

**IN THE BASIC COURT OF FERIZAJ/UROŠEVAC**

**P. nr. 250/13**

**29<sup>th</sup> 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 Ragip Bugacku, in the criminal case against:

**B .SH.**

<b>Nickname</b>	-
<b>Father's name</b>	.....
<b>Date of Birth</b>	.....
<b>Place of Birth</b>	.....
<b>Gender</b>	<b>Male</b>
<b>Address</b>	..... Street (formerly named ..... Street) at “.....” in ..... / ...../ ..... no....., .....
<b>Nationality</b>	<b>Kosovo</b>
<b>Citizenship</b>	<b>Albanian</b>
<b>Occupation</b>	..... (.....)
<b>Personal identity</b>	.....

<b>number</b>	
<b>Restrictive Measures</b>	<b>In detention since his arrest on 11<sup>th</sup> September 2013 and released into house detention on even date.</b>

**Et alii**

Charged in the Indictment of the Special Prosecutor PPS.nr. 5/12 dated 27<sup>th</sup> December 2013 and filed with the Registry of the Basic Court of Ferizaj/Uroševac on 27<sup>th</sup> 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 19<sup>th</sup> and 30<sup>th</sup> May, 2<sup>nd</sup> and 12<sup>th</sup> June, 10<sup>th</sup> and 11<sup>th</sup> July, 4<sup>th</sup> and 25<sup>th</sup> August, 8<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup> and 30<sup>th</sup> September, 13<sup>th</sup> and 28<sup>th</sup> October, 13<sup>th</sup>, 14<sup>th</sup> and 27<sup>th</sup> November, 5<sup>th</sup>, 8<sup>th</sup> and 15<sup>th</sup> December 2014 and 16<sup>th</sup>, 26<sup>th</sup> and 30<sup>th</sup> January and 10<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> February 2015, 3<sup>rd</sup> and 31<sup>st</sup> March 2015 and 2<sup>nd</sup> and 21<sup>st</sup>, 23<sup>rd</sup> and 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> 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 21<sup>st</sup> 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 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> 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:

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## JUDGMENT

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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*

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*

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.**

**REASONING**

**A. COMPETENCE OF THE TRIAL PANEL**

According to Article 11 (1) of the Law on Courts, Law Nr. 03/L-199, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law. Article 8 of the Law on Courts states that the Basic Court of Ferizaj/Uroševac is established for the territory of *inter alia* the Municipality of Ferizaj/Uroševac. The defendant, B.Sh. was co-accused in the same indictment with five defendants accused of offences coming within the ambit of Article 15 (1.19) of the same Law. The indictment in this case was filed on 27<sup>th</sup> December 2013.



## **B. PROCEDURAL BACKGROUND**

On 23<sup>rd</sup> March 2013, the Prosecutor issued a Decision on Initiation of Investigation, which was expanded on 28<sup>th</sup> March 2013 upon issuance by the Prosecutor of a Decision to Expand the Investigation.

On 11<sup>th</sup> September 2013, the defendant B.Sh. was arrested and on 12<sup>th</sup> September 2013 the pre-trial judge ordered detention on remand against all the defendants in the case, including the defendant B.Sh., for the period of one (1) month. Upon the expiration of this period the prosecutor applied for it to be extended. The pre-trial Judge granted this application. The period of detention was extended pursuant to statute from time to time. The defendant, B.Sh. filed appeals to the Appeals Court and to the Supreme Court of Kosovo but these were invariably rejected. On 27<sup>th</sup> December 2013, the Prosecutor filed the Indictment PPS No. 05/2012, formally charging the defendants B.Sh., M.S., B.V., S.M., and R.A. All applications to have the indictment and/or evidence dismissed or rejected respectively were rejected at first instance and on appeal.

The main trial in this case commenced on 19<sup>th</sup> May 2014 in the Basic Court of Ferizaj (sitting in Kacaniku/Kacanik). Sessions were also held on 30<sup>th</sup> May, 2<sup>nd</sup> June, 12<sup>th</sup> June, 10<sup>th</sup> and 11<sup>th</sup> July, 4<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> August, 8<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup> and 30<sup>th</sup> September, 13<sup>th</sup> and 28<sup>th</sup> October and 13<sup>th</sup>, 14<sup>th</sup> and 27<sup>th</sup> November 2014. There were also sessions on 5<sup>th</sup>, 8<sup>th</sup> and 15<sup>th</sup> December 2014, 16<sup>th</sup>, 26<sup>th</sup> and 30<sup>th</sup> January and 10<sup>th</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, and 25<sup>th</sup> February 2015, 31<sup>st</sup> March 2015 and 2<sup>nd</sup>, 21<sup>st</sup> 23<sup>rd</sup> and 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> April 2015.

### **C. ADMISSABLE EVIDENCE**

The defendant, B.Sh. pleaded guilty on the basis of the evidence contained in the indictment. He was fully advised at all material times by his defence counsel, A.D. and, prior to that, R.A. The trial panel scrutinized the guilty plea agreement in its deliberations on 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> April 2015.

During the first session of the initial hearing in this case on 10<sup>th</sup> January 2014, the defendant, B.Sh. stated he accepted the weapon and items of ammunition at Count 10 on the indictment (namely, the offence of Use of a Weapon or Dangerous Instrument contrary to Article 375 paragraphs 1 and 2 of the CCK) were recovered during a search of his residence however he stopped short of pleading guilty to this offence.

On 27<sup>th</sup> January 2014 then counsel for the defendant, B.Sh., the lawyer, R.A. filed an objection to the evidence pursuant to Article 249 of the CPC. This was rejected by order of the presiding Judge dated 6<sup>th</sup> March 2014. Defence counsel did not file an appeal nor did he file an application to dismiss the indictment.

On 27<sup>th</sup> January 2014 then counsel for the defendant, B.Sh., the lawyer, R.A. also filed an application to dismiss the indictment pursuant to Article 250 of the CPC. This was also rejected by order of the presiding Judge dated 6<sup>th</sup> March 2014. Defence counsel did not file any appeals.

The plea agreement concluded between SPRK and the defendant, B.Sh. was based on the evidence set out in the indictment, which was disclosed to the defendant prior to the initial hearing, and the evidence administered during the main trial.

## **D. FACTUAL FINDINGS**

On the basis of the guilty plea agreement concluded between the defendant, B.Sh. and SPRK the trial panel makes the following findings of fact:

### **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*

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*

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.**

The plea agreement between the defendant, B.Sh. and the SPRK dated 21<sup>st</sup> April 2015 also contained an Addendum in which the defendant, B.Sh. confirmed certain facts put to him by the prosecutor. The Addendum is annexed to this judgment.

### **E. ANALYSIS OF THE EVIDENCE**

The trial panel analysed the guilty plea agreement and Addendum concluded between SPRK and the defendant, B.Sh. and unanimously agreed the offences to which the defendant pleaded guilty were supported by the factual allegation contained in the indictment. In particular the statements of the S. family and the mobile telephone records of conversations between them and the defendant strongly support the defendant, B.Sh.'s guilt in respect of all of the offences with which he is charged in the indictment.

## **G. DETERMINATION OF THE PUNISHMENT**

The trial panel is unanimously satisfied the punishments contained in the plea agreement negotiated between the defendant, B.Sh. and the SPRK are within the statutory range, are proportionate to the offences committed and strike a proper balance between the court's right to punish the defendant and its duty to offer him an opportunity for rehabilitation.

## **H. FORFEITURE**

The Court orders the permanent seizure of the weapon and ammunition seized from the Defendant's residence.

## **I. COSTS OF THE PROCEEDINGS**

Based on the guilty plea negotiated at the premises of the SPRK on 21<sup>st</sup> 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 the costs of the proceedings will be reimbursed by the Defendant. The costs of the criminal proceedings assessed in the sum of 100 (one hundred) Euros together with the Scheduled Amount, assessed in the sum of 50 (fifty) Euros.

## **SENTENCES**

Based on the guilty plea negotiated at the premises of the SPRK on 21<sup>st</sup> April 2015 between the SPRK Prosecutor, Mr. Drew Engel (duly authorised by the Chief

Prosecutor for SPRK), the defendant, B.Sh. and 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 (5) 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:

One (1) year, seven (7) months and eighteen (18) days in Detention on Remand from 11<sup>th</sup> September 2013 to 29<sup>th</sup> April 2015;

The period of time already spent in detention on remand and in house detention amounts to one (1) year, seven (7) months and eighteen (18) days. The aggregate sentence of imprisonment imposed is five years (i.e. sixty (60) months). As agreed by the defendant, B.Sh. and SPRK the defendant will be released into house detention from 29<sup>th</sup> April 2015 to 11<sup>th</sup> September 2015 when he will be released on condition he remains of good behaviour for a period of three (3) years.

The defendant, B.Sh. will perform **200 hours of Community Service** at a community centre, charity, animal shelter, or other non-profit organization designated by the Court 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 12<sup>th</sup> September 2015*. There will be a review of the performance of said Community Service hours, no later than 28<sup>th</sup> 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 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.

The defendant, B.Sh. is also prohibited from being employed as a police officer or serving in any police and/or security capacity, and/or in any capacity requiring or allowing for the carrying of a firearm or other prohibited weapon enumerated under the CCK for a total period of twenty (20) years.

The Defendant, R.A. shall not have any contact (directly or indirectly) with the victim, A.Xh., unless she states in writing her willingness to have such contact *and* the Court approves this;

The Defendant, R.A. is prohibited from having any and all contact with the witnesses in this case and/or any of their immediate family members, unless such persons state in writing their willingness to have such contact and unless such contacts are Court-approved. Similarly, the defendant, B.Sh. is prohibited from having any and all contact with the victims and/or their family members, unless such person state in writing their willingness to have such contact and unless such contacts are Court-approved. The defendant, B.Sh. is also prohibited from having

any and all contact with all the defendants and/or their family members, unless such persons state in writing their willingness to have such contact and unless such contacts are Court-approved.

The Court orders the permanent seizure of the weapon and ammunition used by the Defendant in the commission of the criminal offence at Count 10 herein.

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

#### **J. Compensation of the S family**

In relation to this issue, the court notes point 13 on page 4 of the Guilty Plea Agreement whereby the defendant, B.Sh. and SPRK have agreed the Defendant, B.Sh. will pay in full all the money requested from the S. family by the defendant and/or all the money received by the defendant as material benefit of the criminal offences committed in this case for which the Defendant is pleading guilty.

The trial panel notes the injured party, B.S. claims to have suffered substantial material and non-material losses to himself, his family and his company “L” as a result of the criminal actions of the defendant, B.Sh. Indeed, the injured party, B.S. filed a document at the outset of the main trial assessing these losses in the region on €1.4 million. However, this sum was not sufficiently particularized and/or evidenced/vouched to allow the trial panel to make any order in this regard. Therefore this claim should be the subject of a separate civil claim pursuant to Article 463 of the CPC.

In addition the trial panel is aware the S. family paid €4,750 to the defendants, B.Sh. and allegedly to the defendant, M.S. to secure the release of B.S. from detention. At this point the trial panel cannot make any order in respect of the liability of the defendant, B.Sh. for the return of this sum until the case against the defendant, M.S. is completed and a verdict is reached. The defendant, M.S. has pleaded not guilty and the trial is ongoing. If the defendant, M.S. is acquitted, all of the liability for return of the sum of €4,750 will rest with the defendant, B.Sh. However, if the defendant, M.S. is convicted of all or any of the offences relating to the unlawful procurement of the sum of €4,750 then he and the defendant, B.Sh. will be jointly and severally liable to the S. family for return of this sum.

**BASIC COURT OF FERIZAJ/UROŠEVAC**

**P. nr. 250/13**

**Dated this 29<sup>th</sup> day of April 2015**

Piotr Bojarczuk

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Presiding Judge

Marie Tuma

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Panel Member

Musa Konxheli

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Panel Member

Sara Xhemaili

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Court Recorder