

## BASIC COURT OF PRIZREN

P. No. 171/13

PP. No. : 147/2011

### IN THE NAME OF THE PEOPLE

The Basic Court of Prizren, in the trial panel composed of:

- 1) EULEX Judge, Vladimir Mikula, as presiding Judge,
- 2) EULEX Judge, Franciska Fiser, as panel member, and
- 3) Local Judge, Refki Piraj, as panel member

assisted by the court recorder undersigned below, in the criminal case against:

1. **R M**, father's name R; date of birth; ..... in ..... village, P, male, nationality Albanian, citizenship Kosovar, current address; "....." Street No ....., P.;
2. **S P**, father's name I., date of birth ....., in ..... village, P, male, nationality Albanian, citizenship Kosovar, current address .....No. .; P;
3. **A A**, father's name R, date of birth ....., male, nationality Albanian, citizenship Kosovar, current address .....village, P.....;
4. **K U**, father's ....., date of birth. .... in ..... village, P., nationality Albanian, citizenship Kosovar, current address ..... village, P.;
5. **A T**, father's name, date of birth ..... in ..... village, P..... nationality Albanian, citizenship Kosovar, current address '..... street no. ...., P.....;
6. **M K**, father's I, date of birth ..... in ..... village, P.....; nationality Albanian, citizenship Kosovar, current address; ....., P.....

All of them charged pursuant to the Indictment of 26 February 2013, filed with the Basic Court of Prizren on 27 February 2013, with the following criminal offences as described in the Indictment:

- I. In the period between 01/07/2008 and 29/11/2011 in Prizren, **R M** in the capacity of the ....., and **K U** in the capacity of the ....., in co-perpetration and with the intent to obtain a benefit for M K, M Q and J A, by taking advantage of their official

authority did not execute their official duties, in particular by intentionally failing to execute the Judgment of the Supreme Court of Kosovo Rev. No. 209/2005 dated 26/05/2006 declaring the ..... as the rightful owner of the land parcels No 8617 and No 8619, respectively of the size of 0,20.65 ha in the value of 41.300 EUR and 0,06.22 ha in the value of 12.440 EUR in ‘Bugazillek’, possession list No 8414 CZ ....., and in particular:

1. in the period between 01/07/2008 and the end of March 2010 **K U**, after having been notified about the aforementioned judgment by the Municipal Public Lawyer of the ..... by way of the memo No 621/08 dated 01/07/2008 and the memo dated 12/11/2008, intentionally failed to take any action to execute it and make appropriate changes in the cadastral records which would have evidenced the ..... as the rightful owner of the land parcels in question;
2. in the period between 01/07/2008 and 29/11/2011 **R M**, after having been notified about the aforementioned judgment by the Municipal Public Lawyer of the ..... by way of the Memo No 621/08 dated 01/07/2008, ordered **K U** not to execute it and make appropriate changes in the cadastral records which would have evidenced the ..... as the rightful owner of the land parcels in question and continued failing to comply with the judgment until 29/11/2011.

**As the aforementioned acts resulted in a benefit for, at least, M K, M Q and J A, in the form of use of and benefit from Municipality land, they constitute the offence of Abusing Official Position or Authority pursuant to Article 422(1) and (2)(2.1) and (2.2) in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.**

**II.** In the period between 24/11/2010 and 11/02/2011 in Prizren, **R M** in the capacity of the ....., **M K** in the capacity of ....., and **A A** in the capacity of ....., acting in co-perpetration and with the intent to obtain a benefit for the Education and Schooling Centre QEA (Qendra Edukative Arsimore) ‘Gulistan’, and to cause damage to another legal person, the Privatization Agency of Kosovo, by taking advantage of their official authority, exceeded the limits of their authorizations in the process of allocation of public land to Gulistan, and in particular:

1. on 24/11/2010 in order to allocate the land for the planned investment by ‘Gulistan’, they enabled the ..... to unlawfully take in possession the land parcel No 800/2 of the size 50.300 m<sup>2</sup> in the location named ‘Boka Boka’ in ..... in the value of 100.600 EUR, possession list No 553 CZ Korisha registered in the name of the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests, under the administration of the Privatization Agency of Kosovo, without the required Agency’s consent;
  - a. on the aforementioned date **R M** issued decision No 01-370 by way of which the ..... took the possession of the said land parcel;

- b. on the same date **M K**, following decision No 03/3, issued the request to **A A** in order to make changes in the cadastral records effecting the transfer of the ownership of the said land parcel from the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests to the .....
  - c. on the same date **A A** issued decision No 07-025-6976/Z by way of which he approved the request of **M K** and made changes in the cadastral records indicating the transfer of the ownership of the said land parcel from the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests to the .....
2. on 11/02/2011 in order to allocate the land for the planned investment by ‘Gulistan’, they enabled the signing of the contract between the ..... and the aforementioned entity by way of which the latter was unlawfully given for use the land parcel No 800/2:
- a. on the aforementioned date **R M** signed the contract No 01/17 on the conditions of use of the real property with ‘Gulistan’ represented by its director **T S**, by way of which the said entity was given for use the said land parcel for the period of 40 years and without compensation;
  - b. on the aforementioned date **M K**, acting upon the aforementioned contract, issued the request to **A A** to make changes in the cadastral records in order to register the lease of the said land parcel on the conditions of use of real property;
  - c. on the aforementioned date **A A** issued the decision by way of which he approved the request of **M K** and made changes in the cadastral records in order to register the lease of the said land parcel on the conditions of use of the real property.

**As the aforementioned acts under 1 and 2 were committed with the intent to obtain a benefit, in the form of the free of charge use of Municipality property for ‘Gulistan’, and also with the intent to cause damage to the Privatization Agency of Kosovo, they constitute the offence of Abusing Official Position or Authority pursuant to Article 422(1) and (2)(2.1) and (2.2) in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.**

**III.** In the period between 15/12/2010 and 15/04/2011 in Prizren, **R M**, in the capacity of the ....., and **S P**, in the capacity of the ....., acting in co-perpetration and with the intent to obtain a benefit for a legal person, namely N.T.P. ‘Kamila’ chocolate factory, by abusing their official authority exceeded the limits of their authorization in the process of allocating public land to the said organization, and in particular:

1. on 15/12/2010 **R M** signed the Agreement on Public-Private Partnership and Concessions on the Use of the Immovable Property of the ..... on various land parcels amounting to a total of 13.935 m2 in Prizren, possession list No 593 CZ Lubizhde with 'Kamila' with the seat in Gjakova represented by E Swithout having obtained prior decision of the Municipal Assembly and without having followed the relevant legal procedures;

2. on 15/04/2011 **S P**, upon the authorization of **R M**, signed with 'Kamila' represented by E.S. the contract No 04-353 'for Use of Municipal Land and Setting the Lease Price for Construction of the Structure - Chocolate Factory', by way of which he allocated the land parcel No 688/2 of the size of 20.000 m2 in 'Boka Boka' in ..... in the value of 40.000 EUR, possession list No 257 in CZ ....., without having obtained prior decision of the ..... and without having followed the relevant legal procedures;

**As the aforementioned acts resulted in a benefit, in the form of free of charge use of Municipality property for 'Kamila', without prior decision of the Municipal Assembly, it constitutes the offence of Abusing Official Position or Authority pursuant to Article 422(1) and (2)(2.1) and (2.2) in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.**

IV. In the period between 02/08/2011 and 26/01/2012 in Prizren, **R M**, in the capacity of the ....., **M K**, in the capacity of the ....., and **A T**, in the capacity of the ....., acting in co-perpetration and with the intent to seriously violate the rights of other persons, namely persons having filed civil claims of ownership at the ..... in at least 7 cases, i.e. C 244/11, C 583/11, C 539/11, C 526/11, C 727/06, C 388/11, C 872/08, by abusing their official authority exceeded the limits of their authorization in that they participated in the issuing and the implementation of decision No 01/06-8121 entitled 'Conclusion' dated 02/08/2011 by way of which cadastral experts working in the ..... were banned from attending court sessions and giving their experts' opinions in the aforementioned cases, thus thwarting the realisation of the claimants' rights to an expeditious trial leading to the potential return of their properties, and in particular:

1. on 02/08/2011 **M K** submitted to **R M** the proposal to issue the Conclusion in order to ban cadastral experts working for the ..... from attending court sessions and giving their experts' opinions in the aforementioned cases;
2. on 02/08/2011 **R M**, following the proposal of **M K**, issued the Conclusion by way of which cadastral experts working in the ..... were banned from attending court sessions and giving their experts' opinions in the aforementioned cases, and in spite of a number of calls from the court, he refused to lift the ban until he issued the decision No 01/06 dated 26/01/2012;

3. on 02/08/2011 **A T**, following the Conclusion, ordered subordinate cadastral experts working in the ..... to comply with the Conclusion effectively banning them from attending court sessions and giving their experts' opinions in the aforementioned cases.

**As the aforementioned acts resulted in a serious violation of the rights of a number of claimants in civil disputes, they constitute the offence of Abusing Official Position or Authority pursuant to Article 422(1) and (2)(2.1) and (2.2) in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.**

After having held the main trial, in the presence of the Public Prosecutor, of the accused and their defense counsels on:

13, 14 and 15 August 2013;  
12, 13, 16, 17 and 19 September 2013;  
10 and 24 October 2013;  
7, 12, 13, 14, 15 and 19 November 2013;  
13, 16, 17 and 19 December 2013;  
27 January 2014;  
10, 11, 12, 13, 14 and 25 February 2014;  
13 March 2014

after the trial panel's deliberation and voting held on 13 March 2014, based on Articles 390 and 391 par. 1 of the KCCP,

**PURSUANT** to Articles 359, 364, 365 and 366 of the Kosovo Criminal Procedure Code, on this 13<sup>th</sup> March 2014, in open court and in the presence of the defendant, his Defence Counsel and the EULEX Prosecutor, renders the following

## **JUDGMENT**

### **1. For the count one of the Indictment R M and K U are found guilty**

Because in the period between 01/07/2008 and 29/11/2011 **R M**, in the capacity of the ....., after having been notified about the Judgment of the Supreme Court of Kosovo Rev. No. 209/2005 dated 26/05/2006 declaring the ..... as the rightful owner of the land parcels No 8617 and No 8619, respectively of the size of 0,20.65 ha in the value of 41.300 EUR and 0,06.22 ha in the value of 12.440 EUR in 'Bugazillek', possession list No 8414 CZ ..... by the ..... by way of the Memo No 621/08 dated

01/07/2008, ordered ..... **K U** not to execute it and not to make appropriate changes in the cadastral records which would have evidenced the ..... as the rightful owner of the land parcels in question and continued failing to comply with the judgment until 29/11/2011 and for that period **M K**, **M Q** and **J A**, obtained the benefit in the amount of 30050 Euro from the premises which would have belonged to the .....

**2. For the count two of the Indictment **R M**, **M K** and **A A** are found guilty**

Because in the period between 24/11/2010 and 11/02/2011 in Prizren, **R M** in the capacity of the ....., in order to allocate the land for the planned investment by ‘Gulistan’, on 24/11/2010 issued decision No 01-370 by way of which the ..... took the possession of the land parcel No 800/2 of the size 50.300 m2 in the location named ‘Boka Boka’ in ..... in the value of 100.600 EUR, possession list No 553 CZ Korisha registered in the name of the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests, under the administration of the Privatization Agency of Kosovo, without the required Agency’s consent; on 24/11/2010 following the ..... decision **M K**, in the capacity of ....., instructed **G S** to sign on his behalf the request No 03/3 to **A A** in order to make changes in the cadastral records effecting the transfer of the ownership of the said land parcel from the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests to the Municipality of Prizren; on 24/11/2010 **A A**, in capacity of ....., issued decision No 07-025-6976/Z by way of which he approved the request of **M K** and changes were made in the cadastral records indicating the transfer of the ownership of the said land parcel from the Labour Organization of Forestry ‘SHARRI’ – OPB Economy of Forests to the ..... On 11/02/2011 **R M** signed the contract No 01/17 on the conditions of use of the real property with ‘Gulistan’ represented by its director **T S**, by way of which the said entity was given for use the said land parcel for the period of 40 years and without compensation and benefit for Gulistan from free rent which is 20.120 EURO; on 11/02/2011 date **M K**, acting upon the aforementioned contract, instructed **G S** to sign on his behalf the request to **A A** to make changes in the cadastral records in order to register the lease of the said land parcel on the conditions of use of real property; on 11/02/2011 date **A A** issued the decision by way of which he approved the request of **M K** and changes were made in the cadastral records in order to register the lease of the said land parcel on the conditions of use of the real property and it was proceeded although the consent of Municipal Assembly for allocation of concrete land was not sought which is prescribed and stipulated in 3 (a) of the Statute of the ..... No 01/011-

5643 and Law No. 03/L-226 on Allocation for use and exchange of immovable property of Municipality entered to force 15/12/2010 and contrary to Article 5 para 3 and 7 para 1 of the Law No. 03/L-241 on public Procurement in Republic of Kosovo dated 30/09/2010.

**3. For the count three of the Indictment R M and S P are found guilty**

Because on 15/12/2010 **R M** as a .....signed the Agreement on Public-Private Partnership and Concessions on the Use of the Immovable Property of the ..... on various land parcels amounting to a total of 13.935 m2 in ....., possession list No 593 CZ Lubizhde with 'Kamila' with the seat in ..... represented by E S without having obtained prior decision of the Municipal Assembly and without having followed the relevant legal procedures, this contract was not fulfilled; on 15/04/2011 **S P**, in the capacity of the ....., upon the authorization of **R M**, signed with 'Kamila' represented by E S the contract No 04-353 'for Use of Municipal Land and Setting the Lease Price for Construction of the Structure - Chocolate Factory', by way of which he allocated the land parcel No 688/2 of the size of 20.000 m2 in 'Boka Boka' in ..... in the value of 40.000 EUR, possession list No 257 in CZ Lutogllave, without having obtained the prior decision of the Municipal Assembly and without having followed the relevant legal procedures; and the aforementioned contracts resulted in a benefit of 4500 EURO, in the form of free of charge use of Municipality property for 'Kamila', without prior decision of the Municipal Assembly and procurement procedure, **as it is** prescribed and stipulated by Article 3 (a) of the Statute of the ..... No 01/011-5643 and Law No. 03/L-226 on Allocation for use and exchange of immovable property of Municipality entered into force 15/12/2010 and contrary to Article 5 para 3 and 7 para 1 of the Law No. 03/L-241 on Public Procurement in Republic of Kosovo dated 30/09/2010.

**4. For the count four of the Indictment R M, M K and A T are found guilty**

Because on 02/08/2011 **M K**, in the capacity of Director of the Directorate of Administration/Office of Property and Legal Affairs of the ....., submitted to **R M** the proposal to issue the Conclusion in order to ban cadastral experts working for the ..... from attending court sessions and giving their experts' opinions in the civil cases; on 02/08/2011 **R M**, in the capacity of the ....., following the proposal of **M K**, issued the Conclusion by way of which cadastral experts working in the ..... were banned from attending court sessions and giving their experts' opinions in the aforementioned cases, and in

spite of a number of calls from the court, he refused to lift the ban until he issued the decision No 01/06 dated 26/01/2012; on 02/08/2011 **A T**, informed with the knowledge of the illegality of such Conclusion subordinate cadastral experts working in the .....complied with the Conclusion effectively banning them from attending court sessions and giving their experts' opinions in the aforementioned cases. This caused delays in the progress of the property civil cases filed at the ..... in at least 7 cases, i.e. C 244/11, C 583/11, C 539/11, C 526/11, C 727/06, C 388/11, C 872/08, interfering with judicial procedure and execution of the justice.

Thereby

1. **R M**, committed, by the acts described ad 1 to 4 in continuation, the criminal offense of Abusing official position or authority pursuant Article 422 paragraph 1, 2 subparagraphs 2.1. And 2.2. of Criminal code valid from 1 January 2013 in continuation pursuant to Article 81 valid from 1 January 2013 and partially in co perpetration pursuant to Article 31 of the Criminal code valid from 1 January 2013;
2. **S P**, committed by the act described ad 3 criminal offense of Abusing official position or authority pursuant to Article 339 paragraph 1, 2 of Criminal code valid until 1 January 2013 in co perpetration pursuant Article 23 of Criminal code valid from 1 January 2013;
3. **A A**, committed, by the act described ad 2, the criminal offense of Abusing official position or authority pursuant Article 422 paragraph 1, 2 subparagraphs 2.1. And 2.2. of Criminal code valid from 1 January 2013 in co perpetration pursuant Article 31 of Criminal code valid from 1 January 2013
4. **K U**, assisted by the act described ad 1 in the commission of the criminal offense of Abusing official position or authority pursuant to Article 422 paragraph 1, 2 subparagraphs 2.1. And 2.2. of Criminal code valid from 1 January 2013 pursuant to Article 33 of Criminal code valid from 1 January 2013;
5. **A T**, assisted by the acts described ad 4 in the commission of the criminal offense of Abusing official position or authority pursuant to 339 paragraph 1, 2 of Criminal code valid until 1 January 2013 pursuant to Article 25 of Criminal code valid until 1 January 2013;
6. **M K**, committed, by the acts described ad 2 and 4 and in continuation, the criminal offense of Abusing official position or authority pursuant to Article 422 paragraph 1, 2 subparagraphs 2.1. and 2.2. of Criminal code valid from 1 January 2013 in continuation pursuant to the Article 81 of valid from 1 January 2013 and in co perpetration pursuant to Article 31 of Criminal code valid from 1 January 2013;



Thereby, the trial panel imposes the following sentence:

**1. R M**

Pursuant to Articles 41, 49, 50, 52 73, 81 and 422 paragraph 1 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of 2 years of imprisonment with execution being suspended pursuant to Article 51 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 3 years of verification period if the defendant does not commit another criminal offense for the verification period.

Pursuant to Articles 65 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of prohibition of exercising public administration or public service functions for 30 months.

**2. S P**

Pursuant to Articles 34, 42, 43, 44, 64 and Article 339 paragraph 2 of Criminal code valid until 1 January 2013 to the punishment of 8 months of imprisonment with execution being suspended pursuant to Article 43 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 2 years of verification period if the defendant does not commit another criminal offense for the verification period.

Pursuant to Articles 65 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of prohibition of exercising public administration or public service functions for 12 months

**3. A A**

Pursuant to Articles 41, 49, 50, 52, 73, 75, 76 and 422 paragraph 1 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of 5 months of imprisonment with execution being suspended pursuant to Article 51 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 18 months of verification period if the defendant does not commit another criminal offense for the verification period.

**4. K U**

Pursuant to Articles 33, 41, 49, 50, 52 73, 74, 75, and 422 paragraph 1 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of 8 months of imprisonment with execution being suspended pursuant to Article 51 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 20 months of verification period if the defendant does not commit another criminal offense for the verification period.

**5. A T**

Pursuant to Articles 25, 34, 42, 43, 44, 64, 65, and Article 339 paragraph 2 of Criminal code valid until 1 January 2013 to the punishment of 1 month of imprisonment with execution being suspended pursuant to Article 43 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 1 year of verification period if the defendant does not commit another criminal offense for the verification period.

**6. M K**

Pursuant to Articles 41, 49, 50, 52 73, 81 and 422 paragraph 1 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of 1 year and 6 months of imprisonment with execution being suspended pursuant the Article 51 paragraph 2 1 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 for 2 years of verification period if the defendant does not commit another criminal offense for the verification period.

Pursuant to Articles 65 paragraph 2 of the Criminal Code of Kosovo valid from 1<sup>st</sup> January 2013 to the punishment of prohibition of exercising public administration or public service functions for 18 months.

The defendants are obliged to pay all of the costs of the criminal proceedings in the amount of 1200 EURO. The obligation of each defendant is limited to the amount of 200 EURO each.

Pursuant the Article 463 paragraph 2 of Criminal procedural code The Ministry of Justice, ....., Kosovo privatization Agency, Forestry organization Sharri, are instructed to pursue their property claim in civil litigation.

**BASIC COURT OF PRIZREN  
P. No. 171/13; PP. No. : 147/2011**

\_\_\_\_\_  
Presiding Judge  
Vladimir Mikula

\_\_\_\_\_  
Panel Member  
Franciska Fiser

\_\_\_\_\_  
Panel Member  
Refki Piraj

**Legal Remedy:**

Pursuant to Article 380 of the Criminal Procedure Code of Kosovo 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 Basic Court of Prizren.