M.S, (called as a Witness by the Prosecution), was heard by the court
- N.M, (called as a Witness by the Prosecution), was heard by the court
- N.K, (called as a Witness by the Prosecution), was heard on 9 July 2015
- H.K, (called as a Witness by the Prosecution), was heard by the court
- S.H, (called as a Witness by the Prosecution), was heard on 13 July 2015
- Z.P (called as a Witness by Defence Counsel Musa Dragusha), was heard on 16 October 2015
- N.K (called as a Witness by the Prosecution), was heard on 16 July 2015, 28 July 2015
- H.B was heard on 27 July 2015.
- L.N (called as the witness by defence council T. R) was questioned on 21 January 2016,
- An expert witness D.G appointed ex officio questioned on 21 January 2016,

2. Almost all the defendants decided to defend themselves in silence and refused to provide any testimony or answer any question, exept

- N.U, statements dated 25 March 2013 and 19 December 2012 together with annexes binder 5
- F.H , statements dated 18 September 2013 and 12 March 2013 together with annexes binder 2
- S.M., statements dated 8 October 2013 and 26 March together with annexes binder 1

3. During the course of the main trial session , with the consent of all parties the following documents, material evidence collected during the investigation were considered as read into the record:

- All material evidence submitted by the defendants during the investigation that are placed in the binder 7
- opinions of expert witnesses proposed by the defense
- All evidence collected by SPRK during the investigation that are enumerated in detail in the binders 9 a-b-c, binder 10a, binder 10 b, binder 10c, binder 10d, binder 10 e, binder 10 f, binder 10 g, binder 10 h, binder 10i, binder 10j, binder 11 a-b, binder 12,

4. During the Main Trial, the following Evidence was collected by the Panel *ex officio*:
   The opinion of the expert witness on evaluation of land property in question

D. Established facts

This criminal case relates to a property in the old part of Prishtina, located behind the Kosovo Museum. The location is now called No.1 H.M. Street, but was previously called No. 1 Shkupit or Skopljanska Street. The property is registered in the Municipal Cadaster Office in Prishtina as Possession List 4137, Cadastre / Land Parcel 5602, as a site which contained an old house of 97m2 and yard of 69m2. This was listed as Socially Owned Property until 2005. This piece of land initially belonged to M.H, was born on xxxxxxxx and died xxxxxxxx, at the age of xx. M.H worked as a miner and had retired by the 1990s. It has to be underlined that was semi-literate and mainly used the Cyrillic alphabet. His wife was, A.H born on xxxxxxxx and died on xxxxxxxx, aged xx. She worked as a housewife and was illiterate.

M. and A.H had six daughters. They are the defendants M. M.H B, N. M. M., I.M.H Cakaj, K. M.H, K. M.H-U. and H.M.M. One of their daughters, K.married the defendant N.U in 1977.

Land Parcel 5602 is currently registered in the Cadastre Office of Kosovo in the ownership of the six H. sisters and is registered as consisting of an old house of 97m2 and a yard of 69 m2. However, the house and yard were already demolished in 2003 and an 800m2, four story commercial building was illegally built in 2004/5 in breach of a construction permit. The registered ownership of Land Parcel 5602 by A.H and the H. sisters is based on the judgment rendered by Judge S.M. of 2004, in which she based her decision on two contracts with different addresses and for an apartment of a total area of 72m2. Despite the fact that Judge M. and F.H officially visited the site of Land Parcel 5602 on June 26th 2006 and saw the commercial building with their own eyes, the Judgments delivered by judge S.M. and the first Expert Geodesy Report of F.H refer only to the non-existent old house and yard. Neither the Judgments nor the reports refer to the commercial building that by that time was erected on parcel 5602 and rented out to a public entity, the Energy Regulatory Office (ERO). This commercial building has produced lucrative rental income (approximately 3,800 – 4,100 EURO per month) for the H./ U. family since 2005.

Before the H. family took the possession of this land parcel, a lady called L.R lived in the old house near the mosque and the national museum on the road to xxxxx with the address xxxxxx. She lived there from 1979 to 1986 and she paid rent to the Public Housing Enterprise, the BVI. The house was very old, damp and the roof leaked. The decision allowing L.R to use the house was issued by N.U's study friend from university, M.S.. This decision was issued on 17 November 1983, four years after L.R had actually moved in.

The street then called Shkupit Street/ Skopljanska Street in Prishtina is what is now called H.M. Street, according to 1983 maps. It is behind the Kosovo Museum and next to the mosque. It can be seen from these maps that all of the Land Parcels in this area have four digits commencing with the number 5. Before WWII the property belonged to the N family. It was nationalized by Yugoslav authorities after WWII and the N family subsequently moved to Turkey. From 1979 until 1986 L.R lived at this address.

When M.H retired, in January 1986, he and his family were granted an apartment in the Dardania area in Prishtina. He had been assigned this apartment by the Association for Retired

Persons. M.H swapped this apartment in Dardania with L.R in 1986. This swap was registered by a Decision of the Municipal Court of November 6th, 1986 that permitted L.R to exchange her apartment on Sheshi 19 Nentori with M.H's Dardania apartment. The road which was previously called 19 November Street is now called Garibaldi Street opposite the Grand Hotel. The Decision of 6 November 1986 describes the apartment of Leposoava Radenovic as an apartment of 72,000 m2. The Decision also mentions that L.R uses the apartment since 1984. The Public Housing Enterprise-SHA confirmed that M.H exchanged the Dardania apartment with L.R for the basement apartment 'located (in front of the Grand Hotel) in Prishtina '19 Nentori' No.1/a in surface of 72,000m2'. There is no evidence that H.M. Street or any street in that area was ever known as Rruga or Sheshi 19 Nentori/ Ullica or Trg 19 November. The BVI-Public Housing Enterprise-SHA administered no properties in this area around the museum. Because there is no doubt that L.R lived in an old house near the mosque and the Kosovo museum on the road to Germia, and since there is no doubt that the H. family moved to that particular house and lived there for a long time, it appears that the above mentioned Decision of 6 November 1986 and the other documents refer to either an incorrect street name or are completely fake. L.R confirmed that she lived in the old house near the mosque until 1986 when she made an exchange with M.H. The main leader of all of this was, according L.R, N.U'. She confirmed that everything was organized by N.U, whom she knew because she worked in the cafeteria of the Municipality of Prishtina. She stated that she never lived close to the Grand Hotel, on what is now called Garibaldi Street.

M.H and his family moved into the old house near the museum. He then made a contract with the BVI (Self Governing Community of Interest for Prishtina), on November 26th, 1986. In this 'Contract on Apartment Use No. 1193/2176', the BVI, on behalf of the Municipality of Prishtina, authorised M.H, the right to use the apartment described as '72m2', with 3 rooms, at Square 19 November, No. 1/a. No-where in this document are the words Land Parcel 5602 mentioned. M.H then purchased the apartment Square 19 November – Skopska No.1 on February 8th, 1993, in Apartment Purchase Contract No. 07-360-714 (unreadable) -84, from the Municipal Assembly of Prishtina. This contract specifically states that the 'Buyer uses as a bearer of residential right (Lease for a limited time) based on a Contract for Use of the Apartment, number 1193/2176, concluded on 26/11/1986.' The Municipal Court of Prishtina certified, with Certification Number 12702/93 on December 2nd, 1993 the sale. No-where in this document are the words Land Parcel 5602 mentioned. This contract is the first time that any reference to the word 'Skopska' (or Skopje) is made in relation to the Sheshi 19 Nentori/ Trg 19 Novembra No1/A apartment. That this may be reference to the fact that Shesi 19 Nentori was the main road out of Prishtina south to the city of Skopje.

It has to be underlined that although there is a level of uncertainty about Prishtina street names over the past thirty years, it is possible to identify the apartments and houses in this case by reference to their addresses, their size and their descriptions. It is clear that property on land parcel 5602 described above consisted of a total area of 166m2, divided into a house of 97m2 and a yard of 69m2. This was an old house with traditional features in the old part of Prishtina. This property is clearly different from an apartment described as '72m2' or '72000m2' with three rooms.It is likely that M.H used documents relating to an apartment in order to avoid the Law on land for Construction and used the Law on Housing relations. The Law on Land for Construction regulated socially owned land in urban areas, such as Land Parcel 5602. The

provisions of this Law, however, are less beneficial than those from the Law on Housing Relations that dealt with apartments. It appears that by using documents that refer to an apartment on a different address and a different number of square meters, M.H tried to avoid the applicable law, which, for instance, allowed the transfer of an apartment to the heirs of a deceased apartment owner. Obviously, it is likely that this semi-literated miner was advised by his son-in-law, by then President of the Municipal Court and former employee of the Prishtina Municipality.

In 1991, M.H applied for a Construction Permit for a business premises on Land Parcel 5602. His application was refused on February 25th, 1991 by the Secretariat of Urbanism of the Municipality of Prishtina with the explanation that the permit could not be granted since the building was owned by the Municipality of Prishtina and not by M.H. In 1997, M.H again applied for a Construction Permit for Land Parcel 5602. The interoffice memorandum from the Institute of Urban Planning for the Municipality of Prishtina outlines the conditions that M.H would have had to comply with if he were to build in the historical part of the city. These conditions include traditional features. These works were not carried out at that time.

On December 21st, 2000 Land Parcel 5602 was described for the Municipality of Prishtina Cadastre Office by F.H. This report includes measurements and a plan, both of which clearly show the existence of a house of 97 m2 and a yard of 69m2, bringing to a total area of 166m2, or 1.66ha.

On 4 February 2001, M.H again applied for a building permit. which was written in Latin script, but signed by M.H in Cyrillic script, yet on April 24th 2001 a request for an Urban Permit was signed by M.H in Latin script. On June 4th, 2001, M.H submitted a request for a new Construction Permit for Land Parcel 5602 (Shkupit Street, No. 1). The permit was picked up by N.U. The complete Project File submitted by M.H shows construction plans for a traditional house.

On 19 December 2001, a Construction Permit (No. 05nr350-1565/1 for Land Parcel 5602, which has attached to it the Urban-Technical Conditions for Construction Permit No. 05nr350-1565/1) was granted by the Directorate of Planning, Urbanisation and Construction for **a renovation** of the old house on Land Parcel 5602. The Construction Permit specifically required that M.H **reconstruct a traditional house with traditional features**, to fit in with the surrounding area of old Prishtina. The Permit specified that the renovation or re-building of the house must include traditional features, such as wooden doors and windows and a tiled roof. It clearly states that the investor is required to notify the Directorate when the works start and at various stages throughout the building and allow inspectors to verify that the construction is built in confirmation with the construction permit. It also clearly states that the construction permit does not create any legal or similar right to the land. In 2002 a handwritten request in the Latin alphabet for an extension of time for the completion of the reconstruction was made and signed by M.H, which was granted. It was established that N.U. helped his father –in –law with the building permit.

It was established that the old house was probably demolished in 2003. In breach of the above Construction Permit, between December 2003 and April 2005, the H./ U. family built a 800m2,

modern, four-story glass and steel commercial building on the site instead of a traditional house and yard. This new building was completed by April 2005. The completed structure covers approximately 166m2, that is, all of the land within the Land Parcel, both the area of the old house (97m2) and the old yard (69m2). It is unclear how construction of this building was financed.

The previous owners of this parcel filed a claim for the re-establishment of their ownership rights over Land Parcel 5602 on August 12th, 2002. This claim was initiated by three brothers from Prishtina, I., A. and H.H (H.). The wife of one of the brothers, B. N, explained that his claim was given Case No. C-839/02 and was assigned to Judge S.M.. The claim was lodged by advocate R.B. from Prishtina. The claim explains that Land Parcel 5602, with a house of 97metres squared and a yard of 69 metres squared had been registered in the H. family's name. The claim states that their historic ownership is based on a Deed dated October 2nd, 1938, which was verified at the County Court of Prishtina on October 16, 1938, but that the Yugoslav authorities in 1946 had expelled the claimants from their property with no legal grounds and forced the family to move to Turkey. According to the claim the authorities then used the house to accommodate 'officals of the regime'. The claim contained a clear description of house of 97 m2 and yard of 69 m2 on Land Parcel 5602. The Claim refers to the Possession List 4137, dated 21st December 2000 (which had been made by F.H). While the street name quoted in the claim (Tasligje IV, nr. 23) is different, the Land Parcel number 5602 and description of the property clearly show that this is the same property. These documents were in the possession of B. N. A copy of this claim was also found during the lawful search of the apartment of N.U on March 20th/21st, 2013, therefore proving that N.U was fully aware of the case despite the fact that at this stage neither he nor any member of the extended H./U. Family was a party to the case (although he was joined as a respondent later in proceedings).

Lawyer R.B. withdrew the claim in a Court hearing before Judge S.M. on October 21st, 2003 without prior consent of his clients. Judge S.M. immediately accepted the withdrawal and approved it.
It is clear that R.B. believed that the case would be lost because the Judge, S.M., would rule against his clients. R.B. stated: 'S.M. never did anything without the knowledge of the President of the Court, she was his servant (…) I never had a good relationship with M. and had the impression she was under the influence of the President of the court'.

N B. was unaware of the fact that the claim was formally redrawn and hired another lawyer, M-H P. The case continued and on a later date the claim was expanded by advocate M.H.P N.U, because 'as house user started to demolish and to reconstruct the house, object of review in this dispute, on the Street 22 Tetori, No. 33, registered as cadastral parcel No. 5602, from possession list 4137 of Pristina Municipality.' While the street name quoted in the claim (Street 22 Tetori No. 33) is different, the Land Parcel number is 5602 and description of the property show that this is the same property.

In the submission the Court was requested to take the temporary measure of 'ordering the respondent N.U from Pristina to immediately suspend all construction works on cadastral parcel No. 5602, from possession list 4137 of Pristina Municipality, in the house on the Street 22 Tetori, No. 33, to remove construction material, and to return the immovable property to its

previous condition'. When nothing happened the advocate M.H.Pstated that he 'asked to be received by the female judge. She refused to see me and said 'Without a summons I cannot see anybody.' He further stated: 'When I saw she refused to talk to me, then I applied to the President of the Court [N.U]. They told me I could not enter his office. I submitted a Motion to the Supreme Court of Kosovo asking the Supreme Court to exempt the entire Court of Prishtina.'

On November 14, 2003, the lawyer M.H.Pposted a Request to the President of the District Court of Prishtina, outlining the bias that was shown against his client by the Municipal Court and requesting that the claim be sent to another jurisdiction. The request stated that: 'On date 12.08.2002, a claim was filed with the Municipal Court in Prishtina. The case was registered as C.nr.839/02. Submission for claim and proposal for Temporary Measure in the same case were propounded to the same Court on date 22.10.2003. On 28.10.2003, the President of the Main Trial Panel refused to discuss and to provide an explanation why the TEMPORARY MEASURE was not approved. Until now, no court session was approved and the respondent N.U took this opportunity to demolish the disputed house and build a new one. Among the respondents is N.U, President of the Municipal Court in Prishtina which brings into question the Court impartiality.' Mr. P. received no response to this logical request. Later, lawyer P. made a Request to the Kosovo Judicial Institute Inspectorate of the Courts, outlining his attempts to have the case heard, and requesting them to undertake actions because 'as the President of the Court is among the respondents, he will not allocate the case, and neither will he take a temporary measure. Although the court case in question is of an urgent nature, until now there has been no response from the mentioned courts'. On December 16th, 2003, Mr. P. made a Plea to the Kosovo Ombudsperson to 'intervene for the basic protection of rights'. In this he outlined his attempts to have the case heard and stated that 'All requests remained without results, as the respondent N.U is the Court President' and requesting them to undertake actions.

Despite many submission filed to competent institutions, Mr. P. got no response to any of these requests. This claim was therefore never heard in Court. The advocate M.H.P handed the claim back to his client Mrs. N. The withdrawal of the claim clearly demonstrates, whatever the legal status of Land Parcel 5602 and whoever was the technical owner – already in 2002 N.U was perceived as being the main house owner or user. He was perceived as being the decision maker about the demolition of the old house and yard and about the construction of the large commercial building. It was for this reason that the claim of the H. brothers was expanded against him, rather than against M. or A.H. It has to be noted that, although he was confronted with a claim affecting the interest of his family-in-law and lodged in his Municipal Court, he took no steps to transfer the case to an impartial Court. N.U was the main decision maker throughout the acquirement of Land Parcel 5602 and the demolition and construction of the new commercial building, and not his elderly father or mother-in-law.

It was in the best interest of the H./U. family that the claim of the H.'s was not dealt with. A possible positive decision on the claim would have meant that the H./U. family would lose the property they intended to build on. It was therefore in their interest to first delay the dealings of this claim and later to ignore the understandable concerns raised by Mr. P. about potential bias. Also, by the time the claim was filed, the U./H. family had begun to demolish the house claimed by the H. family.

The next step for H./U. family was to get the confirmation of property of the land parcel in question.

On October 14th, 2003, M.H applied to the Municipal Court of Prishtina for confirmation of ownership of Land Parcel 5602. It has to be noted that this claim was filed one week before R. B. redrew his claim in front of Judge M.. It is worth observing that the H. family, after living on Land Parcel 5602 for 17 years, suddenly decided to file a claim so shortly after their claims to Land Parcel 5602 were challenged. The claim lodged by M.H was assigned to Judge S.M. who was fully aware that there had very recently been contested ownership in relation to Land Parcel 5602 and well aware of the fact that the old house and yard had been demolished because it had been pleaded in the claim of the H. family. She must also have been well aware of the fact that N.U had been a respondent in that case. In this claim for ownership, M.H used the Contract for Use of Sheshi 19 Nentori, NO. 1193/2176, dated 26/11/1986 and the Contract for Purchase, No. 12702/93 for Trg 19 Novembra –Skopska No.1, dated 08/02/1993, the documentation from a 72m2 apartment on 19 November Street. The street then called 19 November Street / Rruga 19 Nentori/ Ullica 19 Novembra in Prishtina is what is now called Garibaldi Street, according to 1983 maps. It can be seen from these maps that all of the Land Parcels in the area of Rruga 19 Nentori/ Ullica 19 Novembra contain five digits. There are no four-digit land parcels in the area. Land parcel 5602, on the contrary, obviously contains four digits. Two BVI Officials confirmed that 19 November Street is now called Garibaldi Street. One official stated that 'because that road in reality leads to Skopje….. everyone was calling that road the road towards Skopje'. This was possibly the reason to use documents relating to Sheshi 19 Nentori (19 November Street). It was easy to use the common way this street was called to make the connection with the street where Land Parcel 5602 was located. The Claimant's Submission of November 12th, 2003 states that:

'….the building house which the claimant bought in 1993 from the respondent – Municipality of Prishtina, was built time ago with the surface area of 97,00m2 on the cadastral parcel no. 5602, registered as per possession list no. 4137 of Pristina Municipality, whereas the remaining area of the same cadastral parcel – 69m2 is a yard surrounded by a wall…' This description of a house of 97m2 is clearly different from that of a 72m2 apartment. Documents which refer to an apartment with a different address and with a different total area were used to ground a claim for a larger, more valuable property. The intention was clearly to misrepresent the facts of the situation to the Court and to gain a Court Order granting ownership to M.H thereby deceiving the Court and the Municipality and to cause the Municipality to transfer the property to M. or A.H and thereby cause the Municipality to lose ownership of the property.

The claim was received and stamped by the Municipal Court of Prishtina on 14 October 2003. However, M.H was already dead by this time. He had died on 17 July 2003. The case was interrupted when the Court became aware of the death of Mr. H.. The claim was filed by Ermira U., a daughter of N.U. M.H, then aged 79 and on the verge of death, a retired miner and semi-literate, was neither the author nor instigator of this claim, but that rather it had been drafted and instigated by his son-in-law, N.U, just as he had been perceived by the H. Brothers as the investor and developer in the demolition and construction of the old house and yard on Land Parcel 5602 and was therefore listed as a respondent in their claim. The fact that the claim was filed by a daughter of the President of the Municipal Court, on behalf of the parents-in-law of the

President of the Court obviously means that N.U should have referred the claim to another Court in order to prevent any bias. N.U made sure the claim was later assigned to his old friend, Judge S.M..

On 22 March 2004, N. H. filed a request to initiate an inheritance procedure at the Municipal Court in Pristina. She made reference to a house with a yard, located in Prishtina, Shkupi Street, and registered in possession list 4137 as Land Parcel 5602. The request is supported by the contract of Purchase 12702/93, dated 2 December 1993, which only refers to a 72m2 apartment.

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An Inheritance Ruling was rendered on March 31st, 2004 which resulted in A.H, the widow of the deceased, becoming the sole heir. Subsequently she also became the claimant in the above case. The ruling mentions usership of the yard in relation to the property on Land Parcel 5602.The inheritance ruling grants F.H. with 97m2 instead of the 72m2 that M. purchased. Since the contract for purchase was attached to the claim, it is strange that Judge Ixhlale Sheholli did not elaborate at all on the difference. One cannot obtain more rights in an inheritance ruling than the deceased person possessed. This inheritance Ruling was later used to support claim 424/04. The Judge legally could not award the usership rights of the yard. Article 24 of the applicable Law on Land for Construction stipulated that the right to use land necessary for the regular use of a building, such as a yard, could not be transferred at all.

After completion of inheritance procedure, the case was re-opened based on an application by H.G, upon authorisation dated 5 May 2004 signed by A.H (despite the fact that she signed most documents with her thumb-print). It was reassigned a new Case Number 424/2004. It was filed in the Municipal Court of Prishtina on May 7th, 2004. It was again assigned to Judge S.M.. She held the first court session only two weeks later, on May 18th, 2004. Also in this case, neither N.U nor S.M. acted upon the apparent situation of conflict of interest and referred the claim to another Court. The claim was again dealt with by the Court of which the son-in-law of the claimants was its President.

The record of the Main Hearing on June 30th, 2004 records that the lawyer for the Respondent Municipality submitted to the Court that 'based on contract of sales-purchase, the claimant is owner of only the premises built on this plot and not of the land'. It appears that he did not raise any questions about the differences in area or street name.

On June 30, 2004, Judge S.M. held that the claimant, A.H, was the owner of the house located on Land Parcel 5602 and that the claimant was entitled to the permanent use of the relevant yard. In her verdict she states that the area of the house covers 97m2 and that the yard covers an area of 69m2. Judge M. specifically stated that her judgment was grounded on the 'Contract for Use dated November 26th, 1986' and the 'Contract for Sale No. 12702/93'. She made no reference to the fact that the apartment the subject of those contracts had an area of 72m2 or the other differences in the documents. The decision of Judge S.M. of June 30th, 2004 was an unlawful decision for a number of reasons. Firstly, it was legally impossible to grant permanent user-ship of Socially Owned Property, the yard, to a private person. Secondly, she based a decision for ownership of one property (Land Parcel 5602) on documents containing two completely different addresses. Thirdly, she completely ignored the huge difference in the square meters between the apartment of 72m2 and the property of 166m2, (containing the house of 97m2 and a yard of 69

m2) These three large discrepancies all point towards Judge M. deliberately acting in favour of the claimant, A.H, and the H./U. family, which included N.U, Judge M.'s supervisor.

Case allocation system

In accordance with established case allocation procedure within Prishtina Municipal Court, each Judge had a number and each case would be assigned to the Judge whose number was the same as the last digit in the case number. Judge S.M. had been given the number 1, therefore she should have been assigned only cases which had a case number ending in 1. A.H's case received Case Number 424/2004. So based on case allocation system, it should have been assigned to Judge N.H.. Despite clear and transparent system, it was assigned to Judge M.. Therefore Case No. C-839/02 (the claim of the H. brothers) should have been assigned to Judge dealing with cases that number end up with No. 9. Claim No. C-1805/03 (first claim by M.H) should have been sent to Judge No. 5 (Gyltene Sylejmani until Olga Janicjevic took over).

However, all these cases were all assigned to Judge No. 1, S.M., since S.M. and N.U knew each other well and had such a personal relationship that went beyond the normal working relationship.

There were some exceptions to this system of case allocation within the Municipal Court (for example if there were Serbian parties, or one Judge had a heavier caseload than other judges), but generally the President of the Municipal Court, N.U was involved in re-allocating the relevant cases. On two occasions N.U confirmed that the case allocation system was not always adhered to, when he was President of the Municipal Court. In the case when the judge was overburdened, the cases he/she was due to decide were allocated to other colleagues However, Judge S.M. stated that the case list was not overburdened in 2004 and that then it was normal for a first hearing to occur within 11 days of the claim being received, as occurred with A.H's claim.

It is understandable that there are occasional departures from the normal system of case allocation. However, all three cases between 2002 and 2004 that related to Land Parcel 5602 were surprisingly assigned to Judge S.M., despite none of those cases carrying her number within the case allocation system. All three cases resulted in actions or decisions that were beneficial to the H./U. family, the family of her supervisor N.U . Two of the cases involved blatant breaches of the law and procedure. All of these factors provide very strong evidence that N.U, as President of the Municipal Court, circumvented the normal system of case allocation and assigned all three cases to a Judge that he could rely on to make decisions in favour of his interests and those of his family. It is because N.U and Judge M. are old friends. N.U indicated that he once had a close relationship with S.M. when he was recorded by a Surveillance devise as saying that 'They got information from the spies, and they didn't lie about it, regarding my relationship with Sanije that I used to have'. This indicates that there was at least a close friendship between the two at one stage in their history and that must be the source of her willingness to take unlawful actions in his favour.

The Municipal Court decision of Judge S.M., dated June 30th, 2004 was appealed to the Prishtina District Court by the lawyer representing the Municipality of Prishtina, N.K, on 14 October 2004. The appeal was based on two main points, firstly that M.H only bought

72m2:'…in Possession List No.4137, Cadastral Parcel 5602, where it is noted that the house surface is of 97m2, …………the contract on use of the apartment and the contract on sales-purchase of the apartment out of which without any doubts it can be confirmed that the same house as a surface of 72m2 and therefore the larger surface of 25m2 cannot by any means be recognized by the claimant'. The second point of the appeal was that 'the first instance Court, without any rights, has nominated A.H as the holder of the right to use the land which is a social property of the Municipal Assembly. A decision on this matter could only be made by the Municipal Assembly and by no means by the Municipal Court of Prishtina.'

Despite the obvious breaches of both the Law and of common sense in the Judgment of Judge S.M., the District Court, comprising Judges F.B, E.A. and R.R, confirmed the verdict of the Municipal Court on December 27, 2004.

On 3 January 2005, a request to Transfer Ownership was presented to the Municipality of Prishtina Cadastre Office by A.H, based on the Municipal Court Decision issued by S.M.. Despite the fact that Judgment of the Municipal Court granted ownership of the house and usership of the yard, A.H's request was for the transfer of ownership of the **whole parcel**. The intention of such submission is clear-cut and self-explanatory was to deceive the Municipality of Prishtina Cadastre Office into registering full ownership of the Land Parcel. As a result of the lodgment of this Municipal Court Verdict , the Cadastre Office accepted the request of A.H, and instead of looking at the wording of the Municipal Court Verdict , unlawfully transferred ownership of the complete Land Parcel 5602 to A.H on January 18th, 2005. In his decision to transfer Land Parcel 5602 to A.H, the Director of the Cadastre Office, S.H, reasoned as follows: 'Ms. A.H submitted a request to the Cadastral Office of Pristina Municipality for transfer into the Immovable Property Register, and attached to her request complete evidence necessary for registration in the Immovable Property Register (type of document): Verdict C. nr. 424/2004, dated 30.06.2004.' The Decision by the Municipality of Prishtina to transfer the ownership should have reflected exactly the wording of the Judgment and not the wording of the Request for Transfer, and that the Decision to transfer should have been to transfer only the ownership of the house and the user-ship of the yard. The land on which the house is built on and the yard had to remain in the ownership of the Municipality.

On the basis of an ungrounded inheritance ruling, an unlawful verdict and various misrepresentations, Land Parcel 5602 was transferred into the name of A.H in January 2005. By this time the large four story glass and steel commercial building was almost completed.

On 22 February 2005, A.H put her thumb-print to an authorisation letter which authorised her grandson M. U., the son of N.U, to 'sell, award or give for rent' the building on Land Parcel 5602. In September 2005, M. U. signed a bid to ERO for the rental of the office building. By the end of 2005, the building was leased to the Energy Regulatory Office of Kosovo for a rent of Euro 4,130 per month. The rental contract was signed between the ERO and defendant M. H. Bislimi on November 22nd , 2005 and was found in N.U's apartment during the Court-Ordered Search on March 20/21 2013. N.U was involved in the rental of the property and stated that 'I wasn't involved in the contract itself but provided my service with regard to the talks and discussion that took place, I offered my advice'. The rental payments were made into the bank account of A.H. Financial Records show that M. U. , the son of N.U and grandson of A.H, and

M.H, were the beneficiaries of the payments. On November 11th, 2005, Mrs. H. waived her interest in her bank account to M. U., the son of N.U. She signed this document with a thumb-print. This authorisation letter was verified by T. U., a relative of N.U and certifying officer at the Prishtina Municipal Court. Strangely, this document is not registered in the registry book at the Municipal Court in Prishtina.

A.H, who in 2005 was 81 years old, who had worked as a housewife and was illiterate, was neither the author nor instigator of the claim for ownership, nor for the lease of the commercial building on Land Parcel 5602. Rather, all of these actions were instigated by her son-in-law, N.U, just as he had instigated the applications for Construction Permits for Land Parcel 5602; ensured that the H. Brothers Claim to Land Parcel 5602 was not dealt with fairly by the Courts; instigated the claim for ownership by the then elderly M.H and then continued the claim for ownership through A.H. This is one of the reasons that it was N.U's son, M. U., was the beneficiary of A.H's bank account which contained the rental income.

The questionable District Court verdict , dated December 27th, 2004 was appealed by way of Revision to the Supreme Court by the lawyer representing the Municipality of Prishtina, N.K. The application for a Revision was based on two main points. Firstly, that there was no legal basis for the owners of the apartment to become registered as the owners of the land around the apartment [because it is socially owned land], and secondly that the Court was not competent to deal with this claim at all.

On February 22, 2006, in decision Rev. No. 144/2005, the Supreme Court annulled the decision of the District Court and annulled part of the decision of the Municipal Court. The Supreme Court confirmed the ownership of the house in the Land Parcel 5602 as belonging to A.H. **It stated, however, that the yard of 69m2 could never have been granted to a claimant, because it was a piece of Socially Owned Property, and as such, could never be transferred.** The Supreme Court overruled the granting of use of the yard to A.H and sent the case for retrial to the Municipal Court. The Supreme Court held that 'the claimant can not to be the user of the entire yard surface of 69m2, because the building-house which is in the quality of apartment, is built on socially owned property, on the property of the respondent [the Municipality of Prishtina], but [the claimant] may have the right to use a part of the yard which will serve the claimant for using the facility and that in the length and width of a path from the city road until the construction-apartment of the Claimant'.

The Supreme Court therefore accepted in part the argument of the appellant in relation to the usership of the yard and sent the matter for retrial and ordered that the Municipal Court undertake the following actions: 'The first instance court is obliged at the retrial to appoint a geodesy expert who must give an opinion regarding the surface that the claimant may use in order to enter from the road to her home, respectively to what length and width should be the path from the city road to her house-apartment….'. Instructions given by the Supreme Court are clear and leave no space for any sort of doubts.

Judge S.M. totally ignored the instructions of the Supreme Court she was obliged by law to observe, so as to assist her supervisor N.U, and so to damage the rights of other parties to the case. The case was returned to the Prishtina Municipal Court and given the number 807/ 2006. It

was assigned again to Judge S.M..

On June 26th, 2006 a site visit was conducted by the Geodesy Expert, F.H, Judge S.M., the lawyer for the Municipality Mr. K.and the lawyer for Mrs. H., Mr. H.G. All parties therefore saw the site, which by then, consisted of a four story commercial building in glass and steel, the floor-space of which covers the entire land parcel, without any leftover area for yard. The house in traditional style and a yard had ceased to exist in or about 2003. None of the officials involved makes reference to this fact in their Judgments or Expert Reports or submissions to Court. Each one of them ignored the fact that the house and yard were demolished and that the site now consisted of an illegally constructed four-story commercial building. Thus, the assignment of the Supreme Court could not be executed. There was no yard left to measure a path. (!)

The First Expert Geodesy Report of F.H was dated June 26th, 2006 and contains a written report and a technical drawing of the Land Parcel 5602 accompanying his Report. The technical drawing shows **the old house and the yard**. Two different versions of this First Expert Geodesy Report exist. One, shorter version of this Report (version A) was described by F.H as being the initial Report that he handed to Judge M., and the second Report (version B) was described by him as the final version. Version A was not registered and found in the official Court file. Version B was in the Court file. Version B contained an extra paragraph that, according to F.H, had been requested by the Judge. This extra paragraph reads as follows: 'The yard of the contested parcel 5602 borders from the North with a construction in height of 2.73m + 1.06m + 5.38m +2.31m and 9.29m and 1.74m from the eastern side 10.10m + 2.79m and 3.48m, from the south the road 8.28 and the west again the road 3.33m.' This last one (B) is the only Expert Report referred to in the Judgment of S.M. of 2006. In this Report, Mr. H. also specifically states that '…contested parcel number 5602 which is construction land and construction –house is built on it'. This clearly indicates that despite the fact that the entire site consisted of a large modern commercial building, F.H stated in his Expert Report of June 26th, 2006 that the parcel contained both a house and a yard. The technical drawing of Land Parcel 5602 also clearly shows the parcel as divided into two sections with perimeter measurements for a house and yard matching those measurements given in his Report.

In the version (B) that was found in the Court file, absolutely no mention is made anywhere of the fact that no house or yard then existed and that the parcel consisted of a large commercial building. A copy of Report A was found in N.U's apartment. The Report found in N.U's apartment (version A) included annexed aerial photographs of the Land Parcel 5602 showing the new building, which were also not found in the Geodesy Report on the Court File. These aerial photographs show very clearly that in 2006 the Land Parcel 5602 contained only a large commercial building and no yard.

The Court file contained a Second Exert Report of July 11th, 2006 (C), which was issued by F.H.It was never referred to in the Judgment of Judge S.M. and was not listed in the document registry of the Court file. In this Report (C), H. for the first time mentions that a new building was built and that no dimensions of a road to enter the house could be given, because of this new building. This clearly shows that, contrary to his statement, F.H was aware of the assignment given by the Supreme Court. It is also interesting that this Report (C) was not listed in the registry log of Court file and not referred to in the Judgement of Judge M.. It shows that only

documents favorable to the H./U. family made it formally to the Court file and the Judgement.

As it was established, there were four different Geodesy Reports in this case. There was the First Expert Geodesy Report (Version A) dated June 26th , 2006 found in N.U's apartment which included aerial photographs, but was not in the Court file; the First Expert Geodesy Report (Version B) dated June 26th , 2006 found on Court File 807/2006 which did not include aerial photographs but was one paragraph longer; the Second Expert Geodesy Report dated July 11th, 2006 which mentions two garages and which was physically located in Court File 807/2006 (Version C), but was not registered on that Court File, and finally the 'new map' (D) that was given to the Prosecutor in March 2013. That clearly shows that F.H was writing Expert Geodesy Reports on demand, realized he was caught and then tried to cover up his actions.

Site inspection and different versions of geodesy reports are clear indication of a plan involving a number of persons, particularly Judge S.M. and F.H, to assist N.U and the U./H. family in their campaign to obtain a formal declaration of ownership of Land Parcel 5602.

Judge M. completely ignored the decision of the Supreme Court, and rendered a second Verdict in almost exactly the same terms as her first Verdict of 2004 and granted the right of permanent use of the yard on Land Parcel 5602 to A.H. In the reasoning of the verdict it is stated that it was grounded on the Contract for Use dated November 26th, 1986 and the Contract for Sale No. 12702/93. In relation to the Contract for Use, the reasoning reads that 'It was confirmed that the apartment-house located at former Street Shkupi, now H.M.…' despite the fact that the Contract of Use never mentions the word 'Shkupi Street' and describes the relevant property as 'Sheshi 19 Nentori'. In relation to the Contract for Sale, S.M. uses the name 'street Shkupi' again, when in fact that Contract uses the name 'Trg 19 November-Shopska'. In the reasoning the reference is made to the Construction Permit No. 05nr350-1330 for Land Parcel 5602, which has attached to it Urban-Technical Conditions for Construction Permit No. 05nr350-1330 , but makes no reference to the fact that the H./U. family built the modern commercial building in direct breach of this permit. Judge M. also relied in her Verdict on the first Expert Geodesy Report of F.H, dated 26 June 2006 (Version B), which also referred only to a house and yard on Land Parcel 5602 and did not mention the four- story glass commercial building. Despite the site visit of June 26th, 2006 at which she observed that Land Parcel 5602 contains a large glass four-storey commercial building Judge S.M. did not once in her Judgment refer to the creation of a path from the road to the house, despite this being a direct order of the Supreme Court. The reasons for this are obvious: she simply could not execute the decision of the Supreme Court and writing this down in her Judgment would have drawn attention to the illegally build construction and her first illegal decision. Judge M. also ignored the Supreme Court re-iteration of the law that A.H could not have been awarded permanent usership of the socially owned yard.

Despite her site visit on June 26th, 2006, no mention is made by Judge M. in her Verdict of the fact that the site now consisted of a large modern commercial building and that neither a traditional-style house nor yard remained in existence. No mention is made of the fact that the information given by Mrs. H. referred to above is untruthful and physically impossible. No mention is made in her Verdict of the fact that F.H's Expert Geodesy Report of June 26th, 2006 (Version B) contained false statements of fact. No mention was made of the fact that it was legally impossible to transfer Socially Owned Property. And no mention was made by her of the

direction of the Supreme Court to measure a path across the yard for A.H.

The Decision of the Municipal Court in Case No.807/06 was made on July 26th, 2006 and the Municipality received the Decision on August 4th, 2006. An appeal must be lodged within 15 days from the receipt of verdict, therefore by August 19th, 2006 at the latest. However, N.K lodged his appeal on August 22nd, 2006, three days after the time limit expired. His appeal was received by the Prishtina Municipal Court on September 4, 2006. Judge M. dismissed the application for an appeal by N.K on September 22nd, 2006 on the basis that it was 'not done within the legal time period'. N.K did not appeal against her decision to dismiss his appeal. N.K did not file the appeal on time, and so the Decision of Judge S.M. in the Municipal Court dated July 26th, 2006 became final.

As a result of Judge M.'s first unlawful decision in 2004, Land Parcel 5602 had been transferred to A.H on January 18th, 2005. In November 2005, the H./U. Family then rented out the commercial building unlawfully built on Land Parcel 5602 for a valuable rental income. The six H. sisters were involved at different stages in the rental agreements. On November 25th, 2005, a rental contract was signed between M.H-B and the ERO, in which the ERO rented a large commercial building at Land Parcel 5602, on H.M. Street, for a monthly rent of 4,130.00 Euro. This rental contract with the ERO was extended on November 22nd, 2006; it was renewed on 21st, November 2007. It was then again renewed on November 27th, 2008 for Euro 4,768 per month and on November 27th, 2009 for Euro 4,768 per month. These contracts were signed by M.H-B. On 3 December 2010, K.H signed the lease contract with ERO for Euro 4,768. On 3 December 2011, K.H.U signs the lease contract with ERO. They prove that all of these persons had actual knowledge that Land Parcel 5602 contained a large commercial building which generated a large rental allowance. Between 2005 and 2010 the ERO paid the rent into NLB Prishtina Account Number 1700100101998475, belonging to A.H. During those years, M. U. and M.H-B were listed as being persons operating the account. The bank statements for this account from December 27th, 2006 until December 20th, 2010 were found in N.U's apartment.

In 2005 rental income of Euro 13,381.20 was received into the account. In 2006 rental income of Euro 31,222.80 was received into the account. In 2007 rental income of Euro 41,630.40 was received into the account. In 2008 rental income of Euro 38,161.20 was received into the account. In 2009 rental income of Euro 52,066.56 was received into the account. In 2010 rental income of Euro 48,230.39 was received into the account. In 2011 and 2012 the rental payments were transferred to the bank accounts of K.H and K.H.U. Both were sole owners of these bank accounts. In 2011, K.H on NLB bank account number 1701003023432887 and in 2012, K.H.U on NLB bank account number 17000100000257794 received each a total of Euro 56,066.56 of rental income from the ERO. The bank statements of bank account 1701003023432887, belonging to K.H, were also found in N.U's apartment.

The total rent for the commercial building on Land Parcel 5602 received by the H./U. family between 2005 and 2012 comes to a total of Euro 336,825.67.

A new claim 2133/09 for Ownership of all of the content of Land Parcel 5602, the full 166m2, was made in the name of the then 85-year old A.H on September 7th, 2009. The claimant based her claim on the Decision of Judge S.M. of 2006. This application was made despite the fact that

on January 18th, 2005 A.H had already obtained a transfer of Land Parcel 5602 into her name from the Cadastral Office on the basis of the Municipal Court Decision of 2004. The claim states that the residential-commercial premises were built in accordance with the building permit.

The case was assigned to Judge N.H.. This claim was withdrawn on October 22nd, 2010. It was withdrawn on the grounds that the Decision 807/06 of the Municipal Court on July 26th, 2006 had finalized the matter.

The procedure for the transfer of ownership of a property requires that there be a contract for transfer (sale or gift) which is certified by the Municipal Court. When this is done, the certified contract must be submitted to the Municipal Cadastre Office to ground the change in legal ownership. This is done by way of a Decision of the Municipal Cadastre Office. This is the procedure that was followed by A.H in 2005, although in that instance it was an unlawful Municipal Court Decision that was submitted to the Cadastre Office.

On September 23rd, 2010, K.H and K.U signed a first contract of gift with their mother, Akjuna H., which was certified at the Municipal Court of Prishtina on September 24th, 2010. This was the first step in the procedure to transfer property to another person. In this contract Akjuna donated Land Parcel 5602 to her two daughters, K. and K.. The contract, at paragraph one, states that 'The gift donator is the sole and exclusive owner of the immovable property which is located in Pristina, Street H.M. No.1, registered in possession list no. UL-71814059-11117 CZ Prishtina as cadastral parcel 5602, house in surface of 97m2 and the yard in surface of 69m2, the total surface of 166m2.' At paragraph three, this contract states that 'both contracting parties have joint interests in this contract and they hand signed it personally based on free will under no influence of violence, fraud or aberration. 'This first Contract of Gift of September 23rd , 2010 is signed by K.H and K.U and is marked with the fingerprint of A.H. This document was lodged in the Municipal Court of Prishtina on September 24th, 2010. All parties signed this document swearing to the existence of a house and yard which they all knew, did not exist at the date of the Contract of Gift in 2010, because since 2005 their sister, M.H, on behalf of their mother A.H, had been renting out the four story commercial building on Land Parcel 5602. This is not to mention the fact that this large commercial building had been standing for five years on the site of their childhood home.

This document was submitted to the Cadastre Office of the Municipality of Prishtina by K.H on September 28th, 2010 to ground the change in legal ownership from A.H to K.H and K.U.

Based on Contract on Gift, the Municipal Cadastre Office issued a Decision on 6 October 2010 transferring the ownership of Land Parcel 5602 from A.H to K. and K..

On October 7th, 2010, approximately two weeks after the first contract of gift, K.H and K.U authorized M. U. to undertake all necessary actions related to renting the commercial building on Land Parcel 5602. This authorisation was certified by the Court on 8 October 2010. On October 25th, 2010, a contract was signed between K.H and K.H.U in which they agreed to rent the building on Land Parcel 5602 to the ERO; that the rent would be paid into K.H's bank account and that half of the rent would be paid by K.H to K.U every month. It is clear based on these facts, that K.H and K.U were fully aware that the commercial building on Land Parcel 5602, was

not a traditional old house and yard, as they had sworn in the first contract of gift two weeks earlier, but was a large commercial building.

On October 21st, 2010, K.H and K.U entered into a second contract of gift with their four other sisters, M.H, N.M, H.M. and I.C. This contract was certified by the Court on 21 October 2010. In this contract of gift, which is almost identical to the first contract of gift of September 23rd, 2010, the donators further divided the immovable property which ‘is located in Prishtina, Street H.M. No.1, registered in possession list no. UL-71814059-11117 CZ Pristina as cadastral parcel 5602, house in surface of 97m2 and the yard in surface of 69m2, the total surface of 166m2’. This contract therefore aimed to divide the property into six equal shares between each of the six H. sisters. At paragraph three, this contract states that the donators ‘consciously sign this contract and are aware of the consequences of this contract’ and that ‘both contracting parties have joint interests in this contract and they hand signed it personally based on free will under [no] influence of violence, fraud or aberration.’

This second Contract of Gift of October 21st, 2010 is signed by K.H, K.H.U, M.H-B, N.H.M, Hilmije H. Miftari and I.H.C. This document was lodged in the Municipal Court of Prishtina on October 21st, 2010. All parties signed this document swearing to the existence of a house and yard which they all knew did not exist at the date of the second Contract of Gift in 2010, because M.H-B had been involved in renting out the four story commercial building on Land Parcel 5602 to the ERO for the previous five years, and because K.H and K.U authorized M. U. on 7 October 2010 to undertake all necessary actions related to renting the commercial building on Land Parcel 5602. This is again not to mention the fact that this large commercial building had been standing for five years on the site of their childhood home.

The six sisters continue to remain unlawfully in possession and occupation of Land Parcel 5602, which rightfully belongs to the Municipality of Prishtina. In the contract of December 3rd, 2011, signed by the ERO and K.H.U, K. acted as the representative of the group of owners formed by Mirafete; Nazmie; Ibadete; K.; K. and Hilmije. N.U stated that the six H. sisters are the beneficiaries of the rental income of the commercial building on Land Parcel 5602.

Land Parcel 5602 is currently registered in the Cadastre Office of the Municipality of Prishtina as being owned by K.H, K.H.U, M.H-B, N.H.M, Hilmije H. Miftari and I.H.C. The certificate describes a house and yard and makes no reference to the fact that they were replaced in 2004/5 by a four-story commercial building. Thus, all (166m2) of the property on Land Parcel 5602 was granted to the H./U. family in an illegal manner and completely contrary to the law, common sense and the decision of the Supreme Court.

In December 2012, the commercial building on Land Parcel 5602 was rented to PBC Kosovo for a period of five years for a rental income of Euro 3,815 per month. In paragraph 2, the contract states that the rent is to be paid into the account of K.H, account no. 1300003006465036, BpB. The contract was signed by Muhamed U. and certified on 20 December 2012. By the 21st of March 2013, PBC had paid 7,630.00 Euros into the account. This account was frozen on 18 April 2013 based upon an order for Long-Term Attachment by the Pre-Trial Judge in Prizren.

All rental income received into A.H’s Account 1700100101998475 and into K.H’s Account

1300003006465036, BpB, and NLB Prishtina Account Number 17001003023432887 from the rent of the commercial building on Land Parcel 5602 to the H./ U. Family is evidence of, and a proceed of, the crimes described above. Without the unlawful judicial decisions, the fraudulent transfer of the 166m2 of Land Parcel 5602, the breach of the Construction Permit, and the construction of the illegal commercial building on Land Parcel 5602, this rental income could not have been received.

On 24 September 2010, A.H submitted a request for Legalisation of Building Premises to the Municipality of Prishtina, Directorate for Urban Planning, Construction and Environmental Protection. The request says that building commenced in 2003 and was completed in 2005. The request remained pending with the Municipality until March 2013. The Municipality of Prishtina received the request on 13 March 2013 and replied the same day. The Municipality confirmed that the legalization procedure had begun, but that a conclusion will be drawn after the process. However, on July 18th, 2013, the Municipality of Prishtina has, in reply to the query of the Prosecutor confirmed that this legalisation process is on hold. It is obvious that in this process N.U was also involved. The hiden listening device recorded him saying on 16 July 2013: “The request for legalization was done, for the permission for exceeding”.

E. Legal Reasoning

Statutory limitation

The legal concept of statutory limitation is widely recognized in the continental law system. It is important to understand jurisprudence on that matter, so the court makes reference to the following commentary that can still be applied in this case.
LJUBISA LAZAREVIC
COMMENTARY OF THE CRIMINAL CODE OF FRY 1995, 5TH EDITION "SAVREMENA ADMINISTRACIJA" BELGRADE
CHAPTER TEN
THE STATUTE OF LIMITATIONS

The idea on the statute of limitations as a basis for termination of jurisdiction for sentencing a perpetrator upon expiration of a fixed time period that comes after the criminal act was committed, or after the sentence was pronounced, is primarily based on the understanding that sentencing after the expiration of the fixed time period is no longer criminally or politically justified. Accomplishing the purpose of the sentence is possible only when the sentence was applied at the time when one could have expected positive effects on the perpetrator in the sense of his correction, i.e. his successful re-socialization. However, if a longer time period has passed since the criminal act was committed, or since the sentence was imposed, and in that time the sentence was not imposed or was not executed, this may indicate that in the specific case the application of the sentence became superfluous because the perpetrator was not committing criminal acts in the elapsed period, thus providing sufficient evidence that it is no longer necessary to use measures of repression against him with the aim of preventing him from committing criminal acts.

The purpose of the sentence, in all of its components, can only be accomplished if applied in a timely manner. If the institution of the statute of limitations were not adopted, the sentence would fail to accomplish its aim and thus it would become unjustified, and also the sentence would become a purpose in itself, and essentially this would be contradictory to the goals of every penal sanction, and especially to the purpose of the sentence, as perceived in contemporary theory of criminal law and as defined in Article 33.

There are also practical reasons for the existence of the statute of limitations on prosecution of criminal offences. After expiration of a fixed time period, especially a longer period of time, it is sometimes difficult or impossible to introduce evidence with the aim of identifying a criminal act, the perpetrator and his/her accountability. The institution of the statute of limitations reminds the bodies of prosecution of criminal offences and the bodies executing sentences of the need for disciplined and conscientious performance of their duties and tasks in the identification of criminal acts and for imposing adequate sentences upon perpetrators in order to prevent their future criminal activities.

The court and other bodies of prosecution for criminal offences and the bodies executing sentences must take the statute of limitations into account in their official capacities, in every phase of criminal proceedings, or of sentence execution. Neither the perpetrator of a criminal

act nor the convict can be denied the legal effect of the statute of limitations.
The statute of limitations on prosecution of criminal offences in its legal nature is an institution of procedural nature, therefore, in the case of the statute of limitations on prosecution of criminal offences, acquittal will not be adopted, but rather a judgment by which the charges are dismissed, i.e., the matter is to be solved formally and not on its merits.

The court is obliged to take into consideration statutory limitation at any stage of the proceedings. The legal grounds to reject the indictment are provided by in the Article 363 1.3 of the CPC that reads the following:" The court shall render a judgment rejecting the charge, if (…) the period of statutory limitation has expired".

According to Article 3 of the CCRK:

1. *The law in effect at the time a criminal offence was committed shall be applied to the perpetrator.*
2. *In the event of a change in the law applicable to a given case prior to a final decision, the law most favorable to the perpetrator shall apply.*

This provision had to be used since the Criminal Code of the Republic of Kosovo "came into a force on 1 January 2013.

Proper implementation of statutory limitation requires two elements to be established, firstly time when the criminal offence was committed, secondly when the act was undertaken for the purpose of criminal prosecution of the criminal offence committed.

The consolidated indictment dated 29 April 2014 brings the following charges committed on the specific date or within the specific time frame:

COUNT 1: Issuing Unlawful Judicial Decisions, in violation of Article 346 of the former CCK, currently penalized under Article 432 of the CCK 2013.
Because on **26 July 2006**, in Prishtina, Kosovo, **S.M.**, with the intent to obtain an unlawful material benefit for another person, namely A.H - and by extension the members of the H./U. family - and/or the intent to cause damage to another person, namely the Municipality of Prishtina, issued an unlawful decision, in which she granted permanent use of the yard of Land Parcel 5602 to A.H, in contradiction to the Law; in violation of the Revision of the Supreme Court of Kosovo and despite her having made a site visit where she observed the fact that the Land Parcel 5602 contained an illegally built large commercial building instead of an old house and yard.

COUNT 2: Abuse of Official Position or Authority, in violation of Article 339, paragraphs 1, 2 and 3, in conjunction with Article 23 of the former CCK, currently penalized under Article 422, paragraphs 1 and 6, in conjuction with Article 31 of the CCK 2013.
Because **between 22 February 2006 and 26 July 2006** in Prishtina, Kosovo, **N.U**, then President of the Municipal Court in Prishtina, **S.M.**, then Judge of the Municipal Court in Prishtina and **F.H**, then geodesy expert of the Municipal Cadastre in Prishtina, all official persons who, in co-perpetration, with the intent to obtain an unlawful material benefit for A.H - and by extension the H./U. family- and/or with the intent to cause damage to another person or business organisation, namely the Municipality of Prishtina, abused their official positions and exceeded the limits of their authority, to the effect that N.U assigned the relevant case to S.M., in violation of the common case allocation procedure and in violation of all legal principles of unpartiallity and to the effect that S.M. as Judge of the Municipal Court of Prishtina on July

26th, 2006 unlawfully granted ownership and use of all of Land Parcel 5602 to A.H, thus causing damage to the Municipality of Prishtina and to the effect that F.H abused his official position by hiding the real factual situation in his official reports as a geodesy expert, thus enabling Judge S.M. to issue her illegal decision.

COUNT 3: Legalisation of False Content, in co-perpetration, in violation of Article 334, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 403, paragraph 1, in conjunction with Article 31 of of the CCK 2013.
Because **between 23 September 2010 and 6 October 2010**, in Prishtina, Kosovo, **K.H** and **K.U,** in co-perpetration**,** used a document with a false content, namely a certified contract on gift (*the first contract on gift*) between themselves and A.H, to mislead competent authorities, namely the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, into certifying an untrue matter (namely that K.H and K.U become co-owners of **a house and yard** on Land Parcel 5602) which was designed to serve as evidence of a legal matter in a public document, register or book, that is in the Decision of the Cadastre Office of the Municipality of Prishtina of 6 October 2010 to grant a change in legal ownership of Land Parcel 5602. The documents were misleading and untrue because the defendants swore that a house and yard existed on Land Parcel 5602 in 2010, when in fact the house had been demolished in 2003/2004 and a large commercial building had been illegally built in 2004/2005 on the whole parcel, including on the no-longer existing yard.

COUNT 4: Legalisation of False Content, in co-perpetration, in violation of Article 334, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 403, paragraph 1, in conjunction with Article 31 of of the CCK 2013.
Because between **21 September 2010 and 8 November 2010**, in Prishtina, Kosovo, **K.H, K.U, M.H-Bislimi, N.M, H.M. and I.C**, in co-perpetration, used a document with a false content, namely a certified contract on gift (*the second contract on gift*), between K.H and K.U on one side and M.H, N.M, H.M. and I.C on the other side, to mislead competent authorities, namely the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, into certifying an untrue matter (namely that K.H, K.U, M.H, N.M, H.M. and I.C become co-owners of **a house and yard** on Land Parcel 5602) which was designed to serve as evidence of a legal matter in a public document, register or book, that is in the Decision of the Cadastre Office of the Municipality of Prishtina of 8 November 2010, to grant a change in legal ownership of Land Parcel 5602. The documents were misleading and untrue because the signatories swore that a house and yard existed on the Land Parcel in 2010, when in fact the house had been demolished in 2003/2004 and a large commercial building had been illegally built in 2004/2005 on the whole parcel, including on the no-longer existing yard.

COUNT 5: **Fraud, in co-perpetration, in violation of Article 261, paragraph 2, in connection with paragraph 1, and in conjunction with Article 23 of the former CCK, currently penalized under Article 335, paragraph 2, in connection with paragraph 1, and in conjuction with Article 31 of the CCK 2013.**
Because between **22 February 2006 and 22 September 2006** in Prishtina, Kosovo, **N.U**, **F.H** and **S.M.**, in co-perpetration, with the intent to obtain a material benefit for A.H - and by extension the H./ U. family - acted together to deceive another person, namely the Municipality of Prishtina and/or to keep the Municipality of Prishtina in deception, by means of false representations and/or by concealing facts as to the unlawful construction by the H./U. family of a large commercial building on Land Parcel 5602 in place of an old house and yard, and thereby induced the Municipality of Prishtina to do an act to the detriment of his property, namely, loss of title to the property which is damage of over 15,000.00 Euros to the Municipality of Prishtina. The false representation and/or concealment of facts consisted in i) **N.U** allocating the case to S.M. and making sure she would rule in favour of his mother-in-law ii) **Fehmhi H.** issuing a false Geodesy report that did not reflect the actual situation and iii) **S.M.** issuing an illegal decision in which she granted permanent use of the yard of Land Parcel 5602.

COUNT 6: **Fraud, in co-perpetration, in violation of Article 261, paragraph 2, in connection with paragraph 1, and in conjunction with Article 23 of the former CCK, currently penalized under Article 335, paragraph 2, in connection with paragraph 1, and in conjuction with Article 31 of the CCK 2013.**
Because between **23 September 2010 and 6 October 2010**, in Prishtina, Kosovo, **K.H** and **K.U**, in co-perpetration, with the intent to obtain a material benefit for themselves, namely the co-ownership of Land Parcel 5602, deceived another person, the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, by means of false representations contained in a certified contract of gift (*first contract on gift*) and thereby induced the Cadastre Office of the Municipality of Prishtina to do an act to the detriment of the Municipality of Prishtina in a sum of over 15,000 Euro, namely to grant a change in legal ownership of Land Parcel 5602. The deception involved each of the defendants falsely representing that they became co-owners of **a house and a yard** and by concealing that this house had been demolished in 2003/2004 and that a large commercial building had been illegally built in 2004 on the whole parcel, also covering the yard.

COUNT 7: **Fraud, in co-perpetration, in violation of Article 261, paragraph 2, in connection with paragraph 1, and in conjunction with Article 23 of the former CCK, currently penalized under Art 335, paragraph 2, in connection with paragraph 1 and in conjuction with Article 31 of the CCK 2013.**
Because between **21 September 2010 and 8 November 2010**, in Prishtina, Kosovo, **K.H, K.U, M.H, N.M, H.M. and I.C**, in co-perpetration, with the intent to obtain a material benefit for themselves, namely the co-ownership of Land Parcel 5602, deceived another person, the Municipal Court of Prishtina and the Cadastre Office of the Municipality of Prishtina, by means of false representations contained in a certified contract of gift and thereby induced the Municipal Court of Prishtina to do an act to the detriment of the Municipality of Prishtina in a sum of over 15,000 Euro, namely to grant a change in legal ownership of Land Parcel 5602. The deception involved each of the defendants falsely representing that they became co-owners of **a house and a yard** and by concealing that this house had been demolished in 2003/2004 and that a large commercial building had been illegally built in 2004 on the whole parcel, also covering the yard.

COUNT 8: Unlawful Occupation of Real Property, in co-perpetration, in violation of Article 259 paragraph 1, and in conjuction with Article 23 of the former CCK, currently penalized under Article 332, paragraph 1, in conjunction with Article 31, of the CCK 2013.
Because betweenn **6 October 2010 and 8 November 2012 K.H** and **K.U**, in co-perpetration, unlawfully occupied the real property, namely Land Parcel 5602, or a part thereof, of another person, namely the Municipality of Prishtina.

COUNT 9: Unlawful Occupation of Real Property, in co-perpetration, in violation of Article 259 paragraph 1, and in conjuction with Article 23 of the former CCK, currently penalized under Article 332, paragraph 1, in conjunction with Article 31, of the CCK 2013.
Because betweenn 8 November 2012 and 31 December 2012 **K.H, K.U, M.H, N.M, H.M.** and **I.C**, in co-perpetration, unlawfully occupied the real property, namely Land Parcel 5602, or a part thereof, of another person, namely the Municipality of Prishtina.

COUNT 10: Unlawful Occupation of Real Property, in co-perpatration, in violation of Article 332, paragraph 1, in conjunction with Article 31, of the CCK 2013.
Because **from 1 January 2013 and continuing to the present date**, **K.H, K.U, M.H, N.M, H.M.** and **I.C**, in co-perpetration, unlawfully occupied and continue to occupy the real property, namely Land Parcel 5602, or a part thereof, of another person, namely the Municipality of Prishtina.

COUNT 11: Organized Crime, in violation of Article 274, paragraphs 1 and 2, of the former CCK, currently penalized under Article 283, paragraph 1, of the CCK 2013.
Because between **1 January 2004 and 31 December 2012**, in Prishtina, Kosovo, or elsewhere in Kosovo, all the defendants committed serious crimes and/or participated in the activities of an organized criminal group consisting of **N.U, S.M., F.H, K.H, K.U, M.H, N.M, H.M.** and **I.C**, who formed an organised structured criminal group, each with their own specific roles, acting in concert to defraud the Municipality of Prishtina of its property (166m2 or 94m2 of Land Parcel 5602) and acquire lucrative rental income from an office building illegally built on Land Parcel 5602, by committing one or more serious crimes, namely the criminal offenses listed under Counts 1 through 7 above, and the other criminal offenses as mentioned under Counts 8, 9 and 10.

COUNT 12: Organized Crime, in violation of Article 274, paragraph 3, of the former CCK, currently penalized under Article 283, paragraph 2, of the CCK 2013.
Because between **1 January 2004 and 31 December 2012**, in Prishtina, Kosovo, or elsewhere in Kosovo, **N.U** organized, supervised and directed the activities of the criminal group consisting of him and the other eight defendants, in that he organized, supervised and directed the specific roles played by each of the defendants in defrauding the Municipality of Pristina of its property (166m2 or 94m2 of Land Parcel 5602). N.U was the organizer and supervisor of the illegal building; he allocated the cases concerning Land Parcel 5602 to S.M. and made sure she would rule in favour of his family-in-law; he further organized that the six daughters of M. and A.H applied for certification and transfer of ownership of Land Parcel 5602, using the decision of Judge M. and other fraudulent documents and profited from the rental income of their unlawful actions, and finally N.U organized and directed the defense of all defendants and tried (and continues to try) to secure the property for his extended family.

On **10 October 2012** the Prosecution issued a Ruling on Initiation of Investigation against **F.H**. The investigation was expanded on **29 November 2012** against **Saije M., N.U and N.K.** The investigation was further expanded on **30 May 2013** against **M.H, K.H, K.U, H.M., N.M and I.C ("the H. sisters").** The investigation was expanded on 9 October 2013 and 22 November 2013 against K.U, G.G, R.P., H.J, H.A and H.P. On 23 December 2013, part of the case was severed. On 8 January 2014, the investigation against K.U, G.G and N.K was terminated.

The periods of statutory limitations are regulated in the Article 106 of the Criminal Code of the Republic of Kosovo and Article 90 of the Criminal Code of Kosovo.

Count	Former Criminal Code (Provisional CCK)	New Criminal Code (New CCK)	Statutory Limitation (Provisional CCK)	Statutory Limitation (New CCK)	RoII
1) ***Issuing Unlawful Judicial Decisions***	Article 346 --------------- Imprisonment of six (6)	Article 432 ------------------- Fine and imprisonment of	Article 90 (4) After five (5) years	Article 106 (1.4) After five (5) years	

	months to five (5) years	six (6) months to five (5) years	***Article 91 (6)*** ***2x 5 years /absolute bar***	**Article 107 (8)** ***2x 5 years /absolute bar***	
2) ***Abuse of Official Position or Authority***	Article 339 (1-3) in conjunction with Article 23 ---------------- Imprisonment of up to one (1) year /(1) Of up to three (3) years /(2) Imprisonment of one (1) to eight (8) years /(3)	Article 422 (1) and 6 in conjunction with Article 31 ----------------------- Imprisonment of six (6) months to five (5) years /(1)	1) Article 90 (6) After two (2) years 2) Article 90 (5) After three (3) years 3) Article 90 (3) After ten (10) years	1)Article 106 (1.4) After five (5) years	
3) ***Legalization of False Content***	Article 334 (1) in conjunction with Article 23 ---------------- Imprisonment of three (3) months to five (5) years	Article 403 (1) in conjunction with Article 31 --------------------- Imprisonment of three (3) months to five (5) years	Article 90 (4) After five (5) years	Article 106 (1.4) After five (5) years	
4) ***Fraud***	Article 261 (2) in connection with (1) and in conjunction with Article 23 ---------------- Fine or imprisonment of up to three (3) years /(1)	Article 335 (2) in connection with (1) and in conjunction with Article 31 --------------------- Fine and imprisonment of three (3) months to three	1)Article 90 (5) After three (3) years 2) Article 90 (4) After five (5) years	1)Article 106 (1.5) After three (3) years 2) Article 106 (1.4) After five (5) years	

	Imprisonment of six (6) months to five (5) years /(2)	(3) years/ (1) Fine and imprisonment of six (6) months to five (5) years /(2)			
5) ***Unlawful Occupation of Real Property***	Article 259 (1) in conjunction with Article 23 ----------------- Fine or imprisonment of up to one (1) year	Article 332 (1) in conjunction with Article 31 --------------------- Fine or imprisonment of up to two (2) years	Article 90 (6) After two (2) years	Article 106 (1.5) After three (3) years	
6) ***Organized Crime***	Article 274 (1-3) ----------------- Imprisonment of at least seven (7) years /(1) Of at least five (5) years /(2) Fine of up to 500,00 euro and imprisonment of seven (7) to twenty (20) years /(3)	Article 283 (1-2) --------------------- Fine of up to two hundred fifty thousand (250,000) EUR and imprisonment of at least seven (7) years /(1) Fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years/ (2)	1)Article 90 (3) After ten (10) years 2)Article 90 (4) After five (5) years 3)Article 90 (2) After fifteen (15) years	1)Article 106 (1.3) After ten (10) years 2)Article 106 (1.2) After twenty (20) years	

Criminal offence ***Issuing Unlawful Judicial Decisions*** as described in count 1 was committed on 26 July 2006, in Prishtina, Kosovo by S.M.. Both a new criminal code as well as the old one provides 5 years of statutory limitation that starts on 26 July 2006 and ends up on 26 July 2011. The ruling on initiation of investigation was issued on 29 November 2012, so after statutory limitation period elapsed.

Criminal offence ***Abuse of Official Position or Authority*** as described in count 2 was committed between 22 February 2006 and 26 July 2006 in Prishtina, Kosovo by N.U, S.M. and F.H. The new criminal code is more favorable to the defendants as it envisages the punishment of 6 months to 5 years, whereas the old criminal code provided in Article 339 par.3 the punishment of 1 to 8 years. As the consequence, the shorter statutory limitation period of 5 years as per Article 106 1.4 of the CCRK was implemented. Statutory limitation starts on the last day of commission of criminal act, namely on 26 July 2006 and ends up on 26 July 2011. The ruling on initiation of investigation was issued in the case of these defendants on 29 November 2012, so after statutory limitation period elapsed.

And finally, criminal offence of ***Fraud*** as described in count 5 was committed 22 February 2006 and 22 September 2006 in Prishtina, Kosovo by N.U, F.H and S.M.. Both criminal codes envisage the punishment of 6 months to 5 years and the same period of statutory limitation of 5 years. Statutory limitation starts on the last day of commission of criminal act, namely on 22 September 2006 and ends up on 22 September 2011. The ruling on initiation of investigation was issued in the case of these defendants on 29 November 2012, so after statutory limitation period elapsed.

In case of the three abovementioned criminal offences, this panel was obliged to use the provision of Article 363 1.3 of the CPC and reject these charges.

The panel came to the conclusion that provision of Article 107.6 of CCRK that reads as follows:" *The period of statutory limitation is also interrupted if the perpetrator commits another criminal offence of equal or greater gravity than the previous criminal offence prior to the expiry of the period of statutory limitation*". This legal concept was also recognized in the previous code of criminal procedure as well as in the code of criminal procedure of Yugoslavia. The reference to the commentary on the relevant article has to be done.

ARTICLE 96 LJUBISA LAZAREVIC COMMENTARY OF THE CRIMINAL CODE OF FRY,1995, 5TH EDITION, "SAVREMENA ADMINISTRACIJA" BELGRADE:

"*The suspension and recess of the statute of limitations is effective regardless of the will of the perpetrator of the criminal act, so that the perpetrator cannot renounce the statute of limitations that is in place. The statute of limitations is* ***not at the disposition of the perpetrator of the criminal act****. Therefore,* ***the court and the public prosecutor shall, in official capacity, establish whether the statute of limitations on criminal prosecution has become effective and accordingly reach a decision***."

As far a commission of other criminal offence is concerned the commentary indisputably notes:' *The statute of limitation is recessed also when the perpetrator within the time period commits the same or a more serious criminal act. A typical case is the one that was discussed, on which the Supreme Court of Croatia has expressed an opinion, in judgment Kz. 2108/ 62. The issue is that the accused had, in 1954, fabricated a diploma showing completion of technical school, and he had used it several times until November 1959, for the purpose of employment in different companies and people's committees. The perpetrator continued to use resolutely this*

identification document and he continued to use it for different purposes, and in relation with different individuals and for an ambiguous period of time. Thus, with every such use of the identification document he was committing a new criminal act of false documentation usage and these new acts would be perceived as belonging to realistic concurrence, except in some individual cases, when conditions would have to be met, when such act could be perceived as an extended criminal act. According to this, with each further usage of identification document the accused was committing a new criminal act, due to which the execution of each new act caused the recess of the statute of limitations on criminal prosecution for the prior act, and the final consequence is that the statute of limitations on criminal prosecution that would refer to the entire criminal activity which the accused committed cannot enter into force .

Since the recess occurs in personam, the recess of the statute of limitations comes in effect separately for each accomplice in the criminal act if during the statute of limitations he commits the same or more serious criminal act.

Comparison of the criminal acts regarding their seriousness is carried out on the basis of penalties determined by the law for the act for which the statute of limitation is in effect and for a new criminal act, committed while the statute of limitations was in affect. An act for which the law provides a heavier type of penalty is considered more serious (death penalty, jail term, monetary penalty) or a higher minimum jail term penalty or a higher maximum jail term penalty along with the same minimum jail term penalty. Currently the criminal law determines a fine for specific criminal acts, but does not determine a specific minimum or maximum, but if the law in some case prescribes the amount of the fine, for such a penalty the same provision would apply which was earlier mentioned for the jail term'

Organized crime

After the review of the commentary and after critical analysis of the elements of criminal offence of organized crime, as it is described in the old criminal code in Article 274 and in the new criminal code in Article 283, this panel came to the conclusion that Article 107.6 of the CCRK cannot be applied in this case as it was not proven that such criminal offences of organized crime were committed.

The criminal offence of organized crime was defined in Article 274(1) PCCK as follows: "whoever commits a serious crime as part of organized criminal group shall be punished by a fine of up to 250.000 Euro and by imprisonment of at least 7 (seven) years". The elements of the criminal offence of organized crime require the proof of the commission of the serious crime, that it was committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit.

The elements of each criminal offence are unique and when assessing them, it is imperative to check whether the established facts are sufficient to come to the conclusion that all constituent elements of the criminal offence of organized crime are present, including the mens rea. As per the indictment, the defendants were charged with organized crime according to article 274 par 1 and 2, additionally N.U was charged with Article 274 par.3 PCCK[4], but the criminal offence was

[4] Article 274 PCCK reads as follows: (1) Whoever commits a serious crime as part of an organized criminal group

subject to some changes in the new criminal code of the Republic of Kosovo, in force as of 1 January 2013, and now the criminal offence is set in article 283 CCRK[5] . The main differences between the two versions are related to the structure and legislative technique used in the description of the criminal offence[6] , as well as to the more demanding mens rea mentioned now

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shall be punished by a fine of up to 250.000 EUR and by imprisonment of at least seven years. (2) Whoever actively participates in the criminal or other activities of an organized criminal group, knowing that his or her participation will contribute to the commission of serious crimes by the organized criminal group, shall be punished by imprisonment of at least five years. (3) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years. (4) Whoever commits the offence provided for in paragraph 2 of the present article shall be punished by a fine of up to 500.000 EUR and by imprisonment of at least ten years or by long-term imprisonment if the activities of the organized criminal group result in death. (5) The court may waive the punishment of a perpetrator who commits the offence provided for in paragraph 2 or 3 of the present article if, before the group has committed a crime, such person reports to the police or public prosecutor the existence, formation and information of the organized criminal group in detail to allow the police to arrest or the prosecutor to prosecute the group. (6) Whoever is punished by the accessory punishment provided for in Article 57 of the resent Code for the commission of a criminal offence provided for in the present Article and violates the terms of such accessory punishment shall be punished by imprisonment of up to one year. (7) For the purposes of the present article: 1) The term “organized crime” means a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit. 2) The term “organized criminal group” means a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit. 3) The term "serious crime" means an offence punishable by imprisonment of at least four years. 4) The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

[5] Article 283 CCRK reads as follows: (1) Whoever, with the intent and with knowledge of either the aim and general activity of the organized criminal group or its intention to commit one or more criminal offenses which are punishable by imprisonment of at least four (4) years, actively takes part in the group’s criminal activities knowing that such participation will contribute to the achievement of the group’s criminal activities, shall be punished by a fine of up to two hundred fifty thousand (250,000) EUR and imprisonment of at least seven (7) years. (2) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years. (3) When the activities of the organized criminal group provided for in paragraph 1 or 2 of this Article result in death, the perpetrator shall be punished by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years or life-long imprisonment. (4) The court may reduce the punishment of a member of an organized criminal group who, before the organized criminal group has committed a criminal offense reports to the police or prosecutor the existence, formation and information of the organized criminal group in sufficient detail to allow the arrest or the prosecution of such group. (5) For the purposes of Article, “actively takes part” includes, but is not limited to, the provision of information or material means, the recruitment of new members and all forms of financing of the group’s activities.

[6] Hence, the former paragraph 7, related to definitions, has disappeared, as now in the CCRK, the previous paragraph 7.1 (that was a kind of a summary of the elements constituent of the criminal offence) has no correspondence in the new article, in the previous paragraph 7.2 the term “structured group” was replaced by “structured association” now defined in article 120, paragraph 14, CCRK, the previous definition of “serious crime” contained in the previous paragraph 7.3 is now included in the1st paragraph of the article 283 CCRK. In relation to the previous paragraph 7.4 the term “group” is now defined autonomously as “group of people” in article 120, paragraph 12, CCRK as “three or more persons”, it is no longer defined in the criminal offence, as the previous term “structured group” is equivalent to the current definition of “structured association”, meaning that it is one that is not randomly formed for the immediate commission of a criminal offence, but it does not need to have formally defined roles for its members, continuity of its membership, or a developed structure. Other difference has got to do with the reunion of “committing” (previous paragraph 1) with “actively taking part” (previous paragraph 2), as previously these criminal actions were described in different paragraphs without a logic reason for such, as both actions are still within the concept of commission. However, the punishment that was foreseen in paragraph 2 for “actively taking part” (instead of “committing”) was more lenient, as the minimum term of imprisonment was 5 years, therefore most

in article 283(1) CCRK, as now the legislator clarified that the perpetrator must act "with the intent and the knowledge of either the aim and general activity of the organized criminal group or its intention to commit one or more criminal offences which are punishable by imprisonment".

However, in both versions, there is no room for doubt on the need of a direct intent, as eventual does not suffice (it is not compatible with the structure and nature of the criminal offence) to commit this criminal offence. As defined in articles 14(2) and (3) PCCK and 21 (2) and (3) CCRK, "*a person acts with direct intent when he or she is aware of his or her act and desires the commission*" and "*a person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence*", respectively.

In order to analyse the elements of the criminal offence of organized crime, this panel first turns to the issue of committing **an underlying criminal offence** as a requirement of the criminal offence of organized crime. The Supreme Court of Kosovo in its previous decisions stressed that the criminal offence of organized crime requires the commission of an underlying offence, in addition to the criminal offence of organized crime itself. [7]

In relation to N.U, two serious underlying offences were alleged namely abuse of official position or authority as per count 2, and fraud as per count 5.
Judge S.M. was charged with three serious criminal offences of issuing unlawful judicial decision as per count 1, abuse of official position or authority as per count 2 and fraud as pre count 5. F.H was charged with two serious criminal offences of abuse of official position and fraud.

Statutory limitation constitutes an absolute bar on prosecution of the criminal offences and as the consequence of elapse of time, the only procedural solution envisaged by Article 363 1.3 of the CPC was to reject the counts 1,2 and 5 of the indictment as filed belated. In such legal circumstances, the court was now even allowed to make any factual findings as to if these criminal offences were even committed. The commission of an underlying criminal offence was a prerequisite for commission of the criminal offence of organized crime, so if this essential element was missing due to bar on prosecution, this panel was left with no other option but to acquit N.U, S.M. and F.H of criminal offence of organized crime as per Article 274 par.1.

This panel is of the opinion that prosecution had sufficient opportunities to issue decision to

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favourable, as now such limit is 7 years. The previous paragraph 3 ("whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years") corresponds to an aggravating circumstance now foreseen in paragraph 2, with the same fine but with a higher minimum of imprisonment, as now it is 10 years and therefore it is not more favourable. Former paragraph 4 corresponds now to paragraph 3, the new version correctly makes reference to the 2 forms of perpetration that were previously mentioned in paragraphs 1 and 2, as before the aggravating circumstance mentioned only paragraph 2, not 1, which was not understandable. Apart from this, the minimum of imprisonment foreseen nowadays is higher, as it is 10 years of imprisonment. Current paragraph 4 corresponds to previous paragraph 3 and is not more favourable as well, as now the court may only reduce the punishment whereas before might waive it. Finally, there is no equivalent to previous paragraph 6 and nowadays paragraph 5 is the definition of the expression "actively takes part".

[7] See Supreme Court, Judgment No. Ap-KZ 61/2012 dated 2 October 2012, paragraph 48; Supreme Court, Judgment No. PAKR 2015/2014, dated 14 May 2015.

initiate the investigation against these three defendants much earlier than 10 October 2012 as it happened in case of F.H, and 29 November 2012 as it happened in case of N.U and S.M. avoiding to meet the deadline of statutory limitation. The investigation (investigation in rem) was commenced with a letter of entrustment dated 16 April 2010, further expanded on 29 October 2010, whereas the decisions to initiate investigation against specific defendants (investigation ad personam) were issued on 10 October 2012 at the latest. The delay of 2 years and 6 months cannot substantiated by any procedural, time consuming action that has to be undertaken in order to bring charges against the defendants.

This panel considered also legal provision of Article 107 5. of CCRK that reads as follows;" *The period of statutory limitation is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offense committed*". It is claimed that so-called letters of entrustment was such an act that interrupted the period of statutory limitation. This panel was of different opinion and again while scrutinizing that legal matter, analysis based on the commentary on Jugoslav criminal procedure law was considered. [8] In the former code of criminal procedure, the form of letter of entrustment is not known, but a criminal report and the ruling to initiate the investigation.

The role of N.U was depicted in the indictment as the head of organized criminal group, the one and the only one who organized, supervised and directed its activities. It was pointed out that as a prominent lawyer with direct legal experience who had many underhand dealings he was able to direct the criminal ring consists of his subordinate judge S.M., expert witness cooperating with the courts in providing opinions F.H and on top of it his wife and his sisters-in –law. It is submitted by prosecution that it was a structured group headed and orchestrated by N.U who had

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[8] ARTICLE 96 LJUBISA LAZAREVIC COMMENTARY OF THE CRIMINAL CODE OF FRY 1995, 5TH EDITION "SAVREMENA ADMINISTRACIJA" BELGRADE

Procedural action is a foundation for the recess of the statute of limitations:

If it is undertaken by the responsible state body or a person (natural or legal) authorized to undertake all or some of the procedural actions; If it is undertaken with the aim of criminal prosecution of a certain person for a certain (concrete) criminal act.

Every action, if it has the character of a procedural action, and if it is undertaken by the person who is authorized to undertake procedural actions causes recess of the statute of limitations. In accordance with the aforementioned, in order for the recess of the statute of limitations to enter into force it should only be established whether the action undertaken has a character of a procedural action and whether it was undertaken by an authorized body of criminal prosecution or by the person who is authorized to undertake procedural actions in the complete case. Therefore it is necessary to determine the term of procedural action in accordance with the principles and provisions of our criminal procedural law. The Law on Criminal Proceedings does not define the term of criminal action, but in the theory of criminal procedural law it is implied that the procedural action is the activity of procedural subjects, either obliged or authorized to undertake the activity, which was performed in the course of the procedure, and which immediately influences the beginning, course and the ending of the procedural relation. Procedural action may be undertaken only by procedural subject, and the procedural action may be executed only in the course of the procedure or with the aim of initiating the procedure, and this action must have an immediate influence upon the procedural relation. Depending on the presented characteristics of the procedural action, there are actions which are undertaken by a procedural subject in the course of the procedural relation but which do not have feature of procedural action (for example, file analysis which is undertaken by the public prosecutor in order to file motions). Similarly, those actions undertaken in the procedure or as a result of the procedure by the persons who are not in the position of a procedural subject are also not considered procedural actions (for example, deposition of the witnesses and expert witnesses; claim of the injured party; granting approval for criminal prosecution by the authorized person; filing charges by the state body, company or other organizations, as well as citizens on the committed criminal act).

always played a decisive role. It is clear that his role was never formally defined, but without him as a leader, S.M. and F.H as his devoted associates, the activities of the H. sisters could never be considered as an organized group, firstly because of absence of the leader who committed serious crime because in fact crimes he committed were subject to statutory limitation, and secondly due to lack of intent to commit an organized crime.

There are basic differences between modes of liability, namely intent and negligence. The law is clear in defining these concepts. The intent is defined as follows: "*1. A criminal offense may be committed with direct or eventual intent. 2. A person acts with direct intent when he or she is aware of his or her act and desires its commission. 3. A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence.* Having these notions in mind, this panel asserted that the criminal offence of organized crime had to be committed only with **a direct intent**, this is why the law uses the term" with the intent and with knowledge of either the aim or general activity of the organized criminal group or its intention to commit one or more criminal offences which are punishable by imprisonment of at least 4 years".

This panel shares the opinion presented and supported by numerous evidence of the prosecutor that N.U was a mastermind of this undertaking who planned, organized and implement it using his legal knowledge, important position he held at time and relations with Judge S.M. and expert F.H., however it was not proven that such a criminal organization ever existed.

This panel asserts that no single, credible evidence was presented supporting direct intent of neither the H. sisters nor S.M. and F.H. to engage in the criminal offence of organized crime. The mental element of organized crime requires proving that defendants actively took part in the group's criminal activities knowing that such participation will contribute to the achievement of the group's criminal activities. Specifically, in the present case, it was necessary to prove that the H. sisters, S.M. F.H. and were at least aware of existence of such group and its aims.

One important factor should be considered in the context of the legal notion of organized group namely what the aim of such criminal activities was. In this particular case, the aim of the H. sisters was to acquire the property of a land where the apartment where the apartment, belonging to the H. family from 1986, was located. No matter what sort of doubts were raised by the prosecution during the main trial as to location of exchanged properties, it was undisputed that L.R lived in the old house near the mosque and the national museum on the road to Germia from 1979 to 1986 when the act of exchange took place. The aim of the H. sisters was to properly safeguard the best financial interests of this family and finally legitimatize it as valuable property assets that were in the possession of this family from 1986. A common-sense approach to a problem is that a family tries to protect material means to become and remain prosperous using the assets that are in the possession of thereof. The H. family did not organize a criminal ring to appropriate property of other people, but to legitimize the legal status of this property, but unfortunately illegal means were used to achieve this plan, but an organized criminal group was not established, at least it was not proven by the prosecution. There is neither material nor circumstantial evidence whatsoever that in this case structured group existed between 1 January 2004 and 31 December 2012. The prosecution failed to explain why these particular dated were considered as the time frame for existence of the alleged organized criminal group. Prosecutor

was obliged to present evidence in favor of the motion that such group in fact existed. Regrettably, supposition and assumptions were presented based on the position of N.U as an influential lawyer who used to hold the post of the President of Basic Court of Pristina. No single piece of material evidence or even circumstantial was presented, to prove that he organized, established, supervised, managed or directed the activities of the criminal group between 1 January 2004 and 31 December 2012. Indeed, N.U is a husband of K.U and brother-in –law of her sisters and one take it for granted that as a lawyer with a professional experience, he instructed her wife and her sisters as to the legal steps that has to be taken in order to appropriate the disputed property, but the panel, based solely on that fact, could not infer an unbiased conclusion that N.U organized and managed a criminal group composed of six ladies married with children who run a stable life. This panel also took into consideration evidence and arguments presented in the consolidated indictment in paragraphs starting from 154 to 210. This panel is of the opinion that although these pieces of evidence are objective they point out the criminal responsibility of N.U with respect to criminal counts 2 and 5 that reached statutory limitation. N.U is depicted as a one-man band that undertook, supervised and implemented all decisions regarding the disputed property by him and in fact did not need anyone as the organized group member to assist him. He abused his position and influence using certain useful persons like S.M. and F.H only as his obedient tools rather than partners in crime. So even from that point of view, the requirements of criminal offence of organized crime were not fulfilled as there were no three or more people formed for the immediate commission of an offence.

It didn't escape the attention of this panel that in fact N.U during the course of this legal dispute over the property, he abused official position or authority and committed the criminal offence of fraud to the detriment of Municipality of Pristina, but as explained above these criminal offences reached statutory limitation that means N.U cannot be prosecuted and found guilty based on these allegations.

Legalization of False Content and Fraud.

A reference has to be made to current commentary on CCRK that reads the following (Article 403):

1. The first form of this criminal offense is committed by the person who, by deceiving a certain competent authority, legalizes in a public document, register (minutes) or book, something that will serve as evidence in legal communication. So the object of the criminal offense is: a public document, register (minutes) or book. Therefore this criminal offense will not exist if the action of commission is taken in a private document.

2. The public document means, in the meaning of this incrimination, a document in the form of a certificate, certificate or receipt with which the competent body proves the existence or non-existence of certain facts. This indicates that the subject of this criminal offense does not include public documents that have the character of rulings and decisions, which a competent authority issues in accordance with the applicable procedure and on the basis of the evaluation of the evidence. The register (minutes) and book must be public, or serve in public communication entities, which means that the data and the facts stated in them have evidentiary power, same as a public document (on the phrase public books, see the commentary on Article 398 of the CCK).

3. Deception is usually effected through fraud, but also any other act which deceives a person. Fraud means every representation through a trick, premeditation, knowingly if something untrue, in order to deceive on the existence of a relevant legal fact.

4. The action of the commission lies in pushing a competent authority to legalize untrue content, which means deceiving that competent authority ***with regard to the accuracy of the facts confirmed by that body****. The offender creates, intentionally and knowingly, on the competent body, i.e. the person who is authorized to certify, on behalf of the competent authority, a public document, register (minutes) or book, a wrong image on the existence or non-existence of relevant legal facts.*

5. Deception can be carried out in various ways, e.g. ***by emphasizing facts that do not exist at all, denying facts that actually exist, changing their meaning and content, keeping silent about facts or data etc., and in this case it is irrelevant whether the statement through which a passive subject is deceived, is given orally or in writing.***

6. For the deception of a competent body to be an element of this criminal offense, it must have been carried out with regard to a public document, register or book legalized with untrue data or content, that serves as evidence in legal communication. It is considered that for this criminal offense to exist, the intent of the perpetrator with regard to that document, register or book is not necessary.

7. For the criminal offense to exist, it is necessary that the competent authority is made, by deception, to legalize untrue content, i.e. there must be a causal connection between deception and legalization of untrue content. Legalization shall only mean the actions of public official legalizing or official legalization of the accuracy of a circumstance that will serve as evidence in legal communication, based on data contained in the declaration of a certain person. The competent body legalizes in such a document, book or register (minutes) the accuracy of facts and data on the basis of a perpetrator's oral or written statement. There is no criminal offense if the competent authority does not enter as real, directly on the public document, book or register (minutes), the data it has received from a party, but, for example, takes its decision on the basis of such data without applying any procedure.

8. A competent authority carries out the legalization of an untrue situation in a public document, register (minutes) or book, on the basis of the statement of another person, in this case the perpetrator of this criminal offense. Therefore, there would be no such criminal offense if the competent authority has not legalized the content of an untrue piece of information received from a party, but it has considered the untrue piece of information submitted by the party, while being deceived, as true and, as such, has used it when rendering a decision with regard to a request of the parties.

9. The facts may relate to actual circumstances (e.g. the fact of a marriage contract, etc.), but may also relate to a person, most commonly with regard to his or her identity (when certifying the identity, the person is not the real one), and the offense is committed only in relation to what is legalized. Thus, for example, if the legalization performed concerns a signature of a person in

a document, the legalization only certifies that the document was provided by that person, but not that the statement given by that person in that document is true.

10. Essence of this criminal offense is constituted by the fact that the competent body acts while being deceived by an offender, i.e. the competent authority legalizes a public document, register (minutes) or book, having a wrong image regarding the accuracy of its content and, in this case, it is irrelevant whether or not the competent body was acting in a state of avoidable or avoidable deception. Of importance is only the fact that the competent body or official or responsible person, must have been acting in in a state of deception when legalizing a document. However, if an official or responsible was aware that he or she was signing a document of untrue content, that act would amount to the criminal offense of falsification of official documents provided for in Article 434 of the CCK, while the person who makes an official person to legalize such a document would be responsible for inciting that criminal offense.

11. The criminal offense is considered as committed by the very act of legalizing false content in a public document, book or register (minutes).

12. The subjective side of the criminal offense comprises the direct intent, because the perpetrator deceives a competent authority knowingly, in order to make it to legalize in the public document, book or register (minutes) something that will serve as evidence in legal communication".

The procedure for the transfer of ownership of a property requires that there be a contract for transfer (sale or gift) which is certified by the Municipal Court. When this is done, the certified contract must be submitted to the Municipal Cadastre Office to ground the change in legal ownership. This is done by way of a Decision of the Municipal Cadastre Office. This is the procedure that was followed by A.H in 2005, although in that instance it was an unlawful Municipal Court Decision that was submitted to the Cadastre Office.

These three signatories to the first contract of gift committed fraud and legalised a false document because they deliberately gave a false representation of the facts of Land Parcel 5602 in this document which was designed to serve as evidence of a legal matter. They intended that this false representation would cause the Municipality of Prishtina to act to its detriment and sign over all of Land Parcel 5602, including the Socially Owned yard, from A.H to her two daughters without noticing that there were very serious differences in what construction was documented and what building existed in fact, and without noticing that it should never have been registered to A.H in the first place. The certificate attached to the Decision of the Cadastre Office only mentions '166m2' and does no refer to a 'house' and a 'yard'. The decision of the Cadastre Office was based on the falsely presented information as in fact F.H. H. was never the sole and exclusive owner of the immovable property and the property was deliberately wrongfully described as consisting of the house in surface of 97 m2 and the yard in surface of 69 m2 in total surface of 166 m2. The description did not correspond with the fact and the fact was that at that time a commercial building was constructed of that plot occupying its entire surface. The aim of this contract of gift was clear namely the intention of Kardije H. and K.U was to acquire the ownership of this parcel to the detriment of Minicipality of Pristina that in line with legal framework was the sole and exclusive owner of this land. The time framework of this criminal

offence is decided based on the day the contract was signed (23 September 2010) and the day the Cadastre Office of the Municipality of Pristina issued the decision that took place on 6 October 2010.

K. H. and K.U in co-perpetration with M. H. –Bislimi, N.M, H.M. and I.C. committed yet another criminal offence of legalization of false document as described in count 4 of the consolidated indictment by entering on 21 October 2010 second contract of gift. By this contract second contract of gift dated 21 October 2010 the property in question was divided between all the H. sisters in 6 equal parts. This document was lodged in the Municipal Court of Prishtina on October 21, 2010. All parties signed the contract confirming the existence of an old house and yard which they all knew did not exist at the date of the second Contract of Gift in 2010.

This document was submitted to the Municipality of Prishtina, Cadastre Office by N.M on 28 October 2010 to ground the change in legal ownership exclusively from K.H and K.H.U to all six sisters. Based on the Contract on Gift of 21 October 2010, the Municipal Cadastre Office issued a Decision on 8 November 2010 transferring the ownership of Land Parcel 5602 from K.H and K.H.U and its division to all six sisters. The six sisters committed fraud and legalized a false document because they deliberately gave a false representation of the facts of Land Parcel 5602 in this document which was designed to serve as evidence of a legal matter. They intended that this false representation would cause the Municipality of Prishtina to act to its detriment and divide up and transfer all of Land Parcel 5602, including the Socially Owned yard, from K.H and K.H.U to all six sisters without noticing that there were very serious differences in what building was documented and what building existed in fact, and without noticing that it should never have been registered to A.H, K.H and K.H.U in the first place. The time framework of this criminal offence is decided based on the day the contract was signed (21 October 2010) and the day the Cadastre Office of the Municipality of Pristina issued the decision that took place on 8 November 2010.

All H. sisters aware that factual situation of the property was in contradiction with the legal status, when they signed two contracts of donation when they submitted them to the Municipal Court in order to certify the deeds of donation and finally when the certified contracts were submitted to the Cadastre Office to grand the change of legal ownership. The H. family came to the possession of a lucrative property located in the historical city center, so they had to make important decisions in a collective manner with the consent of all sisters, who were not legally educated as N.U was, but at least every and each sister had her say on the future of this property. It can be inferred that all H. sisters knew that the old building had been demolished in 2003, as N.U admitted in his testimony, and in place of it a new construction, modern, four-story glass and steel commercial building of 800 m2,was erected. This new construction was surely not left unnoticed, as it did not match surrounding historical neighborhood, but until this was not mentioned in the official documents and legal submission it was an open secret. Despite having had pervasive influence N.U, had the real situation on the parcel been officially revealed, it might have had a negative impact on “the daylight robbery” to grand the change of legal ownership despite legal provisions. No wonder, H. sisters getting guidance on the legal provisions from the learned and experienced lawyer as N.U was, tried to implement the change of legal ownership using illegal means to mislead a legal authority into certifying an untrue matter designed to serve as evidence of a legal matter.

This panel came to the conclusion that in case of all H. sisters they were sufficient elements to find them guilty of two criminal offences Legalization of False Content and Fraud.

The issue at stake concerns the concept of *concursus delictorum, i.e.* the theory concerning concurrence of offences or the adjudication of multiple offences against one accused with respect to the same set of factual circumstances. The CCK does not directly express concurrence of offences nor provides for specific rules or doctrinal theory for determining concurrence of offences but merely recognizes the existence of concurrent criminal offences and regulates their punishment in Article 71. By making reference to general principles of law common to all major national legal systems, international criminal tribunals held that where the same factual conduct meets the definitions of multiple statutory offences, a Court may enter cumulative convictions with respect to those offences only where the crimes are considered **sufficiently distinct or possess "a materially distinct element" not found in the other**. In case two crimes do not each have materially distinct elements, the crime with the materially distinct element as the more specific crime subsumes the other and only one conviction is entered. This determination involves comparing legal elements of the relevant statutory provisions; the specific facts of the case play no role. (see *International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Delalic, Mucic, Delic and Landzo("Celebici"), IT-96-21-A, "Judgement", Appeals Chamber, 20 February 2001, paras. 412-413; Extraordinary Chambers in the Court of Cambodia, Prosecutor v. Kaing Gung Eva (Dutch), Case no. 001/18-07-2007-ECCC/SC, Appeals Judgment, 3 February 2012, paras. 285 et seq.; Special Court for Sierra Leone, Prosecutor v. Sesay et al., Case no. SCSL-04- 15-A, Appeals Judgment, 26 October 2010, para 1190).* [9]

In the opinion of this panel, a comparison of the legal elements of the criminal offences of Legalization of False Content and Fraud leads to the conclusion that they possess a materially distinct element not found in the other. Legalization of False Content is embodied in the chapter Criminal offences against public order and legal transactions whereas Fraud is embodied in the chapter criminal offences against property. For both criminal offences the protected matter is the different, namely the confidence in the administration of public service and in case of fraud the protected matter is property. Further, both criminal offences have materially different and distinct element. Fraud underlines the element of material benefit as a goal of a criminal offence and that substantial element is not mentioned in the case of criminal offence of legalization of false content. The only common element is deception as a mean to achieve intended goal. So as a result of effective concurrency of criminal offences (not legal concurrency), this panel had to impose finally aggregate punishment after sentencing them for each criminal offence separately.

Regarding the value of material damage the Municipality of Pristina sustained, this panel concluded that the damage exceeded 15.000 EUR. This court grounded its findings in this respect on the judgment of Supreme Court of Kosovo dated 22 June 2006 (case reference number 144/2005) and the assessment of value provided by the expert witness.

Supreme Court of Kosovo confirmed that M. H. was the owner of the house/apartment that is located in Pristina, former street 'Shkupi" now "H.M.' street number 1 that is registered as

[9] PAKR 1122/2012, Judgment, 25 April *2013*

cadastral parcel no. 5602 possession list 4137 Municipality of Pristina in surface 97 m2 together with the right of permanent use of the land on which the building is located. The right of permanent use of remaining 69 m2 was questioned by the Supreme Court and the argument was raised:" the claimant cannot be the user of the entire yard of 69 m2, because the building-house which is in the quality of apartment, is built on socially owned property, on the property of the respondent (Municipality of Pristina), but may have the right a part of the yard which will serve the claimant for using the facility and that in the length and width of the path from the city road until the construction-apartment of the claimant". The Supreme Court ordered re-trial of the case in order to determine the surface needed by the claimant to have a proper access to the building from the city road. The remaining part of the first instance judgment was upheld.

The judgment of Supreme Court of Kosovo was considered by this panel as an essential element to establish that actually M. H. and later his hairs were the owners of the house -apartment and permanent users of the land on which the house –apartment was located. The judgment of the Supreme Court creates res iudicata so no other findings in this respect are needed and allowed. The judgment was issued by the highest judicial body in Kosovo and was never challenged so it is still valid.
In the light of this judgment other attempts to establish alternative legal findings and to challenge the right of the H. family to this property have to be considered as mere speculations.

There is one important element that was not announced to the Supreme Court namely that old historical building was demolished in 2003 and a new modern building erected occupying the entire property, but that fact doesn't make legal assessment delivered by the Supreme Court invalid. The crucial importance of this judgment lies in affirmation that the property of the house-apartment is strictly connected with the right of permanent use of the land on which the building was located. The Supreme Court confirmed that the parcel was legally a property of Municipality of Pristina as socially owned land and there was no legal mean to change its status. So, any attempt of the H. family to affirm that also the land was awarded to them had to be considered as unlawful.

The Supreme Court's conclusion that the property of the apartment implied the right to a permanent use of the land, limited to the piece of land on which the building was situated plus necessary path from the building to the public road had important implication for that case and for assessment of the material damage.

Having considered above legal argument presented by the Supreme Court, when the old house was deliberately demolished by the H. family, allegedly in 2003, the right for permanent use linked to the apartment-house seized to exist as well. The unavoidable consequence was that the H. family lost the right of permanent use of the piece of land where the building was constructed. So all in all, starting from the time when old building was demolished and the new one put up, all 166 m2 were occupied by the H. family without legal grounds.

This panel was of the opinion that financial damage caused to the injured party-Municipality of Pristina by defendant's illegal actions was the market sale price of 1 square meter of land located in the same area multiplied by number of square meters occupied illegitimately by the H. family. The expert witness Drita Grazdha assessed that the price of one square meter in the vicinity of

the parcel in question is 1000 EUR. If one multiplies it by number of square meters it makes together the amount of 166.000 EUR and this damage caused to the injured party. This amount of money represents the true material damage as Municipality of Pristina could sell this piece of land at this price with flying colors.

The panel did not consider as credible the private expert's opinion offered by the defence. E.Q., C. F.,Sh.P. and Q. H. presented in fact their own, independent evaluation of facts and indeed drew legal conclusions substituting independent conclusions of this court. As such so-called opinion of expert witnesses could not sustain as reliable opinion.

This panel did not agree with the thesis of the indictment that material damage is rental income of least 344.452,67 EUR the H. family received in the years 2005 and March 2013, from the commercial building on land parcel 5602. It seems to the panel that this calculation is based on the assumption that once the building was put up illegally on the property of Municipality of Pristina, it gained the right to enjoy the benefits deriving from rental income. The panel observes that this legal point of view was not legally substantiated and no legal provision was cited as grounds for such assessment. Moreover such approach seems to imply that Municipality of Pristina became the owner of this commercial building and as such has the exclusive right to collect the income rent. Even if we assume that in fact Minicipality of Pristina became the owner of this building, there is an open legal dispute if the H.Family had the right to claim outlay on construction of this building deducted from the rental income. Another legal notion can be taken into consideration namely that the H. family may have acquired ownership by prescription. This panel came to the conclusion that approach adopted by the prosecution as to the assessment of material damage leads to an open civil law dispute over this property that has to be finalized by the competent civil court in the further proceedings, but not the criminal court that has to decide about criminal responsibility of the accused. So all in all, having considered above arguments this panel evaluated the damage at the amount of 166.000 EUR.

Unlawful occupation of real property

The H. sisters remained unlawfully in possession and occupation of Land Parcel 5602, which rightfully belongs to the Municipality of Prishtina in the time periods described in counts 8, 9 and 10. In case of K. H. and K.U the time period of this criminal offence started on 6 October 2010 when the Municipal cadastre Office issued a decision transferring the ownership of Land Parcel 5602 from A. A. to Kardije H. and K.U. This illegal occupation of property lasted till 8 November 2010 when the Municipal Cadastre Office issued a decision transferring the ownership of Land Parcel 5602 from K. H. and K.U to all six sisters. Then again all six H. sisters starting from 8 November 2010 until 31 December 2012 unlawfully occupied the land parcel in question. The last date 31 December 2012 is the last day when the Criminal Code of Kosovo was in force. The status of unlawful occupation of real property is of permanent nature and continues to the present day since the six H. sisters are registered in the Cadastre Office of Municipality of Pristina as the owners of the land parcel 5602. The starting date for this last period starts from 1 January 2013 when the new cmininal code came into the force and continues to the present date. All periods of unlawful occupation of real property were considered by this panel in the legal framework of Article 81 of the CCRK.

Commission of criminal offence of unlawful occupation of real property is determined by the act of usurpation of real property that is owned by other natural or legal person. Usurpation should mean the occupation of other's real property, which can be carried out through different actions (entry into residential buildings, where no one has yet acquired any housing rights: the right of use, occupancy right or property right; entry into open facilities, fencing, cultivating of land of foreign property, harvesting the products from such cultivation of land, building construction if facilities – construction in such properties as it happened in this case. *For an offender to be held responsible, his or her intent is required, which entails his or her **awareness** that he or she is occupying a other's property without the permission of the legitimate owner, and this means that the elements of this criminal offense are consumed only when the occupation of the property is made without the consent of the owner or his or her relatives; in this case, it is not necessary that the consent should only be formal, written; it could also be verbal*. (Commentary of the CCRK Article 332.)

All six H. sisters namely K.H, K.U, M.H, N.M, H.M. and I.C were aware that the owner of this land parcel is Municipality of Pristina not their family and judicial decisions rendered in their case granting them ownership, were in fact obtained in fraudulent manner with assistance of N.U.

All H. sisters used their rights and decided to defend themselves in silence. This panel took into consideration that individual responsibility for commission of criminal offences has to be established in order to determine criminal responsibility of each and every defendant. This panel had in mind, provisions of Article 23 of the CCRK that states the following*:" knowledge, intention, negligence and purpose required as an element of a criminal offence may be inferred from the factual circumstances.*"

Therefore, this panel considered actions undertaken by all H. sisters as a circumstantial evidence to find out where the guilt lies and to apportion individual guilt. Two important factors were considered in order to establish criminal responsibility of all H. sisters, namely two contracts of gift, first dated 23 September 2010, the second dated 21 October 2010 and rental income collected and shared between all of them.

First and second contract of donation were signed with reference to the property that was described as "**immovable property which is located in Pristina, Street H.M. No.1, registered in the possession list UL-71814059-11117 CZ Pristina, as cadastral parcel 5602, house in the surface of 97 m2 and yard in surface of 69 m2, the total surface of 166 m2**." The solemn declaration about the *bona fide* intentions of the parties to the contract was adopted in both contracts, stating that the contacts were "*hand signed personally based on free will under no influence of violence, fraud or aberration.*

In fact such property did not exist at the time both contracts were signed as the old house was demolished and a new building was erected. All six H. sisters were aware of these facts since this valuable property was used by this family for many years, all sisters maintained close family relationships and they closely cooperated when important decisions regarding this property were taken. In evidence of that close cooperation, a rental income was collected and divided by all H. sisters. In the contract of December 3rd, 2011, signed by the ERO and K.H.U, K. acted as the

representative of the group of owners formed by M.; N.; I.; K.; K. and H.. N.U stated that the six H. sisters are the beneficiaries of the rental income of the commercial building on Land Parcel 5602. [10]. It has to be noted that in his interview on 25 March 2013, N.U did not hide that the decision to build the office building was made between his parents-in-law and the six siblings.[11] It is therefore obvious that the six H. sisters were totally aware of what they were doing. And this is direct evidence proving knowledge of all H. sisters about real legal status of the property.

In doing so, A.H and the six H. sisters defrauded the Municipality out of 166m2 of the Municipality's Socially Owned Property. Land Parcel 5602 is currently registered in the Cadastre Office of the Municipality of Prishtina as being owned by K.H, K.H.U, M.H-B, N.H.M, Hilmije H. Miftari and I.H.C.[12] The certificate describes a house and yard and makes no reference to the fact that they were replaced in 2004/5 by a four-story commercial building. Thus, property on Land Parcel 5602 was granted to the H./U. family in an illegal manner and completely contrary to the law, common sense and the decision of the Supreme Court.

In December 2012, the commercial building on Land Parcel 5602 was rented to PBC Kosovo for a periode of five years for a rental income of Euro 3,815 per month. In paragraph 2, the contract states that the rent is to be paid into the account of K.H, account no. 1300003006465036, BpB. The contract was signed by Muhamed U. and certified on 20 December 2012.[13] By the 21st of March 2013, PBC had paid 7,630.00 Euros into the account.[14]

All rental income received into A.H's Account 1700100101998475 and into K.H's Account 1300003006465036, BpB, and NLB Prishtina Account Number 17001003023432887 from the rent of the commercial building on Land Parcel 5602 to the H./ U. Family is evidence of, and a proceed of, the crimes described above. Without the unlawful judicial decisions, the fraudulent transfer of the 166m2 of Land Parcel 5602, the breach of the Construction Permit, and the construction of the illegal commercial building on Land Parcel 5602, this rental income could not have been received.

The panel therefore concluded, that given the cumulative weight of the circumstantial and direct evidence that six H. sisters have committed criminal offences as described in the enacting clause. The participation of so many people in complex land deals is aimed towards creating confusion and hiding the reality. This panel reached the conclusion that the six H. sisters knowingly committed the above listed criminal offences.

Unfortunately, not all culprits were effectively brought into the justice, including the most important one-the mastermind behind this criminal plot -N.U. The criminal offences N.U, S.M. and F.H. were charged with, at the time the investigation against them was initiated were already

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[10] Annex Lease Holding Contract, December 3rd, 2011. See Transmission of File Received from ERO, 30 August 2013, ref. FIU/21/20130830/4845, tab 20. Also see Investigation Report-Review of Seized Documents, 30 August 2013, ref. FIU21/20130830/4843, p. 10 and Annex B12

[11] Pre-Trial Testimony of N.U, March 25th, 2013, p. 21.

[12] Cadastral Certificate of Ownership, 11 December 2013, 14.45hrs. See Transmission of Evidence, 24 December 2013. Ref. FIU/21/20131224/4919, Annex 3.

[13] See Update on Case Development, 25 March 2013, ref. FIU/21/20130325/4480.

[14] See Update on Case Development, 25 March 2013, ref. FIU/21/20130325/4480. Also see Police Report on Financial Datas, 22 May 2013, ref. FIU21/20130522/4654, p. 6.

statute-barred due to lapse of time as it was explained above. The legal remedy against the bar on prosecution-organized crime was not effective as well, for the reasons explained in details above.

G. SENTENCING

While deciding on applicable criminal law, this panel considered the provision of article 3 of the new Criminal Code of the Republic of Kosovo that entered into force as of 01 January 2013. Article 3.1 states the following: "*The law in effect at the time a criminal offence was committed shall be applied to the perpetrator"*.
Further on in Article 3.2 the law provides that:
"In the event of a change in the law applicable to a given case prior to final decision, the law most favorable to the perpetrator shall apply."

Since almost all criminal offences were committed before 1 January 2013, excluding count 10, when the Criminal Code of the Republic of Kosovo entered into force, generally the law that was in force at the time of the criminal offences were committed should have been applied . However the panel was obliged to establish which law was more favorable to the defendants

Calculating the punishment the panel considered the general rules as per Article 64 that reads as following:

"the court shall determine the punishment of a criminal offence within the limits provided for by the law for such criminal offence, taking into consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment and, in particular the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator, and his or her behavior after committing of a criminal offence. The punishment shall be proportionate to the gravity of the offence and conduct and circumstances of the offender."

The panel underlines that these criminal proceedings are only one aspect of complex situation created in that case by actions of all defendants and further actions of the injured party are urgently needed in order to retrieve the property that by law belongs to Municipality of Pristina as socially owned property. In the event that the injured party wins the civil suit, the property will be regained by the injured party. Moreover, the new building was constructed without permission and again Municipality of Pristina is advised to take all possible actions to restore law and order in this respect. This panel is mindful that by demolishing the old building and erecting a new one the H. family created a complex legal matter and the final decision as to this property and mutual payoff should be decided in the civil proceedings.

The panel decided to differentiate the punishment imposed on the defendants, taking into account the same level of involvement in the commission of the criminal offence, the same level of culpability arising from the same motives and the fact all H. sisters acted upon the instructions given by N.U, who evaded criminal responsibility due to statute-barred counts, and personal circumstances.

In the case of **K.U**, the panel was of the opinion that the sentence of:

1 year for the criminal offences described in count 3 and 4 Legalization of False Content,

10 months for the criminal offences described in counts 6 and 7 Fraud,

6 months for the criminal offence of unlawful occupation of real property

And the aggregated punishment of 2 years imposed on K.U is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances.

The following circumstances were taken into account as mitigating while imposing the punishment for this defendant:
- This defendant does not have a criminal record
- The defendant has a stable social position as a married wife with children

In the case of **K.H**, the panel was of the opinion that the sentence of:
1 year for the criminal offences described in count 3 and 4 Legalization of False Content,
10 months for the criminal offences described in counts 6 and 7 Fraud,
6 months for the criminal offence of unlawful occupation of real property

And the aggregated punishment of 2 years imposed on K.H. is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances.

The following circumstances were taken into account as mitigating while imposing the punishment for this defendant:
- This defendant does not have a criminal record
- The defendant has a stable social position as an employee of Municipality of Obiliq, a married wife with children.

In case of these two defendants, this panel was of the opinion that aggregated punishment should be more severe to reflect that they committed more criminal offences comparting with other H. sisters.

In the case of **M.H, N.M, H.M., I.C.** , the panel was of the opinion that the sentence of:
1 year for the criminal offences described in count 4 Legalization of False Content,
10 months for the criminal offences described in count 7 Fraud,
6 months for the criminal offence of unlawful occupation of real property

And the aggregated punishment of 1 year and 10 months imposed on M.H, N.M, H.M., Idabete Cakaj is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances.
The following circumstances were taken into account as mitigating while imposing the punishment for these defendants:
- This defendant does not have a criminal record
- The defendant has a stable social position employed, married wife with children.

The real possibility of restoring the property significantly reduces the level of injury to the protected value, which together with other personal circumstances, resulted in conclusion that all the defendants deserve to get suspended sentence.

The aggregated sentences are suspended in case of M.H, N.M, H.M., Idabete Cakaj, K.H and K.U for verification period of 2 years. This panel was of the opinion that the role of all H. sisters in these criminal activities was much lower than involvement of N.U and the punishment should reflect that fact. Personal circumstances of all H. sisters suggest that they committed criminal offences only one time in their well-ordered lives and a reprimand with the threat of punishment is sufficient to prevent them from reoffending.

Prosecution presented in the indictment a submission seeking for forfeiture of the land parcel 5602 and two bank accounts where the rental income money was deposited. Additionally, in the submission it was requested to order the building that was illegally constructed on the said parcel, to be demolished by the order of Municipality.

In rendering the decision as to the respective submission, this panel took into consideration the following legal provision of Article 275 of CPC: *"Before the court can order a final order of criminal forfeiture for a building, immovable property, movable property or asset listed in the indictment, the indictment shall allege and the state prosecutor shall prove at the main trial that the building , immovable property, movable property or asset was a material benefit of the criminal offence being investigated, in accordance with Articles 276-280 of the present Code."*

This panel had to doubts that assets deposited on two bank accounts were material benefits acquired by the criminal offences since their source was rental income collected from the building illegally erected to the appropriated parcel. These funds were than" directly obtained due to acts constituting the criminal offence are a material benefit acquired by that criminal offence" (Article 276 par. 2 of the CPC).

The bottom line of the court's finding is that the land parcel 5602 has a legitimate owner which is Municipality of Pristina. This wright to the parcel was confirmed by the Supreme Court of Kosovo in the judgment 144/2005 dated 22.02.2006 and any other decision issued later on that contest it, had to be considered as unlawful. Land parcel 5602 was directly obtained by the H. sisters due to the acts constituting the criminal offence and as a material benefit acquired by that criminal offence (Article 276 par.1 of CPC) had to be released and returned to the legitimate owner – Municipality of Pristina as per Article 284 of the CPC.

It was not asserted that the modern building was erected from the financial resources obtained directly due to the acts constituting criminal offences, so the motion to forfeiture of this building was not lodged, but rather exceptional request was put forward to demolish the building by the order of Municipality.

This panel came to the conclusion that it does not have jurisdiction in this respect. Municipality of Pristina has exclusive right to decide whether to initiate administrative procedure leading to the demolition of this building. The decision is to be taken independently by Municipality of

Pristina, but not by the order of Basic Court of Pristina that has jurisdiction in criminal matters. Moreover, legal provisions of Law on Property and Other Real Rights (2009/03-L-154) have also to be taken into consideration. Since it was proven that the house is also the proceeds from criminal activity, the only possible decision was to release it. Municipality of Pristina and the H. sisters will need to file a civil suit to decide about the future of the house in question.

Pursuant to Article 451and Article 453 of the Criminal Procedure Code K.H, K.U M.H, N.M, H.M. and I.C are obliged to reimburse the costs of criminal proceedings in a lump sum of 50 Euro related to commission of criminal offences in count 3, count 4, count 6, count 7 , counts 8,9 and 10.

Pursuant to Article 454 of the CPC the costs of criminal proceedings related to counts 1,2 and 5 are paid from budgetary resources.

EULEX judge
Arkadiusz Sedek

Legal Remedy: Pursuant to Article 380 of the CPC, an appeal against this judgment may be filed within 15 days from the day the copy of the Judgment has been served to the parties. The appeal should be addressed to the Court of Appeals through the Basic Court of Prizren .