

THE BASIC COURT OF PRISTINA

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

Case No. P.8/13

IN THE NAME OF THE PEOPLE

24 November 2017

EULEX Judge Marie Tuma, acting as Presiding Trial Judge, and EULEX Judge Jennifer Seel and Kosovo Judge Isuf Makolli as panel members, with court recorder Azem Havolli

In the criminal case against the accused:

1)

Name	F.
Surname	L.
Father's name	XXX
Date of Birth	XXX
Place of Birth	XXX
Gender	Male
Address	XXX
Nationality	Kosovo Albanian
Citizenship	Kosovar
Occupation	Former Minister of Transport and Telecommunications (2008 – 2010)
ID	XXX

2)

Name	E.
Surname	S.
Father's name	XXX
Date of Birth	XXX
Place of Birth	XXX
Gender	Male
Address	XXX
Nationality	Kosovo Albanian
Citizenship	Kosovar
Occupation	Former Chief of Cabinet and Political Advisor to F.L. (2008-2010)
ID	XXX

3)

Name N.
Surname K.
Father's name XXX
Date of Birth XXX
Place of Birth XXX
Gender Male
Address XXX
Nationality Kosovo Albanian
Citizenship Kosovar
Occupation Former Chief of Procurement - Ministry of Transport and Telecommunications
ID XXX

4)

Name F.
Surname Z.
Father's name XXX
Date of Birth XXX
Place of Birth XXX
Gender Male
Address XXX
Nationality Kosovo Albanian
Citizenship Kosovar
Occupation Owner of T-Company, Gjilan
ID XXX

5)

Name S.
Surname T.
Father's name XXX
Date of Birth XXX
Place of Birth XXX
Gender Male
Address XXX
Nationality Kosovo Albanian
Citizenship Kosovar
Occupation Former Bodyguard of F.L.

Charged with the following criminal offences as per Indictment PPS No. 425/09 dated 5 December 2012 and PPS No. 67/10 dated 18 February 2014, as consolidated in Indictment PPS No. 425/09 dated 28 September 2015:

Count 1 against F.L., E.S., N.K. and S.T.: **Organized Crime** in violation of Article 274 paragraph 3 of the Provisional Criminal Code of Kosovo (PCCK) as read by Article 274 paragraph 1 of the PCCK and punishable by a fine of up to 500.000 Euros and by imprisonment of seven to 20 years; read in conjunction with Article 23 of the PCCK (co-perpetration) as described in the Consolidated Indictment PPS No. 425/09 dated 28 September 2015;

Count 2 against F.L., E.S., N.K. and S.T.: **Abusing Official Position or Authority** in violation of Article 339 paragraphs 1 and 3 of the PCCK; punishable by imprisonment of one to eight years and read in conjunction with Article 23 of the PCCK (co-perpetration) as to F.L. and N.K. and read in conjunction with Article 25 of the PCCK (assistance) as to E.S. and S.T.; additionally read in conjunction with Section 117.1.a and d of the Law on Public Procurement and additionally as read in conjunction with the following crime of Accepting Bribes as specified in Count 3, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015;

Count 3 against F.L., E.S. and N.K.: **Accepting Bribes** in violation of article 343 paragraphs 1 of the PCCK and punishable by imprisonment of six months to five years; read in conjunction with Article 23 of the PCCK (co-perpetration); and additionally read in conjunction with Section 117.1.a. and d. of the Law on Public Procurement, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015;

Count 4 against F.Z.: **Giving Bribes** in violation of Article 344 paragraph 1 of the PCCK and punishable by imprisonment of three months to three years; read in conjunction with Section 117.1.a. and d. of the Law on Public Procurement, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015;

Count 5 against F.Z.: **Misuse of Economic Authorizations** in violation of Article 236 paragraph 1 subparagraph 5 and paragraph 2 of the PCCK, punishable by imprisonment of six months to five years as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015;

And

Count 6 against F.L.: **Other Criminal Offences in the form of the Non-Declaration of Received Campaign Money in violation of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences**, as amended, Section 5.1 read in conjunction with Section 10.8 punishable by imprisonment of up to two years and a fine of up to 5.000 Euros or twice the amount of the currency accepted, whichever is greater; and Section 5.6 read in conjunction with Section 10.5, punishable by imprisonment of up to five years and a fine of up to 100.000 Euros; as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015.

After conclusion of the main trial, before the current trial panel in public trial sessions, equally in the presence of the Prosecutor, defendants and their defence counsels;

Having deliberated and voted pursuant to Article 357 of the Criminal Procedure Code (CPC) on 23 November 2017;

Pursuant to Article 362, 363, 364, 366, 450, 454 and 463 of the CPC,

Issues the following unanimous

JUDGMENT

1. Count 1 against F.L., E.S., N.K. and S.T.: **Organized Crime** in violation of Article 274 paragraph 3 of the Provisional Criminal Code of Kosovo (PCCK) as read by Article 274 paragraph 1 of the PCCK and punishable by a fine of up to 500.000 Euros and by imprisonment of seven to 20 years; read in conjunction with Article 23 of the PCCK (co-perpetration) as described in the Consolidated Indictment PPS No. 425/09 dated 28 September 2015: **The accused are ACQUITTED pursuant to article 364, paragraph 1(1.1) of CPC because the acts with which they are charged do not constitute the criminal offence of Organised Crime.**

2. Count 2 against F.L., E.S., N.K. and S.T.: **Abusing Official Position or Authority** in violation of Article 339 paragraphs 1 and 3 of the PCCK; punishable by imprisonment of one to eight years and read in conjunction with Article 23 of the PCCK (co-perpetration) as to F.L. and N.K. and read in conjunction with Article 25 of the PCCK (assistance) as to E.S. and S.T.; additionally read in conjunction with Section 117.1.a and d of the Law on Public Procurement and additionally as read in conjunction with the following crime of Accepting Bribes as specified in Count 3, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015: **The accused are ACQUITTED pursuant to article 364, paragraph 1(1.3) of the CPC because it has not been proven that they have committed the acts with which they have been charged. Specifically, it has not been proven that:**

- F.L., E.S. and N.K. abused their official positions by negotiating, promising, and awarding the construction companies T-Company and IE-Company road construction tenders in return for requesting and obtaining bribes. The tenders were awarded by circumventing and manipulating the legal procurement rules in violation of Section 6.2 of the Law on Public Procurement, which forbids the favouring of one company over another at any stage of the procurement process;
- S.T. assisted F.L. and N.K. to manipulate the tender procedures by making arrangements for private deal making negotiations, by asking for and passing on tender papers, by asking for money and by passing on private communication - including promises to have tenders awarded - between company associate A.A. and F.L. before and whilst the tender process was on-going;

- E.S. and N.K. additionally assisted T-Company to ‘fix’ its tender documents, whereas F.L. promised M.S. of IE-Company to ‘fix’ his tender documents by suggesting M.S. visit N.K.. The assistance – the “fixing” of the tendering documents constitutes a violation of Section 61.1.b of the Law on Public Procurement;
- In the course of negotiating the bribes, E.S. also negotiated tender specifications with F.Z. during the period between the placing of the bid and the awarding of the contract, which constitutes a violation of Section 57.2 of the Law on Public Procurement. F.L. and N.K. undertook similar communication with M.S., thereby violating Sections 53 and 57.2 of the Law on Public Procurement;
- Whereas, M.S. of IE-Company refused to pay the requested bribe of 20%, F.Z. of T-Company agreed to pay the requested bribe of 20%. The negotiation and awarding of tenders under the conditions of the payments of bribes constitutes a severe abuse of the public power vested in the suspects as well as the public interest in such public officials to administer binding decisions on the basis of impartiality and fairness;
- F.L., E.S. and N.K. abused their positions with the intent to gain a material benefit and to collect the requested monies from bribes. By assisting the companies with the issuing of bids through the fixing of their documents and by awarding the tenders to specific companies by circumventing the procurement rules, they also intended for such companies to collect an unlawful material benefit. The benefit for the companies T-Company and M-Company as to the tenders are specified in Count 1 of this indictment and amounted to EUR 2.476.607,59;
- In relation to the tender for the construction of the Road Phonesh-Zhegovc in Gjilan, F.L. privately met with M.S. from IE-Company, advising him to bid with other companies in order to win tenders for future projects at the MTPT; thus interfering with and violating the impartiality of the tendering process at the MTPT. N.K. signed the contract with T-Company despite being aware of the fact that F.Z. of T-Company won the tender on the basis of a price fixing agreement with the company belonging to his brother N.Z. of ZC-Company and, furthermore being aware that the tender was awarded as a result of violations committed of essential procurement laws as stipulated by the Law on Public Procurement. Whilst the road was being constructed, E.S. (despite being informed by F.Z. that "the commission will not accept it") instructed F.Z. to continue with the building of the road, which F.Z. acknowledged by telling E.S. that he was "a king";
- As to the tender summer maintenance 2008 Gjilan region, N.K. signed the tender for M-Company despite knowing that F.Z. of T-Company entered into a price fixing arrangement with E-Company and thus both companies should have been disqualified from the tender. Such a disqualification would have necessitated a re-running of the entire process. F.Z. however picked up the tender dossier for the T-Company on 1 February 2008 and submitted the bid for T-Company on 29 February 2008. In spite of the fact that he was prohibited from fixing price arrangements with other bidders before submitting the bids, or on the contrary to openly declare

that T-Company was officially bidding in a consortium with E-Company and shared prices, F.Z. concealed the price arrangement and manipulated the prices with E-Company secretly;

- N.K., despite knowing about the price fixing agreement, nevertheless accepted the continuation of the tendering process. He also did not report to the requisite authorities on the price fixing arrangement between both companies and signed the contract with the winning company M-Company even though he knew about the illegality involved in continuing with this process;
- With regards to the tender summer and winter maintenance 2009-2010 for Gjilan region, F.L. instructed M.S. of IE-Company to “not speak and the summer maintenance for the roads for 2009 is yours”. N.K., upon instruction by F.L. specified the deal by telling M.S. that “we will deposit to you 20 % of the total sum in advance and you will then give these [this] money to us”;
- M.S. refused to pay the bribe and therefore, N.K. told M.S. to go and see F.L. again, because he was the one who had previously promised him the tender. As M.S. did not agree to pay the requested bribe, F.L. instructed E.S. to negotiate a deal (bribe) with F.Z. of T-Company for his own personal benefit. E.S., after having talked about the issues with "some seniors" including F.L., assured F.L. not to “worry about the maintenance, I will be engaged about that all the time”. In March 2009, after detailed discussions had taken place over bribes between E.S. and F.Z. (of which F.L. was aware had taken place) T-Company was awarded the tender with a value of EUR 1.192.844,94, in exchange of paying a bribe in the amount of EUR 250.000,00 which would be passed on directly to the F.L. family. The money involved amounted to 20% of the overall value of the tender .The respective details about the bribe deal are specified in Counts 5 and 6 of this indictment. In the course of the negotiations involving this bribe, E.S. asked F.Z. of T-Company on 24 March 2009 to submit his tender documents evidently for manipulation purposes by telling him: “I will tell you when you should submit the papers and we will finish it because they are asking for them, too.”;
- In relation to the tender 08-073-521 Asphaltting of the road Duraj-Gabrice, F.L. guided through a ‘letter’, which was written in Mani Restaurant in the presence of company associates of B-Company (most likely A.A.) outlining what amount B-Company was required to offer to be successful with this bid. S.T. assisted F.L. by establishing a private communication with A.A. when the tender procedure commenced. N.K., despite knowing about the private agreements and arrangements made by F.L., accepted the continuation of the tender process; he failed to report any misconduct to the requisite authorities and subsequently signed the contracts with the winning companies Es-Company and B-Company.

3. **Count 3** against F.L., E.S. and N.K.: **Accepting Bribes** in violation of article 343 paragraphs 1 of the PCCK and punishable by imprisonment of six months to five years; read in conjunction with Article 23 of the PCCK (co-perpetration); and additionally read in conjunction with Section 117.1.a. and d. of the Law on Public Procurement, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015: **the accused are ACQUITTED pursuant to article 364, paragraph 1(1.3) of the CPC because it**

has not been proven that they have committed the acts with which they have been charged, specifically:

- Between 2007 and 2010 in Kosovo, F.L., in his official position as the MTPT Minister, E.S., in his official position as the MTPT Political Advisor and the MTPT Chief of Cabinet, and N.K., in his official position of the MTPT Chief of Procurement, accepted promises of bribes in exchange for awarding a road construction tender to T-Company. F.Z. as the owner of T-Company inversely offered bribes to get his tender documents “fixed” in order to be awarded with the MTPT tenders;
- The deal-making for the tender summer and winter maintenance 2009 for Gjilan region started when unsuccessful initial negotiations between F.L., N.K. and witness M.S. were undertaken. Whereas F.L. told M.S. to “not speak and the summer maintenance for the roads for 2009 is yours”, N.K. upon instruction by F.L. detailed the deal by telling M.S. that “we will deposit to you 20 % of the total sum in advance and you will then give these [this] money to us”. Witness M.S. in the end refused to pay the bribe and, N.K. therefore told him to go and see F.L. again, because he was the one who had originally promised him the tender;
- As M.S. was unwilling or unable to pay the bribe, F.L. and E.S. intensified negotiations with T-Company in relation to the awarding of the tender in the beginning of 2009. On 10 March 2009, after F.Z. complained to E.S. of not getting enough return on his donation to a leading political party in the amount of 5.000,00 which he had paid before, E.S. communicated to F.L. that “[T-Company] is saying you betrayed me”;
- On 19 March 2009, E.S. communicated to F.Z. of T-Company that he – E.S. – “talked with some seniors and they promised me that they will give it to you; [the] maintenance; of course I told them that you will make them happy too.” Two days later, on 21 March 2009, E.S. assured F.L. by stating the following: “...don’t worry about the maintenance, I will be engaged about that all the time”;
- On 23 March 2009, the bribe between E.S. and T-Company went into the final phase. F.Z. assured E.S. that T-Company will do his “obligation towards you [E.S.] and then of course towards your people” and that he “will give you [E.S.] 25 with four zero”. E.S. replied by saying that he “talked with the brother of our biggest chief and they will give it to you, but you have to keep your promise regarding that 25 that we talked about.” Shortly thereafter, E.S. helped to fix T-Company’s documents in such a way as to make sure that T-Company would be the winning bidder;
- After some further communication, on 27 March 2009, T-Company requested an update with regards to the bribe, to which E.S. replied that “everything goes right we wait for the contract to be ready then after you can sign it, but before the contracts you should release things”;
- A day later, on 28 March 2009, T-Company wrote to E.S. stating that “I hope that issue regarding maintenance will be in our favour, because days are approaching and we are all getting happy” and that “those money in the pocket are biting me” and that they should “hurry up in order to be

able to give you hand over”. E.S. replied on the same day by writing that “we hope it will happen, hahaha, they [the money] are biting you? They will get [hand] over, what to do since those should be given to those seniors”;

- On 30 March 2009, M.S. made a final unsuccessful attempt to win the tender as previously promised by F.L. and asked him for a meeting. On 31 March 2009, T-Company received acknowledgment from number XXX that “as you are very well linked to the statesmen then it seems that the job will be done.” In due course, the tender was awarded to T-Company for the bid/value of EUR 1.192.844,94;

4. **Count 4** against F.Z.: **Giving Bribes** in violation of Article 344 paragraph 1 of the PCKK and punishable by imprisonment of three months to three years; read in conjunction with Section 117.1.a. and d. of the Law on Public Procurement, as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015: **Count 4 is REJECTED pursuant to Article 363, paragraph 1(1.3) of the CPC because the period of statutory limitation expired.**

5. **Count 5** against F.Z.: **Misuse of Economic Authorizations** in violation of Article 236 paragraph 1 subparagraph 5 and paragraph 2 of the PCKK, punishable by imprisonment of six months to five years as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015: **The accused is ACQUITTED pursuant to article 364, paragraph 1(1.3) of the CPC because it has not been proven that the accused has committed the act with which he has been charged, specifically:**

- Between 21 March 2008 to 17 April, 13:00 in 2008 in Kosovo, F.Z. in the capacity as owner of T-Company violated the rules of business activity by conducting and tolerating a price fixing agreement with ZC-Company, owned by his brother N.Z., without disclosing that both companies will work together; thus constituting a violation of Section 66.2 of the Law on Public Procurement;
- The offers, which were given by T-Company and ZC-Company for this tender, contained identical prices in the requested positions for which the offers needed to be specified. F.Z. thereby manipulated and tolerated the manipulation of the bidding procedure, which is meant to be impartial and secret. F.Z. additionally constructed the road defectively despite knowing that such defects would not be officially accepted by the MTPT. He requested advice from E.S., who told him to continue and that he would not be fined;
- As for the tender, Summer Maintenance for the regional Roads, Gjilan for the year 2008, between 11 February 2008 and 24 April 2008 in Kosovo, F.Z. in his capacity as the owner of T-Company violated the rules of business activity by conducting, and tolerating a price fixing agreement with company E-Company, which is owned by I.S., without disclosing that both companies will work together; thus constituting a violation of Section 66.2 of the Law on Public Procurement;
- The offers which were submitted by T-Company and E-Company for this tender, contained identical prices in all requested positions for which the offers needed to be specified. F.Z. thereby

manipulated, and tolerated the manipulation of the bidding procedure, which is meant to be impartial and secret. This tender was awarded to M-Company;

- In relation to the tender Summer and Winter Maintenance on the regional Roads, Gjilan region, for the year 2009 in March of 2009 in Kosovo, F.Z., being the owner of the business organization T-Company, violated the rules of business activity by promising a bribe in the amount of 250.000 Euros to the MTPT official E.S. in order to win the MTPT tender (see the specifications in Counts 5 and 6). Additionally, F.Z. negotiated with E.S. the fixing of his tender documents, which is a violation of the eligibility requirements prohibiting F.Z.'s company T-Company to legally participate in the procurement activity. In the course of negotiating this bribe, F.Z. privately communicated with MTPT official E.S. in the period between the placing of his bid and the awarding of the contract, which constitutes a further violation on the rules of business activity as it represents an illegal non-transparent behavior in contravention to Sections 53 and 57.2 of the Law on Public Procurement.

6. **Count 6 against F.L.: Other Criminal Offences in the form of the Non-Declaration of Received Campaign Money in violation of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences**, as amended, Section 5.1 read in conjunction with Section 10.8 punishable by imprisonment of up to two years and a fine of up to 5.000 Euros or twice the amount of the currency accepted, whichever is greater; and Section 5.6 read in conjunction with Section 10.5, punishable by imprisonment of up to five years and a fine of up to 100.000 Euros; as described in the Consolidated Indictment PPS No.425/09 dated 28 September 2015:

The crime of accepting a political contribution in excess of 1.000 Euros from a single source in a single day under Sections 5.1 and 10.8 of the UNMIK Regulation is REJECTED pursuant to article 363, paragraph 1(1.3) because the period of statutory limitation has expired.

The accused is ACQUITTED of the crime of wilfully omitting to disclose material information in a declaration per Sections 5.6 and 10.5 of the UNMIK Regulation, pursuant to article 364, paragraph 1(1.3) because it has not been proven that he committed the act with which he has been charged, specifically:

- On 18 October 2007, F.L. received a political campaign contribution from I.M. for his election campaign to become the mayor of Pristina in 2007. The campaign contribution was arranged between I.M. and E.S. whilst F.L. was in Germany. E.S. served as the campaign manager for F.L. during this relevant time. The 5.000,00 EUR were transferred by I.M. to F.L.'s private bank account in Kosovo. In spite of being under an obligation to declare the EUR 5.000,00 as an official campaign contribution, F.L. failed to officially declare this amount to the requisite authority.

7. The injured parties are instructed that they may pursue their property claim in civil litigation pursuant to Article 463 of the CPC;

8. The costs of proceedings shall be paid from budgetary resources pursuant to Articles 450 and 454 of the CPC;

BASIC COURT OF PRISTINA

Case No.P8/13

Presiding Trial Judge
Marie Tuma

Panel Member
Jennifer Seel

Panel Member
Isuf Makolli

Court recorder
Azem Havolli

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 Pristina.