

THE BASIC COURT OF FERIZAJ/UROŠEVAC

P. nr. 250/13

6 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

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, Hysni Recica, in the criminal case against:

1. M.S.

Nickname	M.
Father's name	X
Date of Birth	X
Place of Birth	X
Gender	Male
Address	XX
Nationality	Albanian
Citizenship	Kosovar
Occupation	XX
Personal identity number	XX

Financial status	XX
Family status	XX
Education	XX
Arrested	XX
Restrictive measures	XX

And

2. V.T.

Nickname	-
Father's name	X
Date of Birth	X
Place of Birth	X
Gender	Male
Address	X
Nationality	Albanian
Citizenship	Kosovar
Occupation	X
Personal Identity Number	X
Financial status	X
Family status	X
Education	X
Restrictive measures	X

Charged, by the Eulex prosecutor in Indictment PPS No. 05/2012, filed with the Basic Court of Ferizaj/Uroševac on 27 December 2013, with the following offences:

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

COUNT 1: ABUSE OF OFFICIAL POSITION in co-perpetration, in violation of Article 339, paragraph 2, in connection with paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 422 in conjunction with Article 31 of the CCK 2013.

COUNT 2: ACCEPTING BRIBES in co-perpetration, in violation of Article 343, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 428 in conjunction with Article 31 of the CCK 2013.

COUNT 3: TRADING IN INFLUENCE in co-perpetration, in violation of Article 345, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 431, paragraph 1, in conjunction with Article 31 of the CCK 2013.

M.S. and V.T.

COUNT 4: AVOIDING PAYMENT OF MANDATORY CUSTOMS FEES in co-perpetration, in violation of Article 318, paragraphs 1 and 4, in connection with Article 31 of the CCK 2013.

M.S. and V.T.:

COUNT 5: PROVIDING ASSISTANCE TO PERPETRATORS AFTER THE COMMISSION OF THE OFFENSE, in violation of Article 388, paragraph 1, of the CCK 2013.

M.S. (and R.A.):

COUNT 6: PROVIDING ASSISTANCE TO PERPETRATORS AFTER THE COMMISSION OF THE OFFENSE, in violation of Article 388, paragraphs 1 and 2, of the CCK 2013.

M.S.:

COUNT 7: FAILURE TO REPORT CRIMINAL OFFENSES OR PERPETRATORS, in violation of Article 386, paragraph 1, sub-paragraph 1.9, of the CCK 2013.

COUNT 8: UNAUTHORISED OWNERSHIP, CONTROL OR POSSESSION OF WEAPONS, in violation of Article 374 paragraph 1, in connection with Article 120, item 38, of the CCK 2013.

Deciding pursuant to Articles 248, 326, 357, 359, 360, 361, 362, 365 and 366 of the Criminal Procedure Code (“CPC”; Code No. 04/L-123) and after holding the main trial sessions in the Basic Court of Ferizaj/Uroševac on after holding the main trial sessions in the Basic Court of Ferizaj/Uroševac (sitting in Kacaniku/Kacanic and Prishtinë/Priština) on 19 and 30 May, 2 and 12 June, 10 and 11 July, 4 and 25

August, 8, 16, 19 and 30 September, 13 and 28 October, 13, 14 and 27 November, 5, 8 and 15 December 2014, 16, 26 and 30 January, 10, 23, 24, 25 and 26 February, 31 March, 21, 23, 27, 28, 29 April, 13, 15, 19, 27 May, 22 and 29 June, 1, 2, 3, 9, 10, 13, 14, 16, 21, 22, 23, 24 July, 2 and 29 September, 13, 19, 27, 28 October, 16, 20, 23, 24 November, 7, 8 and 17 December 2015, 15 February, 17, 18, 21 and 24 March, 22 and 25 and 26 April, 22 June, 21 July, 5, 9, 26 and 30 September 2016 and 4 and 6 October 2016 in the presence of the SPRK Prosecutor, Drew G. Engel and the defendants, M.S. and V.T. and their counsels the lawyers, A.I., and A.R.(for M. S.) and A.S. (for V.T.) respectively and at which the injured parties were either present or summoned throughout;

The trial panel having deliberated and voted pursuant to Article 357.2, Article 359 and Article 364.3 of the Criminal Procedure Code (“CPC”), in open court and in the presence of the parties, renders and announces the following:

JUDGMENT

The defendant, M.S. with personal details above, is **GUILTY** of;

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

COUNT 1: ABUSE OF OFFICIAL POSITION in co-perpetration, in violation of Article 339, paragraph 2, in connection with paragraph 1, in

conjunction with Article 23 of the former CCK, currently penalized under Article 422 in conjunction with Article 31 of the CCK 2013.

Because in June 2012, in Ferizaj, Kosovo and/or elsewhere in Kosovo, the defendants **M.S.**, as an official person, namely, a Lieutenant in the Kosovo Police and the Head of the Anti-Trafficking Unit in Ferizaj and **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, abused their official position, namely they acquired money from XH.B. and A. S., and by extension other family members B.S. (namely, 4750 Euro), 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. case, and withhold certain evidence against B. from the case file provided to the prosecutor's office.

The defendant, M.S. with personal details above, is **GUILTY** of;

COUNT 2: ACCEPTING BRIBES in co-perpetration, in violation of Article 343, paragraph 1, in conjunction with Article 23 of the former CCK.

Because in June 2012, in Ferizaj, Kosovo and/or elsewhere in Kosovo, the defendants **M.S.**, as an official person, namely, a Lieutenant in the Kosovo Police and the Head of the Anti-Trafficking Unit in Ferizaj and **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. case, and withhold certain evidence against B. from the case file provided to the prosecutor's office.

The defendant, M.S. with personal details above, is **GUILTY** of;

COUNT 3: TRADING IN INFLUENCE in co-perpetration, in violation of Article 345, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 431, paragraph 1, in conjunction with Article 31 of the CCK 2013.

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.

M.S. (and V.T.):

The defendant, M.S. with personal details above, is **NOT GUILTY** of;

COUNT 4: AVOIDING PAYMENT OF MANDATORY CUSTOMS FEES in co-perpetration, in violation of Article 318, paragraphs 1 and 4, in connection with Article 31 of the CCK 2013.

Because **V.T.** intentionally avoided payment of the customs tax fee or other fees or customs obligations payable for the import of goods, namely, a vehicle being a Renault Clio, French registration plate number CC-590-DN, including by seeking the intervention of the defendant **M.S.** when V.T. was stopped by a police officer on 28 May 2013, to avoid paying and customs fees or obligations otherwise payable, or having the aforementioned vehicle confiscated. **M.S.** then intervened in order to ensure that V.T. received a “symbolic ticket”, and thereby intentionally *enabled* V.T. to avoid paying the customs tax fee, other fees or customs obligations payable for the above mentioned vehicle. In so doing, M.S. also enabled V.T. to avoid confiscation of the goods, namely the aforementioned car, that were not accurately declared or the value of payment.

M.S.:

The defendant, M.S. with personal details above, is **NOT GUILTY** of;

COUNT 5: PROVIDING ASSISTANCE TO PERPETRATORS AFTER THE COMMISSION OF THE OFFENSE, in violation of Article 388, paragraph 1, of the CCK 2013.

Because on 28 May 2013, in Ferizaj, Kosovo or elsewhere in Kosovo, the defendant **M.S.** was informed by telephone by a person called **V.T.** that the latter was stopped on the road by the police because he was driving an unregistered vehicle and did not pay custom clearance for the vehicle, specifically, a Renault Clio, French registration plate number CC-590-DN. On V.T.'s request, **M.S.** spoke to the police officer that stopped T. and persuaded this police officer to only issue a ticket for a minor offense. By doing so, M.S. aided V.T. as the perpetrator of a crime (namely, avoiding payment of mandatory customs fees contrary to Article 318 paragraph 1 of the CCK) to elude discovery or arrest.

The defendant, M.S. with personal details above, is **GUILTY** of;

COUNT 6: PROVIDING ASSISTANCE TO PERPETRATORS AFTER THE COMMISSION OF THE OFFENSE, in violation of Article 388, paragraphs 1 and 2, of the CCK 2013.

Because on 29 May 2013, in Ferizaj, Kosovo or elsewhere in Kosovo, the defendant **M.S.** was informed that **R.A.** had shot at a car near a restaurant called "International". Not only did M.S. not report this incident, he actively intervened to persuade the victim(s) not to report the incident involving R.A. to the police. By doing so, M.S. aided R.A. as the perpetrator of a crime

(namely, violations of Article 365(1) “Causing General Danger” and Article 375(2) “Use of Weapon or Dangerous Instrument” of the CCK 2013, which are offences under Chapter XXX –Weapons Offenses of the CCK 2013) to elude discovery or arrest and took steps towards frustrating the arrest, execution or punishment of R.A. by ensuring that R.A. would not be reported for a criminal offence he had committed.

The defendant, M.S. with personal details above, is **GUILTY** of;

COUNT 7: FAILURE TO REPORT CRIMINAL OFFENSES OR PERPETRATORS, in violation of Article 386, paragraph 1, sub-paragraph 1.9, of the CCK 2013.

Because on 29 May 2013, in Ferizaj, Kosovo or elsewhere in Kosovo, the defendant **M.S.** was informed that **R.A.** had shot at a car near a restaurant called “International”. M.S. subsequently did not report this incident, which constitutes a criminal offence (namely, violations of Article 365(1) “Causing General Danger” and Article 375(2) “Use of Weapon or Dangerous Instrument” of the CCK 2013, which are both offences under Chapter XXX –Weapons Offenses of the CCK 2013).

The defendant, M.S. with personal details above, is **NOT GUILTY** of;

COUNT 8: UNAUTHORISED OWNERSHIP, CONTROL OR POSSESSION OF WEAPONS, in violation of Article 374 paragraph 1, in connection with Article 120, item 38, of the CCK 2013.

Because on 11 September 2013, in Ferizaj, Kosovo, **M.S.** owned, controlled or possessed an amount of 48 bullets of sharp ammunition, not being in possession of a proper license required by law; and owned, controlled or possessed an amount of 50 “gas” bullets, prohibited by the The Law on Weapons in Article 4, paragraph 1.1.10, thus violating the applicable Law (Law on Weapons).

The defendant, V.T. with personal details above, is **NOT GUILTY** of;

V.T. and (M.S.):

COUNT 4: AVOIDING PAYMENT OF MANDATORY CUSTOMS FEES in co-perpetration, in violation of Article 318, paragraphs 1 and 4, in connection with Article 31 of the CCK 2013.

Because **V.T.** intentionally avoided payment of the customs tax fee or other fees or customs obligations payable for the import of goods, namely, a vehicle being a Renault Clio, French registration plate number CC-590-DN, including by seeking the intervention of the defendant **M.S.** when V.T. was stopped by a police officer on 28 May 2013, to avoid paying and customs fees or obligations otherwise payable, or having the aforementioned vehicle confiscated. **M.S.** then intervened in order to ensure that V.T. received a “symbolic ticket”, and thereby intentionally *enabled* V.T. to avoid paying the customs tax fee, other fees or customs obligations payable for the above mentioned vehicle. In so doing, M.S. also enabled V.T. to avoid confiscation of the goods, namely the aforementioned car, that were not accurately declared or the value of payment.

The trial panel has heard submissions from the prosecutor and a plea in mitigation from defence counsel and now imposes the following:

SENTENCES

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

COUNT 1: ABUSE OF OFFICIAL POSITION in co-perpetration, in violation of Article 339, paragraph 2, in connection with paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 422 in conjunction with Article 31 of the CCK 2013.

The trial panel imposes a sentence of three years imprisonment.

COUNT 2: ACCEPTING BRIBES in co-perpetration, in violation of Article 343, paragraph 1, in conjunction with Article 23 of the former CCK.

The trial panel imposes a sentence of five years imprisonment.

COUNT 3: TRADING IN INFLUENCE in co-perpetration, in violation of Article 345, paragraph 1, in conjunction with Article 23 of the former CCK, currently penalized under Article 431, paragraph 1, in conjunction with Article 31 of the CCK 2013.

The trial panel imposes a sentence of two years imprisonment.

COUNT 6: PROVIDING ASSISTANCE TO PERPETRATORS AFTER THE COMMISSION OF THE OFFENSE, in violation of Article 388, paragraphs 1 and 2, of the CCK 2013.

The trial panel imposes a sentence of one year of imprisonment.

COUNT 7: FAILURE TO REPORT CRIMINAL OFFENSES OR PERPETRATORS, in violation of Article 386, paragraph 1, sub-paragraph 1.9, of the CCK 2013.

The trial panel imposes a sentence of one year of imprisonment.

Pursuant to Article 80.1 of the CCRK the Court imposes an aggregate sentence of seven (7) years of imprisonment.

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:

On 11 September 2013 the defendant was arrested and deprived of his liberty. On 12 September 2013 the defendant was placed in detention on remand. On 28 April 2015 the defendant was released into house detention. The presiding Judge has not altered this measure to date therefore the defendant has spent a total of 1,121 days in detention on remand or house detention.

Pursuant to Articles 42 paragraph 1 and 65 paragraph 1 the defendant, M.S. is disqualified from holding an official position for the period of five years.

Pursuant to Articles 41.1.3, 62.2.2, 64.1 and 2 of the CCRK the trial panel orders the defendant, M.S. to make restitution to the S. family for the loss of €4,750 which was unlawfully procured from them in consideration of the defendants, M.S. and B.SH. influencing the criminal proceedings against, B.S. The defendant is jointly and severally liable with his co-accused, B.SH., who has also pleaded guilty, for the return of this sum. The entire amount is to be refunded by 31 December 2020. If it is not, the prosecutor may re-enter the matter before the trial panel, or any member of it to consider an alternative sentence.

The defendant, M.S. *may* also be liable to the members of the S. family for the economic and personal damage they sustained as a result of his actions. The S. family have filed claims with the Court in this regard. However, these claims should be the subject of separate, civil proceedings where the alleged damage should be particularised in greater detail.

Pursuant to Article 450 of the CPC the costs of the proceedings will be reimbursed by the Defendant. These are assessed in the amount of €500.

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

PKR. nr. 194/15

Dated this 6th day of October 2016

Piotr Bojarczuk

Presiding Judge

Marie Tuma

Panel Member

Musa Konxheli

Panel Member

Hysni Recica

Court Recorder

Legal remedy:

Authorized persons may file an appeal in written form against this judgment through the Basic Court of Ferizaj/Uroševac to the Court of Appeals within fifteen (15) days from the date the copy of the full reasoned judgment has been served, pursuant to Article 380.1 of the CPC.