

IN THE BASIC COURT OF FERIZAJ/UROŠEVAC

P. nr. 250/13

29th April 2015

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

THE BASIC COURT OF FERIZAJ/UROŠEVAC, in a trial panel comprised of EULEX Judge Piotr Bojarczuk, as Presiding Judge, EULEX Judge Marie Tuma and Kosovo Judge Musa Konxheli as panel members, with court recorder Kushtrim Osmani, in the criminal case against:

B.SH.

Nickname	-
Father's name
Date of Birth
Place of Birth
Gender	Male
AddressStreet (formerly named) at "R..... Sh....." in // no.....,
Nationality	Kosovo
Citizenship	Albanian
Occupation (.....)
Personal identity number
Arrested	11th September 2013, Ferizaj, 09:05 hours and in detention on remand since 12th September 2013.

Et alii

Charged in the Indictment of the Special Prosecutor PPS.nr. 5/12 dated 27th December 2013 and filed with the Registry of the Basic Court of Ferizaj/Uroševac on 27th December 2013,

Charged with the criminal offences of:

B.SH. (and M.S.):

1. **ABUSE OF OFFICIAL POSITION** in co-perpetration, in violation of Article 339 (1) and (2) in connection with Article 23 of the former CCK, currently penalized under Article 422 in connection with Article 31 of the CCK 2013.
2. **ACCEPTING BRIBES** in co-perpetration, in violation of Article 343 (1) in connection with Article 23 of the former CCK, currently penalized under Article 428 in connection with Article 31 of the CCK 2013.
3. **TRADING IN INFLUENCE** in co-perpetration, in violation of Article 345 (1) in connection with Article 23 of the former CCK, currently penalized under Article 431 (1) and Article 31 of the CCK 2013.

B.SH.:

9. FAILURE TO REPORT CRIMINAL OFFENSES OR PERPETRATORS, in violation of Article 386, paragraph 2, in connection with paragraph 1, of the CCK 2013.

10. UNAUTHORISED OWNERSHIP, CONTROL OR POSSESSION OF WEAPONS, in violation of Article 374 paragraph 1, in connection with Article 120, item 38, of the Criminal Code of Kosovo 2013

after holding the main trial sessions in the Basic Court of Ferizaj/Uroševac (sitting in Kacaniku/Kacanik) on 19th and 30th May, 2nd and 12th June, 10th and 11th July, 4th and 25th August, 8th, 16th, 19th and 30th September, 13th and 28th October, 13th, 14th and 27th November, 5th, 8th and 15th December 2014 and 16th, 26th and 30th January and 10th, 23rd, 24th, 25th, 26th February 2015, 3rd and 31st March 2015 and 2nd and 21st, 23rd and 27th, 28th and 29th April 2015 in the presence of the SPRK Prosecutor Mr. Drew G. Engel, the defendant, B.Sh. and his counsel the lawyer, A.D. (previously R.A.) and at which the injured parties were either present or summoned;

and after the defendant, B.Sh. having indicated a plea of guilty to the offences herein and having considered the Guilty Plea agreement concluded by the defendant and the SPRK on 21st April 2015 and filed with the Court during the main trial session in the Basic Court of Ferizaj/Uroševac (sitting in Kačanik/Kaçanik) also on 27th, 28th and 29th April 2015 in which the defendant, B.Sh. pleaded guilty to the offences of:

- Count 1 of the Indictment: Abuse of Official Position contrary to Article 422 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

- Count 2 of the Indictment: Accepting Bribes contrary to Article 428 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

- Count 3 of the Indictment: Trading in Influence contrary to Article 431 para, 1 of the CCK of 2013, punishable by a fine, or by imprisonment of up to eight (8) years.

- Count 9 of the Indictment: Failure to Report Criminal Offenses or Perpetrators contrary to Article 386 para.2 of the CCK of 2013, punishable by a fine, or by imprisonment of at least three (3) years.

- Count 10 of the Indictment: Unauthorised Ownership, Control or Possession of Weapons contrary to Article 374, para. 1, of the CCK of 2013, punishable by a fine of up to seven thousand and five hundred (7,500) Euros, or by imprisonment of up to five (5) years.

The trial panel having deliberated and being satisfied that the requirements contained in Article 233 of the CPC are met, in open court and in the presence of the parties, the Court pursuant to Articles 233 and 248 of the CPC renders and announces the following:

JUDGMENT

The defendant, B.Sh. with personal details above, is **GUILTY** of;

Count 1 of the indictment:

Because

Because in June 2012, in Ferizaj, Kosovo and/or elsewhere in Kosovo, together with the defendant, M.S., as an official person, namely, a Lieutenant in the Kosovo Police and the Head of the Anti-Trafficking Unit in Ferizaj the defendant, **B.SH.**, as an official person, namely a police officer, in co-perpetration and with the intent to obtain an unlawful material benefit for themselves, (namely, 4750 Euro) abused their official position, namely they acquired money from Xh.B. and A.S., and by extension other family members B.S., thereby causing financial damage to these individuals, in exchange for promising to secure the release of B.S. from detention, or promising to make sure he will not be convicted and/or promising to make sure that he does not serve his sentence. These actions of the defendants included, among other things, representations to the S. family that the defendants would contact witnesses to have them change their statements against B., provide gifts to the prosecutors assigned to B.'s case, and withhold certain evidence against B. from the case file provided to the prosecutor's office.

Thereby committing the offence of Abuse of Official Position contrary to Article 422 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

Count 2 of the indictment:

Because

Because in June 2012, in Ferizaj, Kosovo and/or elsewhere in Kosovo, together with the defendant M.S., as an official person, namely, a Lieutenant in the Kosovo Police and the Head of the Anti-Trafficking Unit in Ferizaj the defendant, **B.SH.**, as an official person, namely a police officer, in co-perpetration solicited and accepted a gift or some other benefit for themselves (namely, monetary payment totaling approximately 4750 Euro) to perform within the scope of their authority an official or other act which he or she should not perform or to fail to perform an official or other act which they should or could have performed, so as to either secure the release of B.S. from detention, or make sure he will not be convicted and/or make sure that he does not serve his sentence. These actions of the defendants included, among other things, representations to the S. family that the defendants would contact witnesses to have them change their statements against B., provide gifts to the prosecutors assigned to B.'s case, and withhold certain evidence against B. from the case file provided to the prosecutor's office.

Thereby committing the offence of Accepting Bribes contrary to Article 428 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

Count 3 of the indictment:

Because

Because in June 2012, in Ferizaj, Kosovo and/or elsewhere in Kosovo, the defendants **M.S.** and **B.SH.**, in co-perpetration, requested and received an offer (namely, monetary payment totaling approximately 4750 Euro) of any undue advantage for themselves in consideration of the exertion of an improper influence by the perpetrator over the decision-making of an official person so as to either secure the release of B.S. from detention, or make sure he will not be convicted and/or make sure that he does not serve his sentence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

Thereby committing the offence of Trading in Influence contrary to Article 431 para, 1 of the CCK of 2013, punishable by a fine, or by imprisonment of up to eight (8) years.

Count 9 of the Indictment:

Because in March 2013, in Ferizaj, Kosovo or elsewhere in Kosovo, the defendant **B.SH.**, a police officer, was informed by Xh.B. and K.S. that some persons (now known as B.V., S.M. and A.M.) pushed Xh.B. and K.S., and by extension members of B.'s family, to pay 40,000 Euro in order to make sure that B.S. would not be convicted (on appeal) and/or making sure that he does not serve his sentence. Therefore B.Sh. was informed that the criminal offenses of accepting bribes (Article 428 CCK) and/or trading in influence (Article 431 CCK) took place, which he subsequently did not report.

Thereby committing the offence of Failure to Report Criminal Offences or Perpetrators contrary to Article 386 para.2 of the CCK of 2013, punishable by a fine, or by imprisonment of at least three (3) years.

Count 10 of the Indictment:

Because on 11 September 2013, in Ferizaj, Kosovo, **B.SH.** owned, controlled or possessed a semi-automatic hunting rifle and sixty-one (61) cartridges of a semi-automatic rifle, contrary to law.

Thereby committing the offence of Unauthorised Ownership, Control or Possession of Weapons contrary to Article 374, para. 1, of the CCK of 2013, punishable by a fine of up to seven thousand and five hundred (7,500) Euros, or by imprisonment of up to five (5) years.

For the above mentioned reasons the Panel imposes the following:

SENTENCES

Based on the guilty plea negotiated at the premises of the SPRK on 21st April 2015 between the SPRK Prosecutor, Mr. Drew Engel (duly authorised by the Chief Prosecutor for SPRK), the defendant, B.Sh. and Mr. A.D., Defence Counsel for the Defendant and pursuant to Article 233 of the CPC is sentenced to the following:

Count 1 of the Indictment: Abuse of Official Position contrary to Article 422 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

Four (4) years and six (6) months of imprisonment.

Count 2 of the Indictment: Accepting Bribes contrary to Article 428 of the CCK of 2013, punishable by a term of imprisonment of from six (6) months up to five (5) years.

Four (4) years and six (6) months of imprisonment.

Count 3 of the Indictment: Trading in Influence contrary to Article 431 para, 1 of the CCK of 2013, punishable by a fine, or by imprisonment of up to eight (8) years.

Five years of imprisonment.

Count 9 of the Indictment: Failure to Report Criminal Offenses or Perpetrators contrary to Article 386 para.2 of the CCK of 2013, punishable by a fine, or by imprisonment of up to three (3) years.

Two (2) years and nine (9) months of imprisonment.

Count 10 of the Indictment: Unauthorised Ownership, Control or Possession of Weapons contrary to Article 374, para. 1, of the CCK of 2013, punishable by a fine of up to seven thousand and five hundred (7,500) Euros, or by imprisonment of up to five (5) years.

Four (4) years and six (6) months of imprisonment

Pursuant to Article 80.1 of the CCRK the Court imposes an aggregate sentence of five (5) years of imprisonment. All imprisonment sentences shall run concurrently.

However, pursuant to Article 83.1 of the CCK the Defendant is given credit for the time he has already served in Detention on Remand which is calculated as follows:

Nineteen (19) months and nineteen (19) days in Detention on Remand from 11th September 2013 to 29th April 2015;

The period of time already spent in detention on remand amounts to Nineteen (19) months and nineteen (19) days. The sentence of imprisonment imposed is five (5) years (i.e. sixty (60) months). However the parties have agreed and the Court orders the defendant, B.Sh. will serve the period from 29th April 2015 to 11th September 2015 in house detention. He will then be released and the balance of his sentence of imprisonment (i.e. thirty six (36) months) shall be suspended and will not be executed on condition the defendant, B.Sh. does not violate the terms and conditions of the Plea Agreement.

The exception to the agreement on concurrency of punishment is that the Defendant shall be prohibited from being a police officer, holding a police position, and/or holding any position that allows for or requires the carrying of a prohibited weapon under the CCK as described *infra* in this Plea Agreement for the next 20 years, effective as of the date of acceptance of this Plea Agreement by the Court (i.e. 29th April 2015).

The Parties have agreed and the court orders the Defendant to perform 200 hours of Community Service at a community centre, charity, animal shelter, or other non-profit organization designated by the Basic Court of Ferizaj/Uroševac that will also be in charge of reporting the implementation of this order. The Defendant is to complete two hundred (200) hours of community service to the satisfaction of the Court or its designated reviewing authority no later than December 2015 starting from 12th September 2015. The parties agree and the Court orders there will be a review of the performance of said Community Service hours, no later than 28th February 2016, to determine if the hours were completed by the Defendant. If, the Court is

unable to locate a suitable community center, charity, animal shelter or other non-profit organization, then the Defendant is to complete two hundred (200) hours of volunteer time at a retirement home facility designated by the Court in the Ferizaj region and the same requirements as to date of service completion and verification will apply here.

The Parties have agreed and the Court orders the permanent seizure of the weapon and ammunition seized from the Defendant, with no right of return. The parties have also agreed and the Court orders the Defendant will never again possess, use, own or control any firearm or other weapon defined under the Criminal Code of Kosovo.

As per items (d) and (e) on page six (6) of the Guilty Plea agreement this judgment is final and non-appealable.

The defendant agrees to the factual averments as set forth in the guilty plea agreement dated 29th April 2015 and waives his right to have these read into the record.

The costs of the proceedings will be reimbursed by the Defendant.

Any property claim shall be pursued through the civil courts.

The fully reasoned judgment judgement will be handed down within fifteen (15) days.

BASIC COURT OF FERIZAJ/UROŠEVAC

P. nr. 250/13

Dated this 29th day of April 2015

Piotr Bojarczuk

Presiding Judge

Marie Tuma

Panel Member

Musa Konxheli

Panel Member

Sara Xhemaili

Court Recorder