

District Court of Prizren
P.no.11/10
10 November 2011

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PRIZREN

The District Court of Prizren, composed of EULEX Judge Witold Jakimko as Presiding Judge, EULEX Judge Tore Thomassen and Judge Raima Elezi,

assisted by:

Robina Struthers, Jacqueline Ryan, Valentina Gashi Eriona Bitri Breeding, Sonila MacNeil, Tsvetelina Zhekova, Vlora Johnston, Nexhmije Mezini and Natasa Malesevic, as court recorders,

in the criminal case against:

1. the defendant S.N, son of and (maiden ...) born on ... in, ... municipality, residing in, unemployed, married, six children, secondary school completed, mechanic, Kosovo Albanian, citizen of Kosovo Republic, poor economic status, persecuted for similar criminal offence.
2. the defendant M.K, son of ... and ... (maiden ...) born on ... in, where he permanently resides,, married, 5 children, primary school completed, citizen of Republic of Kosovo, average economic status, is serving the sentence for other criminal offences.
3. the defendant T.K, son of ... and ... (maiden ...), born on ... in, where he currently resides at the street "...”, married, 3 children, unemployed, secondary school completed, Albanian, citizen of Republic of Kosovo, average economic status.
4. the defendant S.K, son of ... and (maiden), born on in, residing in, married, 2 children, graduated at metallurgy faculty, Albanian, citizen of Republic of Kosovo, average economic status.

5. the defendant V.K, son of ... and ... (maiden ...) born on ... in, where he also resides at the street ..., married, two children, secondary school completed, programmer, Albanian, citizen of Republic of Kosovo, average economic status.
6. the defendant A.B, son of ... and ..., (...) born on in ..a, where he resides, at the street “....., married, three children, secondary school completed, tradesman, Albanian, citizen of Republic of Kosovo, average economic status.
7. the defendant N.K, son of ... and ... (maiden ...), born on ...in, where he resides at the street ”....., married, three children, secondary school completed, Albanian, Citizen of Republic of Kosovo, working with construction, average economic status.

charged as

per in the Indictment PP.no.190/09 dated 3 December 2009, with which the defendants S.N, M.K, T.K, S.K, V.K and A.B are charged with criminal offence of extortion under article 267 (2) read with (1) of Criminal Code of Kosovo (hereinafter “the CCK”), the defendant N.K is charged with criminal offence of contracting a disproportionate profit from property under article 270 of CCK.

as described below:

the defendants S.N, M.K, T.K and S.K

Commencing on 23.11.2007 and beyond this date the accused acting as members of consortium, aiming to benefit unlawfully for them or for a third party used force and made a serious threats against the injured Sh.M, forced the same one to act in the way to harm his own property. They gain a huge property wealth taking advantage of difficult financial situation of the injured, thus on 23.11.2007 the defendant S.N through a request of the injured gives him an amount of 23.000€ with a monthly interest of 11% or 2.500€ per month, thereof the injured paid the interest for 3-4 months. Furthermore, S notifies the injured that due to obligations that he had towards the defendant M.Kj the injured supposes from now one to pay the interest to the defendant M.Kj. The injured continues for two more months to pay the interest to M.Kj.

Since M was serving the sentence(in jail) the interest was paid to the defendant T.K, M brother, for 4 more months, thus on 24.07.2008 he gave the amount of 13.000€ to T.Kj, in behalf of capital debt, the interest in amount of 10.000€ remained to be paid. Also on 31.12.2008 the injured gave him 1.000€. Being unable to pay the rest of the interest he made an agreement with T.Kj to postpone the debt up to 01.05.2009 but at this date the injured was obliged to pay 15.000€ only for the interest. In the meantime with a request of the injured the defendant S.K was involved in order to postpone the deadline payment

of the debt and interest, but S.K seeks 3.000€ from the injured party as an award for the mediation made between him and the accused T.Kj. Therefore, the injured was obliged to pay 3.000€ to S.K on 01.09.2009. The injured had no possibilities to cover such requirements towards S.K. Se takes his vehicle Golf 4, gray in colour with number plates 530-KS-865, therefore the debt along with interest reaches the amount of 52.000€.

Wherewith they committed a criminal offence of extortion under article 267 (2) read with (1) of CCK.

II.-the defendants V.K and A.B

Commencing on 01.12.2007 and beyond this date the accused acting as members of consortium, aiming to benefit unlawfully for them or for a third party used force and made a serious threats against the injured Sh.M, from Prizren, forced the same one to act in that way to harm his own property. They gain a huge property wealth taking advantage of difficult financial situation of the injured, thus on 01.12.2007 through a request of the injured the defendant V.K gave him money as usury to injured in amount of 10.000€ with monthly interest of 10%. The injured was obliged to pay an amount of 1.000€ for two months, but on 01.02.2008 the defendant for the second time gives the money to the injured as usury an amount of 15.000€ with monthly interest of 10%. The injured uses to pay the monthly interest up to May 2008 in amount of 2.500€, meaning that the total amount paid as interest was 7.500€. The defendant V.K as mediator among A.B and the injured party gave to the injured the amount of 25.000€ as usury in May 2008 with a monthly interest of 10%, or interest of 2.500€ per month. The injured succeeded to pay only the interest up to 31.09.2007, and he was not able to pay the capital debt which was increasing. The defendant A oblige the injured to sell the plot in lad surface of 6 ari¹ which is located near the hotel “Menes” with a price of 87.500€, and out of this amount 70.000€ would be calculated on behalf of usury, whereas the remaining part of 17.500€ he gave to his mother

Wherewith they committed a criminal offence of extortion under article 267 (2) read with (1) of CCK.

III.-the defendant N.K

On 01.11.2007 the defendant N.K from Suhareka intending to obtain disproportionate profit from property for himself or a third person, taking advantage of difficult financial situation of the injured Sh.M from Prizren, gave him a money in amount of 50.000€ with a monthly interest of 11% or 5.500€ per month. The injured paid the interest up to 01.09.2008. Since the injured was not able to continue with interest payment the defendant N goes to his textile shop and takes goods in behalf of the debt, in amount of 12-13 thousands of Euros; he also makes an agreement with the injured that on 31.08.2009 the injured shall give back the capital debt along with the interest.

¹ Ari (10x10m2)

Wherewith committed a criminal offence of contracting a disproportionate profit from property under article 270 of CCK.

having held the trial sessions

on 13, 14, 15 September 2011, 04, 24, 25 October 2011 and 10 November 2011, in the presence of the defendant S.N, his Defence counsel, Osman Zajmi, the defendant M.K, his defense counsel Kosovare Kelmendi, the defendant T.K, his defense counsel Pjetër Përgjoka, the defendant S.K, his defense counsel Shaban Berisha, the defendant V.K, his defense counsel Nexhat Elshani, the defendant A.B, his defense counsel Brahim Sopa, the defendant N.K, his defense counsel Ethem Rugova and the District Public Prosecutor of Prizren, Mehdi Sefa,

issues the following:

JUDGMENT

1. Pursuant to Article 390 paragraph 3 of the Kosovo Code of Criminal Procedure (hereinafter “the KCCP”), **the defendants S.N, M.K, T.K, S.K, V.K, and A.B are not found guilty** for the criminal offences of extortion under article 267 (2) read with (1) of CCK and **the defendant N.K is not found guilty** for the criminal offence of contracting a disproportionate profit from property under article 270 of CCK, as per the description provided by the indictment (PP.no.190/09 dated 03.12.2009);
2. Pursuant to Article 103 of the KCCP this costs of criminal proceedings under Article 99 paragraph 2 subparagraphs 1 through 5 of KCCP, the necessary expenses of all Defendants including the remuneration and necessary expenditures of defense counsels shall be paid from budgetary resources;

REASONING

I. Procedural background.

On 2 October 2009 the district public prosecutor issued ruling for initiation of investigation against S.N, M.K, T.K, S.K, V.K, A.B and N.K.

On 3 December 2009 the public prosecutor filed indictment (PP no. 190/09, dated 3.12.2009) to the district court of Prizren.

On 6 January 2010 the confirmation judge of the district court of Prizren confirmed the indictment against all of the defendants.

On 15 April 2011 the President of the Assembly of EULEX judges assigned the case to EULEX judges of the district court of Prizren.

On 7 June 2011 a preliminary hearing was held in the district court of Prizren.

On 13 September 2011 the main trial started and was continued on the 13, 14, 15 September 2011, 04, 24, 25 October 2011 and on 10 November 2011. No objection was raised against the panel composition.

On 10 November 2011 the Judgment was announced in the DC Prizren.

III. Administered evidence.

1. During the session of 24th September 2011 the court admitted as evidence the following documents:

E1 The judgment P.133/2008

E2 The indictment of MPPO dated 27 July 2009, against Sh.M and A.B and Sh.M was in that case accused that on 26 June 2009 in Prizren .

E3. The reply from office of disciplinary prosecutor reference number ZPD/09/KB/0879 dated 9 September 2009 to Sh.M. The complaint was rejected.

E4. The declaration of Ar.B who declared on the occasion of signing of the contract on the sale of business premises located at Lamella A5, business unit 9 Ortakol 3 with an area of 30 square meters, Ar.B sold to the person by the name of Sh.M from Prizren the aforementioned unit at a price of 2,500 Euro. On 25th of October 2008, he received that amount mutually agreed upon.

E5 The declaration of Sh.M of the content which is comparable to the other declaration and it is of the same content except for the fact that Sh.M was the one who was the other party signing the document.

E6 Another declaration of Sh.M, in which he declared that he sold to Sh.S the immovable property with an area of 4 ari located at the cadastral plot no. 5147 on location Kamenica. He sold aforementioned property at the sale price of 90,000 Euros.

E7 The contract of sale of real estate between Sh.S and Sh.M regarding cadastral parcel no. 5328/4 located in -Kamenica with an area of 200 square meters (E7); purchase price was 90,000 Euros.

E8 Another declaration made on 4 October 2007, by Sh.S in which Sh.S declared that he sold to Sh.M the house located at Kamenica in Prizren. It was a cadastral parcel no. 5328 and sale price was 90,000 Euros.

E9 Another document as evidence is a document from the Ministry of Public Services, Kosovo Cadastral Agency dated 11 December 2008, with the following ruling: request of A.B from Suhareke is approved. A.B requested for transfer of ownership from previous owner Sh.S from Prizren to new owner A.B from cadastral parcel no. 5251/4 in an area of 0.06,02 ha in the Municipality of Prizren.

E10 The written agreement bound on 1 November 2007 between S.N and Sh.M

E11, E12, E13 The invoices dated 22 August 2008 and 11 September 2008 and 5 December 2008 (E11, 12, 13).

2. During the session of 10th November 2011 the court admitted as evidence the following documents:

C1: Official memorandum from the regional directorate of Prizren.

C2: Information on cases filed against Defendants.

C3: INDPP1818/09 Municipal Public Prosecution of Prizren – against Sh.M

C4: Copy number PP336/09 Municipal Public Prosecution of Prizren – Indictment against N.K

C5: PP1731/08 indicting proposition against S.N for threatening

C6: Indictment proposition from 7th May 2009, against S.N for removing cable connected to the electric meter.

C7: PP2716/2010, Indictment against amongst other T.K, Grievous Bodily Harm.

C8: PP1942/05 against N.K, Extortion,

C9: PP115/05 against T.K also Indictment, Grievous Bodily Harm

C10: Judgment, District Court Prizren 133/2008, amongst others M.K and T.K, Murder.

C11: Information from the Municipal Prosecution Office of Prizren which mentions cases filed against our defendants in different cases and it informs us what happened to those cases. There are few cases pending.

C12: Summary Indictment against T.K 2540/2003, Complicity in Light Bodily Injury.

C13: Information relating to Sh.M from Municipal Prosecution Office in Prizren about cases reported by him to the Prosecution.

C14: Indictment 1324/2003, on Falsification of Documents against T.K.

C15: Indictment 2543/2003 against T.K, Manufacturing Weapons to Committing Criminal Acts

C16: Indicting proposition against Sh.M, related to the electric power and stealing power number PP1864/2004.

3. During the trial sessions the following witnesses were heard (all requested by the indictment):
 - S.M.J from ..., street “....” no ...
 - Sh. N. S, from, street “...” no
 - A. H. Br, from, street “.....” no ...
 - A. H. B from, street “.....” no ..
 - B. A. M from ..., quarter, street “.....” no ... and
 - F. B. B from ..., street ”.....” no ..
4. The Injured Party *Sh.M* was heard on 13th September 2011.
5. The Defendants was heard on 15th Sept. 2011 and 4th Oct.2011
6. The evidence which influences on Court’s findings is explicitly elaborated in subsequent paragraphs. Other evidence had no direct impact on the final content of the enacting clause.

IV. Factual state.

1.The Defendants and their personal data were mentioned in the enacting clause thus there is no need to repeat them in the factual state.

2.The Injured Party Sh.M from Prizren is a tradesman. He owed a private shop and chiefly worked with textile goods. During 2007 Sh.M encountered some financial difficulties with his business, thus he was obliged to seek assistance.

3.However it was not proven beyond the reasonable doubt that the Injured party took any money from S.N as a loan and much less what were conditions of the alleged loan. To S.N Sh.M presented himself as an agent of SHIK (Kosovo Intelligence Agency). S.N had no business relation with K brothers or S.K; he did not lend any money to the Injured party. He admitted that he provided the Injured Party with ID card twice and that he was trying to help Sh.M but not by borrowing or lending any money.

4. Sh.M asked B.M for a loan of 7.000 euro. The witness had not such amount money. On that day Sh.M visited him twice that day. B.M contacted him with his friend S.K who gave him a loan of 7000 euro. The money was given to M by K with no interest. As a guarantee for the loan S.K took Sh.M's vehicle and IP transferred rights to the car to S.K. Meanwhile when time of paying-back came Sh.M went to Albania by car. Sh.M falsified car's documents and transferred the vehicle back to his name in order to cross the border. Sh.M was indicted for his behaviour (see exhibits C3 and C13). According to the witness Sh.M voluntarily gave the keys to the car to S.K. At the border Mo and K reported M to the police and property of the vehicle was transferred back to S.K. S.K sold the car for 6.300 euro which was less that the unpaid back loan given to M.

5.There was no use of force neither serious threat toward Sh.M by **M.K, T.K, S.N and S.K**. K brothers had no role in borrowing money from S.N (minutes of 13th Sept. 2011, page 13). He did not have "dealing of borrowing money with interest" with brothers K. Sh.M also admitted the fact that M.K was *tempore crimini* mostly imprisoned and serving his sentence for a murder. He did not pay any money to M.K when the defendant was at large (minutes of 13th Sept. 2011, page 16). He was not even able to get involved that

time into criminal activities (compare exhibit C10). **T.K** stated that he had no relation with Sh.M I had not lent him any money and he did not know about any money given to him by S.N.

6. It was not proven beyond a reasonable doubt that the Inured Party took any money from **V.K** as a loan and of course much less what were the conditions of the alleged loan. Sh.M presented himself as a successful businessman and there was no ground to believe that he is a person inexperienced or unable to make judgments. As to the difficult financial circumstances at V.K's side there was no knowledge about those circumstances.

7. **N.K** gave to Sh.M a short-term loan of 50.000 euro but without any interest. The money was not paid back until the end of the main trial. Sh.M claimed to N.K that he had two loads of textiles in Serbia coming from Singapore. He provided N K this argument as a purpose of asking for a loan. N K initially disagreed but afterwards made positive decision by taking into consideration the fact that Sh.M had a lot of shops. They agreed on Sh paying the loan back in two weeks to one month. It was arranged in Sh's shop. N K took only some goods from Sh.M's shop as a repayment for the that did not exceed 12.000 euro. (minutes of 15th Sept. 2011, page 9).

8. The plot of land described in the indictment (a plot no 5215/4 (o.lis.no.12727 in an area of 0.06,02 ha – see the exhibit E9) was sold by Sh.S to A.B (minutes of 14th Sept. 2011). O.B and S.J were both present at the moment when the contract was concluded and when the first installment of 30.000 euro was paid. Everything was consensual and in mutual agreement. A.B was not involved in any pressure on Sh.M (minutes of 13th Sept.2011, page 20) and he was tolerant and sincere to him (minutes of 14th Sept. page 6). The sale contract of the plot mentioned in the indictment was fully valid and legally binding. No one has taken any legal step in order to reverse it.

9. **Sh.M** did not pay the debts through his business but he used to pay his debts as he was borrowing from one person to another (minutes 13th Sept. 2011, p.20).

10. There was no planning, no individual assignments and no coordinated action according to the operational plan in the defendants' behaviour. The defendants brothers K, N and K and Ky together with A.B were not acting within the group of perpetrators.

V. Individual analysis of the evidence and legal findings.

The position of brothers M and T.K and S.N.

Sh.M from the beginning of the trial was not consistent in his testimonies. Asked about a use of violence against him he clarified that he took over to pay out S.N's debts. He claimed that he had not been forced by the use of violence by anyone to borrow money from S.N. On 14th September 2011 for the record he denied once again on any use of force neither serious threat toward him by M.K, T.K, S.N and S.K. He denied that the K brothers had had any role in borrowing money from S.N. Although in the same paragraph he claimed that he borrowed money in the amount of 23,000 € from S.N. In the another paragraph he said that he took a guarantee for this sum. The above sentence was followed by the emphasized statement that allegedly as for the amount he was requested by S.N to pay back to the K brothers, all the money he paid as interest were paid in the name of S.N and not in the name of the K brothers. Then he stated that as for the K brothers he did not have "dealing of borrowing money with interest". He denied that he had any contact with them. Sh.M also admitted the fact that M.K was *tempore crimini* mostly imprisoned serving his sentence. The Injured Party also admitted that he did not pay any money to M.K when the defendant was at large (p.16). Inconsistence in the testimony of the Injured Party was obvious as he first said about the guarantee provided to S.N for debts of the last, then Sh.M said that there was no money transfer between him and S.N but finally he said that he took 23.000 euro from S.N and he was obliged to pay it back to brothers K. Both Sh.M and brothers K stated that there was no money transfer from them to the Injured Party; in other words no money was lent by them to him. S.N denied on giving any money to Sh.M. Some documents were provided by the prosecutor with the indictment. There is one agreement with some notes allegedly signed by S.N. The prosecution office has not provided the court with the originals. S.N denied his signature on it. The court was not even able to ask for the opinion of graphology's experts because of lack of the original comparative material. The worldwide practice is that experts refuse to elaborate the opinion basing exclusively on photocopies. Although the court admitted formally the evidence mentioned as exhibits E10 nonetheless it has no value of proving anything.

S.N stated that Sh.M presented himself as an agent of SHIK (Kosovo intelligence agency). S.N denied any alleged business relation with K brothers or S.K, he denied lending any money to the Injured party. He admitted that he provided the Injured Party with ID card twice and that he was trying to help Sh.M but not by borrowing or lending any money.

M.K was *tempore criminis* mainly serving his sentence for a murder. Therefore he was not even able to get involved into criminal activities that time (compare exhibit C10). T.K stated that he had no relation with Sh.M I had not lent him any money and he did not know about any money given to him by S.N. None of witnesses even implicated brothers K with any incriminating action.

IP approach to loans and business activity.

Sh.M being heard in the courtroom once said that he did not pay the debts through his business but he used to pay his debts by borrowing from one person to another (minutes 13th Sept. 2011, p.20). This statement is very significant in order to describe his approach to the way of running businesses and it has an impact on his trustworthiness. He was premeditatedly taking loans with no intention of paying them off. Taking loans was his *modus vivendi et operandi*. The loans were not needed to make his business run but rather for current consumption and to pay off previous obligation.

Trustworthiness of IP as to the interest rate.

The prosecution office has not provided the court with any evidence proving what the interest rate was. There is no evidence to support the bare statements of the Injured Party. The notes (copies) provided together with the indictment were mostly made by Sh.M himself. The only one allegedly signed by S.N was not an original one. Bearing in mind that the defendant denied his signature and that there was no way to get expert graphologist's opinion the court has been barred from taking this evidence into account. Knowing the fact admitted by Sh.M that he was taking loans in order pay his previous debts and that it was his recipe for life and financial problem it is very hard to rely on to his statement that he was a victim of extortion or contracting for disproportionate profit.

Description of force and threats.

There was no description of the way how a force or threats were used and when it happened. The court assumes that the prosecutor did not come over these elements of criminal offence carefully enough getting as an outcome that the Injured party during the main hearing denied at the end to all those mandatory legal requirements constituting this type of criminal offence. One can of course ask another question whether N, brothers K and K did act in the same time and in the same way. It is impossible to learn something about it the indictment. It should be concluded that the position of each and every defendant was not individualized and does not reflect their contribution to the criminal offence. Those deficiencies weaken dramatically the indictment as such without even going deeply to the evidence provided by the prosecution.

Organized consortium – legal elements.

There was no organized crime in the meaning of statutory terms; there was no planning, no individual assignments and no coordinated action according to the operational plan. The provision establishes the fact of being member of a group as an aggravating circumstance and therefore the article 267§2 institutes a more severe sanction. The definition of a group should be based on objective elements. This not an organized crime since this type of crime is provided by another article but still it must contain some elements of planning and intentional consent. The prosecution does not explain what kind of consortium was established by the defendants, on what agreement it was based, what were the rules of its functioning. Did they use force and threats altogether or separately? There is no evidence on the circumstance that brothers K, S.K and S.N acted as a group committing or attempting to commit this criminal offence.

Irregularities and discrepancies in the indictment.

Without having proven even one element of the criminal offence there is no way to attribute the criminal offence of extortion established by art.267§2 of CCK to the respective defendants. The injured party explicitly denied any use of force against him by T.K, M.K and S.N. Moreover Sh.M admitted himself that none of defendants had known about his economic situation. Even assuming his trustworthiness as to the fact that he

really borrowed this money from T.K, M.K and S.N, there is no element of the criminal offence of contracting for disproportionate profit from property established by the article 270 of CCK neither. Sh.M used to present himself as a successful businessman and that way he was construed by everybody. There was no single sign of his inexperience or inability either.

The court discerned some deficiencies in the act of indictment that have not been mended during the main trial by the author of the indictment. First of all there is no final date of the perpetration of criminal offences the defendant were charged with. The author of indictment starts the first count with “Commencing on 23.11.2007 and beyond this date” but he does not refer to the final date of the perpetration. In the opinion of the court this way of description is not satisfactory from the point view of a fair trial. The same mistake was made with the count number two. No defendant neither the court can learn what is the scope of indictment.

Then the prosecutor copies a wording of the law: “aiming to benefit unlawfully for them or for a third party”. The alternative provided by the law (the provision 267§2) allows proper adjustment of content of the factual state to the outcome of the evidentiary proceedings. It is not to be cut and pasted without any reflection on it. The same mistake was made in the count two and three.

Finally the charges in the indictment should not be drafted like little “factual states”. They are supposed to be edited in concise and succinct way describing basic legal circumstances according to respective provisions of the criminal code.

There is also many other questions left without reply in the indictment. When concretely did they use threats and force. In what way? What are the objective criteria of a difficult financial situation? What were exactly the conditions of the “loans” if offered by the defendants? Can we differentiate the behavior of each defendant to learn which activities were actually individually undertaken by whom? How it is possible that during criminal practices described in the indictment M.K was serving his sentence and at the same time he was charged of the criminal offence as per indictment? Did he operate from prison? If so, how did he contribute to the criminal offence described in the indictment? At the other hand if T.K was acting only as a “mail box” or “cashier” for the debtor, are

there any evidence that he was aware of the fact that money given to his brother by the injured party has to be considered as an “unlawful benefit”?

Other remarks on IP’s statement.

On the page 7 of the indictment there is a sentence saying that “such factual situation was determined while the injured was heard in capacity of a witness (...)”. At the other hand the prosecutor observed some irregularities and contradictions at the statement of Injured Party Sh.M as one of the debts taken from Ar.B. In the opinion of the court the statement of the Injured Party contain lot of irregularities, inconsistencies, incoherencies, contradictions and discrepancies regarding all seven defendants and not only Ar.B who was excluded as a suspect from the case already on the pretrial stage. However there is much more of those irregularities, inconsistencies, incoherencies, contradictions and discrepancies that were discerned by the court. It also made the court come the conclusion that it is not possible to construct an objective factual state basing exclusively on the statement of Sh.M. The court provides a detailed argumentation on that in the current reasoning.

S.K’s position.

The indictment treats S.K as one of the defendants involved in the extortion against the Injured Party acting as a member of alleged consortium. According to the indictment the defendant S.K was involved in order to postpone the deadline payment of the debt and interest but he seeks 3000 euro from the IP as a reward for the mediation made between him and the defendant T.K. Few lines later the injured Party said that 2000 euro was for T.K for postponement and the rest for S.K (p.15, minutes from 13th September). Allegedly the IP had no possibilities to cover such requirements towards S.K and the last one took his vehicle Golf. The above circumstance does not reflect the truth. According to the witness B.M, it was Sh.M himself who asked for a loan of 7.000 euro. The witness had not this amount money. On that day Sh.M visited him twice that day. B.M contacted him with his friend S.K. The money was given to M by K with no interest. As a guarantee for the loan S.K took the Sh.M’s vehicle and IP transferred rights to the car to S.K. Meanwhile when time of paying-back came Sh.M went to Albania by car. It

seems clear that Sh.M falsified car's documents and transferred the vehicle back to his name. For this Sh.M was indicted (see exhibits C3 and C13). According to the witness Sh.M voluntarily gave the keys to S.K. At the border Mo and K reported M to the police and property of the vehicle was transferred back to S.K. The testimony of this witness B.M was coherent and fully corresponding to the statement given by the defendant S.K. There is no evidence for Se being "a member of the group" in the meaning provided by the art.267§2 of CCK. S.K was not acting on behalf of S.N and brothers K. The Injured Party admitted that there was no use of threat or force by K to M. Theoretically analyzing circumstances provided by the art. 270 CCK they are also not met due to the lack evidence on disproportionate profit with S.K who barely got back the loan's guarantee in the form of the car. S.K stated that he sold that car for 6.300 euro which was less than the unpaid back loan given to M.

A.B's involvement in the allegedly forcible sale of a plot of land belonging to the IP.

The transfer of the real property (agricultural land, construction land, forest and forestland, buildings, apartments, business premises) during the period in question 2007-2008 was regulated by the following Laws: a/Law on transfer of real property of Kosovo (published in Official gazette of SAP Kosovo No. 45/81, 29/86 with amendments from 31.Dec 1990); b/Law on Regular Courts with amendments (Official gazette SAPK No.21/78, amended 2/89); c/Law on basis of ownership relationship (Official Gazette SFRY, No. 6/80, 36/90 (which was applicable until 2009); d/Law on contracts and torts (Off. gaz. SFRJ", no. 29/78, 39/85, 45/89 i 57/89); e/Law on verification of signatures, manuscript and copies (from 1971); f/Law on the Establishment of the Immovable Property Rights Register (Law No 2002/5, UNMIK/REG/2002/22 as amended by the Law No 2003/13 on Amendments and Additions, promulgated by UNMIK Reg. 2003/27, in force as of 18 August 2003). Under art. 455 of LCT a contract of sale of real property must be in written form; otherwise it shall be null and void. Article 33 of Law on basis of ownership relationships provides that on the basis of the legal work the property ownership right over real estate shall be acquired by the registration into the "public notary- cadastral books" or some other appropriate way that is prescribed by law.

Article 26 (14) of Law on Regular Courts provides that the municipal courts are competent to decide on the procedure of inheritance, procedure of execution, procedure of registration of rights upon the real estate, in cases of physical division, regulating the issue of boundaries, verification of transcripts, manuscripts and signatures, as well as in other out-of-court issues which are, by the law, placed under the court jurisdiction.

Furthermore, according to Section 7.1 of the Law on the Establishment of the Immovable Property Rights Register (Law No 2002/5, UNMIK/REG/2002/22 as amended by the Law No 2003/13 on Amendments and Additions, promulgated by UNMIK Reg. 2003/27, in force as of 18 August 2003) once the Register is established, no subsequent transfer of rights in immovable property shall be effective unless registered in accordance with this law.

There is no doubt that that the plot of land mentioned in the indictment is the 600 m² plot No 5215/4 in the Prizren Municipality, close to “Mena” restaurant”. There is a valid confirmation of the contract by Kosovo Cadastral Agency. The parties of the contract are A.B and Sh.S. The injured party claimed that he was the owner of the land but according to the documents he was not. Exhibit E9 issued but the Kosovo public authority has never been undermined by anyone. Taking into consideration the mandatory form of the agreement and its formal approval by the Kosovo Cadastral Agency dated 11 Dec. 2008 there is no legal way to declare the agreement void. The ruling (Exhibit E9) contains the instruction on legal remedy. The IP should have filed a complaint if unsatisfied but he did not.

The other supporting evidence is the testimony of S.J who testified that the plot was sold by Sh.S to A.B (minutes fo 14th Sept. 2011). O.B and S.J were both present at the moment when the contract was concluded and when the first installment of 30.000 euro was paid. According to the witness everything was consensual and in mutual agreement. Sh.M claimed differently however his version was inconsequent and not supported by any evidence except of his own statement. There is no evidence for involvement of A.B in a criminal offence under art.267§2 CCK, there was no trace of acting as “a member of the group”; the injured party denied on any use of force against him by A.B. Sh.M stated that A.B was not involved in the pressure on him (minutes of 13th Sept.2011, page 20) and he was tolerant and sincere (minutes of 14th Sept. page 6).

There is of course no legally valid evidence on ostensibility of the sale contract of the plot mentioned in the indictment which means also the lack of evidence on any material benefit at A.B's side and no damage at the Injured Party's side.

N K's position.

N K admitted that he gave to Sh.M a short-term loan of 50.000 euro but without any interest. The money was not paid back until the end of the trial. The witness A.Br also confirmed the fact that N K gave money to the Injured Party. Sh.M claimed according to the witness that he has two loads of textiles in Serbia coming from Singapore. He provided N K this argument as a purpose of asking for a loan. N K initially disagreed but afterwards made positive decision by taking into consideration the fact that Sh.M had a lot of shops and therefore seemed to be able to pay his debt off. They agreed on Sh.M paying the loan back in two weeks to one month. It was arranged in Sh's shop. Both the witness and the defendant testified that there was no interest as it was a short-term loan. Except of Sh.M's statement we have no supportive evidence on the amount of interest if any. Bearing in mind the inconsequence of the Injured Party's testimony the court is not allowed to treat them as reliable and trustworthy. It is worth to be reminded that even the prosecutor himself have not found his testimony reliable as to Ar.B excluding allegations against him at the investigative stage. There is also another important factual element that this loan was never paid back to N K who took only some goods from Sh.M's shop as a repayment for the sum not exceeding 12.000 euro. (compare the statement of N K, minutes of 15th Sept. 2011, page 9). No other money was paid back. We have to remember also that the Injured Pary laid to N K telling that the money he needed were to pay for incoming goods from Singapore. Taking into consideration the attitude of Sh.M admitted by him during the court hearing that he was borrowing money in order to pay back loans previously taken out the court comes to the conclusion that the guilt of N K has not been proven beyond reasonable doubt.

As to the mental element of the criminal offence provided by the art.270 of CCK for contracting for disproportionate profit from property is not enough to prove the fact that "an evidently disproportionate amount of property" was negotiated "in return". There are other mental elements of the criminal intent to be fulfilled such as committing the

criminal offence by taking advantage of the injured person's difficult financial circumstances, difficult housing circumstances, hardship, inexperience or inability to make judgments. None of those elements has been proven by the prosecutor as to N K. It would be even inappropriate to claim that someone who at one hand presents himself as a successful businessman and at the other states in court that he takes loan in order to pay off other creditors is somebody inexperienced or unable to make judgments. As the difficult financial circumstances at N K's side there was no knowledge about those circumstances. Most likely he would not agree on giving loan if he knew about it. Assuming even that the contract, unfavorable to the Injured Party, was concluded the other abovementioned elements of the criminal offence are not fulfilled. The court has to conclude that no criminal offence has been committed by N K due to the lack of the above mentioned elements of the criminal offence provided by the art.270 of CCK.

V.K's position.

The witness F.B was heard in the court. The version of his statement given in the court deviates a lot from the version given in the pretrial stage. The testimony given to the police is very brief and containing only basic elements that allegedly establish a criminal offence of usury provided by the art 267 §2 of the CCK. The witness mentioned in his statements that Sh.M was given with a loan of 10.000 euro with 10 % interest per month. During the court session he changed the version. He was not sure about the sum of the loan taken by M. He stated that it was 5.000 or 10.000 euros. He did not remember about the interest rate of the loan. He said that he left them by themselves, by the door next to the office and that he did not know the agreement. In the opinion of the court the witness was not trustworthy. Assuming that the loan was really given to Sh.M the question is problematic as to other elements constituting criminal offence. There is no supporting evidence for threats neither for use of force. This witness does not confirm the circumstance of threats and force by V.K. F.B mentions only threats made by Ar.B and not by A.B. What is worth to be raised in this point is that the prosecutor terminated the investigation against Ar.B even being acquainted with this testimony what means that even the Prosecution Office disbelieves this witness. The prosecutor stressed in the reasoning of the indictment that in this respect there are many irregularities and

contractions at the statement of the Injured Party on the debts taken from Ar.B. It led him to the conclusion that the investigation in this part should have been terminated even bearing in mind the testimony of F.B. This is another reason that the testimony of F.B should be approached with the proper distance and its trustworthiness has to be considered as limited. There was no evidence for the criminal involvement of V.K in the real estate property transfer described in the indictment. The prosecutor did not prove that the defendant was “a member of the group” in the meaning provided by the art. 267§2 of CCK therefore this provision is not applicable. It has not been proven that the defendant used any threat or force in getting his money back as it was explained above and therefore also the art.267 §1 of CCK is not applicable. As to the alternative legal qualification of the criminal offence with the art.270 of CCK of contracting for disproportionate profit from property is not enough to prove the fact that “an evidently disproportionate amount of property” was negotiated “in return” but there is other mental element of the criminal intent such as committing the criminal offence by taking advantage of the injured person’s difficult financial circumstances, difficult housing circumstances, hardship, inexperience or inability to make judgments. None of those elements has been proven by the prosecutor. The injured party at one hand presents himself as a successful businessman and at the other states in court that he takes loan in order to pay off other creditors. How can he claim that he is supposed to be somebody inexperienced or unable to make judgments? As to the difficult financial circumstances at V.K’s side there was no knowledge about those circumstances. Even though the defendant consequently denies any loan given to the defendant and if we bear in mind that the fact of giving loan was not proven beyond reasonable doubt, theoretically speaking V.K most likely would have not agreed on giving the loan if he had known about a real situation of the Injured Party. V.K did not know other defendant A.B at all.

Assuming even that the contract unfavorable to the Injured Party was concluded the other abovementioned elements of the criminal offence are not fulfilled. The court has to conclude that no criminal offence has been committed by V.K due to the lack of mental element of the criminal offence provided by the art.270 of CCK. It has to be stressed that there was also no supporting evidence on additional sums lent by Ky to M as it is mentioned in the indictment.

The court wants to use this opportunity to stress that the circumstance of financial difficulties should be objective and objectively proven and moreover while it is an element constituting a criminal offence this circumstance should be register to a defendant's consciousness in contrast to what happened in the subject-matter. Worth of being noted is the testimony of Ar.B who stated that Sh.M "is entirely fake"; "he had a nice car, four boutiques, women around him, four mobile phones, he went to Turkey every week and he convinced me he was the boss of Prizren"; "don't trust what you see. he is fake and he upset me. It took me three months to realize who he was."(main trial minutes, 14th September 2011, page no.42).

Taking into consideration the all abovementioned arguments and the content of the art.396 paragraph 9 KCPC the court is obliged to point out in the reasoning the art.390 paragraph 3 KCPC as the direct reason of acquittal. It has not been proven that the defendants had committed the act they have been charged with.

Witold Jakimko
Presiding judge

Vlora Johnston
Court recorder

LEGAL REMEDY: Pursuant to Article 398(1) of the KCCP, the authorized persons may file an appeal of this Judgment within fifteen (15) days of the day the copy of the judgment has been served.