

BASIC COURT OF PRIZREN

P. No. 171/13
PP. No. : 147/2011
Date: 13 March 2014

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

IN THE NAME OF THE PEOPLE

The Basic Court of 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; x xx xxxx in xxx village, xxx, male, nationality Albanian, citizenship Kosovar, current address; "xxxx K." Street No xx, xxxx;
2. **S.P.**, father's name I., date of birth x xx xxxx, in xxxx village, xxx, male, nationality Albanian, citizenship Kosovar, current address 'xx xxx street xx no. x; xxxx;
3. **A.A.**, father's name R., date of birth xx xxx xxx, male, nationality Albanian, citizenship Kosovar, current address xxxx village, Prizren;
4. **K. U.**, father's O., date of birth. xx xxx xxxx in xxxx village, xxx, nationality Albanian, citizenship Kosovar, current address xxxx village, xxxxx;
5. **A. T.**, father's name B., date of birth xx xxxx xxx in xxxx village, xxxx nationality Albanian, citizenship Kosovar, current address 'xxxxx street no. xx, Prizren;
6. **M. K.**, father's I., date of birth xx xxx xxxx in xxxx village, Prizren; nationality Albanian, citizenship Kosovar, current address; xxxxxx village, Prizren.

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 Mayor of Prizren, and **K.U.** in the capacity of the Director of the Directorate of Geodesy and Cadaster, 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 Municipality of Prizren 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 Prizren, 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 Municipality of Prizren 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 Municipality of Prizren 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 Municipality of Prizren 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 Municipality of Prizren 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 Mayor of Prizren, **M. K.** in the capacity of Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, and **A.A.** in the capacity of Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, 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 Municipality of Prizren to unlawfully take in possession the land parcel No 800/2 of the size 50.300 m² in the location named 'Boka Boka' in Prizren 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 Municipality of Prizren 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 Municipality of Prizren;
 - 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 Municipality of Prizren.
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 Municipality of Prizren 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 Mayor of Prizren, and **S.P.**, in the capacity of the Director of the Directorate of Urbanism and Spatial Planning of the Municipality of Prizren, 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 organisation, 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 Municipality of Prizren 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.S. without 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 Prizren in the value of 40.000 EUR, possession list No 257 in CZ Lutoglave, without having obtained prior decision of the Municipality Assembly 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 Mayor of Prizren, **M.K.**, in the capacity of the Director of the Directorate of Administration/ Office of Property and Legal Affairs of the Municipality of Prizren and **A.T.**, in the capacity of the Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, 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 Court in Prizren 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 Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 13th 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 Mayor of Prizren, after having been notified about the Judgment of the Supreme Court of Kosovo Rev. No. 209/2005 dated 26/05/2006 declaring the Municipality of Prizren 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 Prizren by the Municipal Public Lawyer of the Municipality of Prizren by way of the Memo No 621/08 dated 01/07/2008, ordered Director of the Directorate of Geodesy and Cadaster **K.U.** not to execute it and not to make appropriate changes in the cadastral records which would have evidenced the Municipality of Prizren 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 30.050 Euro from the premises which would have belonged to the Municipality.

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 Mayor of Prizren, 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 Municipality of Prizren took the possession of the land parcel No 800/2 of the size 50.300 m² in the location named 'Boka Boka' in Prizren 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 Mayor's decision **M. K.**, in the capacity of Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, 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 Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, 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 Municipality of Prizren. 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 Municipality of Prizren 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 Mayor signed the Agreement on Public-Private Partnership and Concessions on the Use of the Immovable Property of the Municipality of Prizren 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.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 Director of the Directorate of Urbanism and Spatial Planning of the Municipality of Prizren, 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 Prizren 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 4.500 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 Municipality of Prizren 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 Municipality of Prizren, submitted to **R.M.** the proposal to issue the Conclusion in order to ban cadastral experts working for the Directorate of Geodesy and Cadaster of the Municipality of Prizren from attending court sessions and giving their experts' opinions in the civil cases; on 02/08/2011 **R.M.**, in the capacity of the Mayor of Prizren, following the proposal of **M.K.**, issued the Conclusion by way of which cadastral experts working in the Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 Directorate of Geodesy and Cadaster of the Municipality of Prizren 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 Court in Prizren 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 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;

For the above reasons 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 1st 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 1st 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 1st 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 1st January 2013 for 2 years of verification period if the defendant does not commit another criminal offense for the verification period.

Pursuant to Articles 56 paragraph 2 of the Criminal Code of Kosovo valid until 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 1st January 2013 to the punishment of prohibition of exercising public administration or public service functions for 18 months.

REASONING

1. Background of the case and Procedural history

In the period between July 2008 and January 2012 the defendants above acting in the capacity of official persons while working in the Municipality of Prizren have committed the criminal offence of Abusing official position or authority in continuation. In the first act regarded as count one of the Indictment **R.M.** and K.U. both in the capacity of official persons, Mayor and the director of directorate for geodesy and cadastre, respectively, failed to act and execute the Judgment of the Supreme Court of Kosovo, thereby leaving the land parcels in the use of the M. K., at the time holding the position of the deputy mayor of the Municipality of Prizren and two other individuals J.A. and M.Q. and providing them material benefit.

Regarding the second act **R.M.** in the capacity of the Mayor of Prizren, M. K. in the capacity of Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, and **A.A.** in the capacity of Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, have acted in co-perpetration with the intent to obtain a material benefit for the Educational Centre 'Gulistan', and thereby causing damage to another legal person, the Privatization Agency of Kosovo, while by taking advantage of their official position have allocated public land to Gulistan without having a consent from Privatization Agency of Kosovo or the Municipal Assembly.

In the third act of abusing official position **R.M.**, in the capacity of the Mayor of Prizren, and **S.P.**, in the capacity of the Director of the Directorate of Urbanism and Spatial Planning of the Municipality of Prizren, have acted acting in co-perpetration and with the intent to provide a material benefit for a legal person, namely N.T.P. 'Kamila' chocolate factory, have exceeded the limits of their authorization and allocated public land to the said organization without consent of Municipal Assembly.

In the fourth act the defendants in the period between 02/08/2011 and 26/01/2012 in Prizren, **R.M.**, in the capacity of the Mayor of Prizren, M.K., in the capacity of the Director of the Directorate of Administration/ Office of Property and Legal Affairs of the Municipality of Prizren and A.T., in the capacity of the Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, acting in co-perpetration have issued and implemented the conclusion of the mayor, which banned the cadastral expert of the Municipality to participate in the court sessions in capacity of experts, thereby, leaving certain number of civil cases pending in the court.

Hence on 15 September 2011, initially, the Prosecutor from the District Prosecutor Office Agron Matjani issued a ruling on initiation of investigation with reference number HP. No. 147/2011, against **R.M.**, N.K., **S.P.** and **A.A.** all of them investigated for the commission of the criminal offence of abusing official position as per Article 339 of the Criminal Code of Kosovo, hereafter 'CCK'.¹

On 26 September 2011, Acting District Chief Prosecutor of Prizren S.H. made a request to Eulex Prosecution Office in Prizren to take over the case, due to the fact that they are dealing with high Municipality officials and the case is considered to be highly sensitive.

On 29 September 2011, the local Prosecutor of the case issued another ruling on initiation of investigation HP. No. 255/2011, against **R.M.**, K.U., **A.A.** and A.T. for the offences of Abusing Official Position or Authority as per Article 339 of the CCK.

On 3 October 2011 the Acting Chief EULEX Prosecutor, Linda Heaton issued a decision to take over the case and assign the case to EULEX Prosecutor Cezary Michalczuk for further consideration.

After the case take over, the EULEX Prosecutor Cezary Michalczuk after reviewing the evidence on 14 November 2011 issued another ruling on Initiation of Investigation PPN. NO. 204/11, against **R.M.** for the criminal offence of Abusing Official Position or authority as per Article 339 of the CCK.

On 14 November 2011 the EULEX prosecutor of the case filed a motion to the court, to join the investigations, PP. No. 147/2011, HP No. 255/2011 and PPN No. 204/11 against all defendants and to proceed with a single investigative procedure.

On 18 November 2011 the three judge panel of the District Court of Prizren, consisting of presiding Judge Fillim Skoro and Raima Elezi and Kujtim Pasuli as panel members, issued a ruling Kp. No. 407/2011, by which they decided that a unique procedure is to be applied for all three investigations, and that the case will proceed with case number Hep. No. 147/2011.

On 23 November 2011 the Prosecutor of the case filed a motion to the President of the Assembly of EULEX Judges to assign the case to the EULEX judges and on 4 January 2012 the president of the assembly of EULEX Judges issued a decision JC/EJU/OPEJ/2697/ff/11 by deciding to assign the case to EULEX judges team of Prizren.

¹ Binder 7

On 14 March 2012 the EULEX Prosecutor of the case issued a decision on expansion of the investigation against **R.M.**, N.K., **S.P.**, **A.A.**, K.U., A.T. and M. K.

On 20 February 2013 the newly appointed Prosecutor of the case Natasha Vicary brought three separate rulings on partial termination of the investigation in regard to **R.M.**, N.K. and **A.A.** for the criminal offence of Abusing Official Position or authority as per Article 422 of the CCK (new criminal code).

On 27 February 2013 the Prosecutor of the case filed the Indictment against **R.M.**, **S.P.**, **A.A.**, K.U., A.T. and M. K. for the criminal offences of Abusing Official Position or Authority as per Article 422 of the CCK, for the four acts as described in the Indictment.

On 25 March 2013 the initial hearing was held in the presence of the defendants, defense counsels and Prosecutor. After objections were filed by the defense counsel, this judge issued a ruling rejecting the objections and deciding to send the case file to main trial.

The ruling was appealed to the court of Appeals and on 29 May 2013, after the review the Court of Appeals issued a ruling PN. No. 372/13 by annulling the ruling of the presiding trial judge and sending the case back for reconsideration.

Upon the decision of the court of appeals this presiding trial judge after reconsideration issued another ruling on 14 June 2013 by sending the case file to the main trial. After the objections filed by the defence counsels and the opinion of the Prosecutor on 25 July 2013 the Court of Appeals issued a ruling by confirming the ruling of the presiding trial judge and sending the case to the main trial.

The main trial in this case started on 13 August 2013 and after having 28 sessions, on 13 March 2014 the trial panel announced the judgment.

2. Administered Evidence

During the main trial the following evidence has been admitted by the trial panel;

Binder No. 3

- The announcement of criminal offences by LDK branch in Prizren dated 14.06.2011. Signed by R.H. municipal adviser;
- Announcement by R.H. dated 20.06.2011;
- Announcement by R.H. dated 27.06.2011;

- Announcement by R.H. dated 19.12.2011 all listen on pages 837-882
- Reply of the Privatization Agency of Kosovo dated 12.01.2012;
- Reply from M.K. to the Prosecutor dated 27.02.2010 on internal organization of the municipality;
- Ruling and decision on internal organization and structure of the Municipality pages 883-959;
- Decision of the mayor on appointment of M. K. as director of administration dated 8.04.2008 (978 page);
- Decision of the mayor on appointment K.U. director of cadastral and geodesy office dated 16.01.2008 (1006 page);
- Decision of the mayor on appointment of **A.A.** director of cadaster and geodesy after K.U. retirement, dated 1.04.2010 (1015 page);
- Decision of the mayor on appointment of A.T. director of cadaster and geodesy, dated 1.02.2011 (1050 page);

Binder No. 4

- Decision of the board of directors on urban planning allowing M.K. to build a new building dated 1.02.2001;
- Copy of the plan and possession list of the parcel on the name of M.K. (1132 page);
- Possession list of the K. sisters (1134-1138);
- Contract on parcel transaction dated 25.06.2001 (J.A., the owner of the parcel, close to M.K.);
- Contract on transaction of the parcel between several sellers and M.K. as buyer (1151-1154);
- Contract of transaction of the parcel from several sellers to M.Q.(1158) (all three contracts are parcel divided from the whole parcel belonging to the Municipality, and which were subject to the evaluation by the Supreme Court Judgment);
- Judgment of the Municipal Court of Prizren C. No. 724/01 dated 9.12.2004;
- Judgment of the District Court of Prizren Ac. No. 255/2005, dated 11.08.2005;
- Judgment of the Supreme Court of Kosovo Rev. No. 209/2005 dated 25.05.2006 (1174);
- Ruling of the Municipal Court of Prizren C. No. 790/06, dated 17.11.2006;
- Ruling of the District Court of Prizren, Ac. No. 85/2007, dated 2.04.2007;
- Supreme Court Ruling Rev. No. 250/2007, dated 6.06.2011;
- Ruling of the Municipal Court of Prizren C. No. 930/07, dated 3.05.2008;
- Letter of the Municipal Public lawyer of Prizren addressed to directorate of geodesy and cadaster to comply with the Supreme Court Judgment dated 12.11.2008 (1213);

- Contract on rental – M.Q. and N.S. dated 28.04.2009;
- Contract on rental – J.A. and ‘K.S. Siguria’ dated 30.11.2009;
- Contract on rental – M.K. and Insurance company ‘Elsig’, dated 14.04.2010
(above contracts are used to evaluate the damage caused to Municipality 1215-1234);
- Memorandum of Cadastral Agency of Kosovo dated 29.03.2011;
- Request for a review of M.Q. addressed to Municipality of Prizren dated 12.12.2011;
- Request of the Public Municipal Lawyer B.M. addresses to the directorate of Geodesy and Cadaster to act pursuant to the Judgment of the Supreme Court of Kosovo dated 16.11.2011 (1253);
- Letter of the director of geodesy and cadaster A.T. to the professional associate B. B. to act and join cadaster plots dated 16.11.2011 (1257);
- Decision of the Director of geodesy and cadaster A.T. approving the request of municipal public lawyer to execute Supreme Court Judgment, dated 29.11.2011 (1259);

Binder number 5

- Minutes of the session of the board of directors of the Municipality, dated 13.04.2007;
- Conclusion issued by M.M. dated 10.08.2007 on the allocation of land to educational center Gulistan;
- Request of the educational center Gulistan for allocation of land dated 13.05.09;
- Minutes of the Municipal Assembly meeting dated 18.06.2009;
- Decision on allocation of land for construction and permanent use by the assembly chairman dated 18.06.2009;
- Example of an agreement between the Gulistan school and a student;
- Decision of the mayor of the Municipality dated 24.11.2010 to transfer the land from the labor organization Forestry ‘Sharri’ to Municipality;
- Letter from M. K. to directorate for geodesy and cadaster to make changes to the land pursuant to the decision of the mayor dated 24.11.2010;
- Ruling of the directorate for geodesy and cadaster approving the transfer of the land from forestry organization ‘Sharri’ to Municipality of Prizren;
- Copy of the possession list on the name of the Municipality of Prizren;
- The Contract of the Mayor of Prizren and Educational center ‘Gulistan’ 11.02.2011
- Request of M.K. to register the parcel on the name of Municipal assembly user for 40 years E.C Gulistan;
- Decision by **A.A.** to approve the request of M. K. to register the land parcel for a lease of 40 years to E.C. Gulistan dated 11.02.2011;
- Copy of the certificate of the possession list on the new name;

- Construction contract between E.C Gulistan and a private company dated 15.02.2011;
- Conclusion issued by the Municipality to the E.C Gulistan for tax payment;
- Decision of the directorate for urban and spatial planning to allow constructions on the new building school to E.C. Gulistan;
- Invitation to the meeting of the mayor with the directors of the municipality and the minutes of the agenda on decision taken with conclusions attached (point 8);
- Conclusion issued by the mayor **R.M.** dated 19.04.2011 on the approval of the urban regulatory plan in Boka Boka;
- Minutes of the meeting of Policy and Finance committee of the Municipality dated 15.06.2011;
- Minutes of the meeting of the Municipal Assembly of the Municipality dated 16.06.2011;
- Memo of the SPRK to the District Public Prosecution Office dated 27.06.2011, in regard to the allegation send to SPRK by Municipal adviser;
- Minutes of the meeting of the Municipal Assembly dated 7.07.2011;
- Decision of the assembly chairman of the Municipality dated 29.07.2011 to change the location from Nashec village to place called Boka Boka;
- Decision of the chairman of the Municipal Assembly to put in discussion the allocation of the land in Boka Boka;
- Decision of **S.P.** to compensate the commission members dated 14.02.2011;
- Decision of **S.P.** dated 19.12.2011 to use the school building by E.C. Gulistan;
- Explanation of the manner of holding a meeting pursuant to Law on local self-government;
- Reply to EULEX Prosecutor office in Prizren from Kosovo Forestry Agency;
- Decision for the approval of the urban regulatory plan by chairman of the Assembly dated 29.02.2012;

Binder number 6

- Request from representative of Kamilla to the Municipality for allocation of land dated 10.05.2010;
- Agreement on public private partnership and the concession of use of property (plot) between the mayor as representative of Municipality and Kamilla chocolate factory, dated 15.12.2010/ Business plan for Kamila Kosova;
- Decision of the directorate for urban and spatial planning dated 4.03.2011 to allow Kamila to build a temporary building for production of chocolate and sweets;
- Contract for use of the municipal land and the lease agreement dated 15.04.2011 and possession list of the parcel on the name of Municipality;

- Reply of the mayor to the complainant R.H. in regard to the allocation of the land to Kamila dated 13.07.2011;
- Proposal from **S.P.** to Mayor dated 1.08.2011 for a decision to allocate land to Kamila;
- Conclusion of the mayor to proceed with the allocation of the land to the committee for policy and finances for review and decision dated 2.08.2011;
- Kamila plan on investments dated 4.11.2010;
- Expert report from A.Sh. in regard to the value of the land parcel allocated and the damage caused to the municipality;
- Meeting of the board of directors in assembly of Prizren;
- Proposal for the agenda and the minutes of the meeting;
- Conclusion of the mayor, ordering the directorate of Geodesy and Cadaster to issue a decision banning the cadastral experts to conduct judicial expertise in court sessions dated 2.08.2011;
- Letter for Judge Valon Totaj informing several different judicial institutions on the ban imposed by the mayor, dated 1.09.2011;
- Contract example, minutes of hearings on different cases relying on cadastral experts;
- Letter of the president of the District Court of Prizren dated 7.09.2011 to the mayor requesting the review of the decision/conclusion;
- Report of the municipal president H.D. to the office of the Prosecutor on the ban of cadastral experts dated 21.09.2011;
- Different claims and hearings involving cadastral experts;
- Report from the Central Bank of Kosovo on the incomes of K.U.;
- Report from the Central Bank of Kosovo on the incomes of **R.M.**;
- Report from the Bank from Private Business and Raiffeisen bank on **R.M.**, K.U. and **A.A.**;
- Report from TEB bank addressed to Central Bank of Kosovo in regard to **A.A.** and A.T., dated 8.12.2011;
- Report from Economic Bank in Kosovo in regard to account of all defendants dated 8.12.2011;
- Report from NLB Prishtina Bank;
- Report from Procredit bank dated 13.12.2011;
- Report from BKT bank dated 13.12.2011;
- Report from Central bank of Kosovo to Kosovo Police dated 16.12.2011;
- Request from police investigator to the Municipal Vehicle registration dated 29.11.2011;
- Reply from directorate of geodesy and cadaster to Kosovo Police dated 29.11.2011;
- Reply for the center for vehicle registration to police investigator dated 30.11.2011;

- Report from police investigator to EULEX Prosecution office dated 20.12.2011;
- Request from Police investigator to Central Bank of Kosovo dated 2.12.2011;
- Authorization from the District Prosecution Office in Prizren to Police investigator to conduct interrogation/several entrustment letters of authorization from EULEX prosecutor to investigator;
- Request from District Prosecution Office in Prizren to the Police to gather information dated 24.06.2011;
- Reply of the investigator to the District Prosecution Office in Prizren, dated 2.09.2011;
- Report from Police investigator to District Prosecution Office in Prizren, dated 13.09.2011;
- Different reports from Police investigators to District Prosecution Office in Prizren;

Main trial binder II

- Submission from the lawyer B.B. for new evidence: requests from the local communion to the mayor to act in location Boka Boka and clean the location from the garbage; list of the employee in the Kamila factory and a proposal to hear to additional witnesses;
- Proposal from the lawyer S.M. to hear two additional witnesses;
- Proposal of the lawyer R.H. to hear an Legal Officer of the Kosovo Cadastral Agency and the submission of several examples of property registration in the cadastral office;
- Additional evidence submitted by **S.P.** (binder number 3);

3. Witnesses heard and defendants

During the main trial the following witnesses were heard:

On 15 August 2013, M. Q. and N.K. were heard;

On 12 September 2013, B. M., A.H., E. M. and B. B. were heard;

On 13 September 2013, witness B. B. continued his interrogation;

On 16 September 2013, the witness J. A. and R.H. were heard;

On 17 September 2013 the witness R.H. continued interrogation, F.H., S.A., G.S. and E.S.;

On 10 October 2013 the witness Y.H., I.K., L.R. and R.S. were heard;

On 7 November 2013, the witness M.K., A.Sh., A.T., A.K., R.A. and V.I. were heard;

On 12 November 2013, the witness B.S., K.G., I.K., and S.R. were heard and also the statement of H.D. was read into the minutes with the consent of the parties;

On 13 November 2013 the witness V. D. gave testimony and the parties agreed that the statement of the witness R.G. be read in the minutes due to the unavailability since he was very sick;

On 14 and 15 November 2013 the defendant **R.M.** gave testimony;

On 19 November 2013 the defendant A.T. gave testimony;

On 13 December 2013 A.T. finished his testimony and then defendant S.P. gave his testimony;

On 16 December 2013 the defendant **A.A.** gave his testimony;

On 17 December 2013 the defendant M. K. gave testimony;

On 19 December 2013 the defendant K.U. gave his testimony;

On 27 January, 10, 11, 12, 13, 14, 25 and 27 February 2014 the trial panel heard the closing statements of the parties and on 13 March 2014 publicly announced the Judgment.

The request for T.S. former director of Gulistan School was rejected because of his unwillingness to travel to Kosovo on the one hand and redundancy on the other hand when all facts were sufficiently established by the other material evidence.

4. Factual Findings

Factual findings count 1

Between 25/06/2001 and 27/06/2001 the occupiers and the alleged owners of the land parcels No 8617 and 8619, respectively of the size of 0.20,65 ha and 0,06.22 ha in 'Bugazillek', possession list No. 8414 CZ Prizren, namely the three siblings N.M., A.K. and G.K. divided the land parcel No 8619 and sold it in three parts: land parcel No 8619/4 in the size of 184 m² to M.Q. for 55.200 DM – contract Leg. No 2475/2001, land parcel no 8619/1 in the size of 193 m² to M.K. for 57.900 DM – contract Leg. No 2474/2001, and land parcel No 8619/2 in the size of 137 m² to J.A. for 41.100 DM contract Leg. 2451/2001.

In 2004 the Municipality of Prizren claimed its ownership over the aforementioned land parcels and N.M., A.K. and G.K. filed a civil claim at the Municipal Court of Prizren against the Municipality of Prizren claiming their ownership over these land parcels. On 09/12/2004 the Municipal Court of Prizren issued the Judgment C. Nr. 724/2001 determining N.M., A.K. and G.K. as the rightful owners by inheritance of the land parcels in question.

On 11/08/2005 the District Court of Prizren confirmed the judgment of the Municipal Court in its judgment Ac. No. 255/2005, dated 11/08/2005. The Public Lawyer of the Municipality of Prizren E.M. filed an extraordinary measure against this judgment upon

which the Supreme Court of Kosovo in its judgment Rev. No. 209/2005 dated 26/05/2006 quashed the judgments of first and second instance and declared the Municipality of Prizren the rightful owner of the land parcels in question. The enacting clause of the Supreme Court judgment expressly stated that this change of ownership must be registered by the Directorate of Geodesy and Cadaster of the Municipality of Prizren.

E.M. in his capacity as the Public Lawyer of the Municipality of Prizren addressed his memo No. 621/08 dated 01/07/2008 to the Mayor of Prizren **R.M.**, the Director of Administration and Personnel, Office of Property and Legal Affairs M.K. and the Director of the Directorate of Geodesy and Cadaster K.U., in which he informed about the binding nature of the Supreme Court judgment Rev. No. 209/2005 dated 26/05/2006 and suggested to execute the judgment through the Directorate of Geodesy and Cadaster.

In a separate memo No. 622/08 dated 01/07/2008 which he only addressed to the Directorate for Geodesy and Cadaster he proposed to change the cadastral records in accordance with the Supreme Court judgment. This translates into making respective changes in the cadastral records indicating the Municipality of Prizren as the rightful owner of the land parcels in question. On 12/11/2008 the Municipal Public Lawyer's Office sent an official reminder letter to the Directorate of Geodesy and Cadaster which was signed by A.H. in which the Directorate was requested to send the information on the execution of the Supreme Court judgment, but still no action was taken.

In his statement dated 14 December 2011 (such statement was confirmed in his testimony on 12 September 2013) E.M. said that neither **R.M.** nor K.U. ever came back to him to discuss his memos dated 01/07/2008.

The memos and the Supreme Court judgment were never given by K.U. to the cadastral lawyer for assessment and implementation.

One mortgage

Letter No 07-029-983/Z dated 25/01/2012, sent by the Directorate of Geodesy and Cadaster of the Municipality of Prizren confirmed that only the land parcel No 8619/2 registered for J.A. was mortgaged. The other land parcels indicated in the Supreme Court judgment were not mortgaged.

In his statement dated 14 December 2011 (such statement was confirmed in his testimony on 12 September 2013) E.M. said that neither **R.M.** nor K.U. ever came back to him to discuss his memos dated 01/07/2008.

B.B., cadastral lawyer gave evidence that the memorandums 621/08 dated 01.07.2008 and No. 622/08 dated 01.07.2008 were properly registered, but he never received them. He stated that the fact that they were properly registered guarantees that they did reach the office of the director, K.U., but they stopped there.

According to Article 62.2 of the Law No 03/L-040 on Local Self Governance dated 20/02/2008 (LLSG) as the Mayor **R.M.** had the power to employ and dismiss K.U. as the Director of the Directorate of Geodesy and Cadaster and also had the right to give instructions to him regarding the execution of the duties of the Directorate, Article 13 of the LLSG. It seems that the Mayor did instruct U., but in a way that breached the law and amounts to a criminal offence.

In the period between 01/07/2008, the moment K.U. was directly advised to execute the Supreme Court judgment in the memo No. 622/08, until he left office at the end of March 2010, U. did not execute the judgment. In fact, U. issued a 'ban' or a 'prohibition' on dealing with the land in question, meaning that no changes could be made in the cadaster in relation to those parcels. This was confirmed by **B.B.**, cadastral lawyer from 2007, who gave evidence on 12 and 13 September 2013, confirming existence of the ban and stating that he assumed that the ban had been ordered by K.U.² A.T. later lifted the ban,³ after the initiation of the investigation.

M.K., Director of Administration and Deputy Mayor from 10 November 2008, was in possession of one parcel of the land in question, parcel 8619/1, and was constructing on that land. M.K. knew (as per the evidence) about the Supreme Court judgment and the foreseen transfer of land. **R.M.** knew that K. was using Municipality land and he instructed U. not to execute the judgment, instead allowing K. to continue to benefit from his use of Municipality land.

In his testimony given on 12 September 2013, public lawyer, **A.H.** confirmed this. He said that the reason for non-execution of the judgment was that one of the officials from the municipality, M. K., was an owner of one of the parcels in question.

Benefit

M. and U. acted to the benefit of those who were using the land, including their Municipality colleague, and to the detriment of the Municipality of Prizren. Third parties were allowed to unlawfully use, dispose of the Municipality land thwarting the Municipality's right to use, rent or sell the land parcels in question.

² See page 52, 53 of the testimony, B.B., dated 12 September 2013;

³ See page 54 of the testimony, B.B., dated 12 September 2013;

- M.K. constructed shops on the property and later he leased the shops to different lessees. There is a contract between M.K. and Insurance company “Elsig”, signed on 14/04/2010,⁴ for a duration of 5 years, monthly rent 850 Euro. During the charge period (in fact, only 17 months, from 14/04/2010 to 29/11/2011 Court did not cover the first month because of agreed conditions and the interpretation of the contract 3.1 especially the Article 3.1.) the amount of rent received was 14450 Euro;
- M.Q. leased the property to a Kebab store and to an insurance company. There is a contract between her and N.S., entered on 28 April 2009⁵, duration of “another period of 5 years”, monthly rent 100 Euros. From 28 April 2009 to 29.11.2011-approximately 31 months-she received an amount of 3 100 Euro. Another part of the property was given for rent by her brother-in-law. This is evidenced in the Contract, dated 01.01.2011 between B.Q. and Insurance company “K.S. SIGAL”,⁶ duration 1 year, monthly rent 300 Euros. From 01.01.2011 to 29.11.2011, more than 11 months- they received the amount of more than 3300 Euros. Therefore, a total of 6,400 rent was received during the period;
- J.A. leased his property to two insurance companies, namely “K.S-Siguria” and “Kosovo e Re”. This is evidenced by the contract between himself and “K.S. Siguria”⁷ from 01 December 2009 to 01.01.2011 and with “Kosova e Re”⁸ from 01.01 2011. He received monthly rent of 400 Euro, from 01 December 2009 to 29 November 2011 –23 months- and therefore an amount of 9 200 Euros.⁹

Therefore, an amount of 30050 Euro benefit was given during the charge period. Such amount is the lost profit of the rightful owner and income of unlawful renters of premises. Court has not reflected the value of the land for calculation of the damage. The casual link between the illegal acting of **R.M.** and K.U. and the damage and municipality is related only to value of lost profit from rent. The omitting of the execution of the judgment factually meant the increasing of income from rent every month but not the decrease of value of property of the Municipality of Prizren. According to the principal **“Superficies solo cedit – surface yields to ground”** the buildings belong to the owner of the land. Although this principle cannot be implicated without exception, in this case the builder of the land was aware about the Supreme Court judgment. (This knowledge the court stipulates derives from the fact that M.K. is the person working on the Municipality and was very well aware about the existence of such judgment). The already built buildings should be compensated to the builder by the owner of the land.

⁴ See page 1224 (English version) 1228 (Albanian version) of the case file;

⁵ See page 1215 (English version) 1216 (Albanian version) of the case file;

⁶ See page 1231 (English version) 1233 (Albanian version) of the case file;

⁷ See page 1218 (English version) 1220 (Albanian version) of the case file;

⁸ See page 1222 (English version) 1223 (Albanian version) of the case file;

⁹ Confirmed by his testimony, 16 September 2013;

On 16/11/2011 B.M. the Public Lawyer of the Municipality of Prizren, who had taken up office on 01/11/2011, sent to the Directorate of Geodesy and Cadaster an application to implement the Supreme Court judgment as cadastral case No 027-1949/B. In his testimony dated 12 September 2013, **B.M.** said he coincidentally became aware of the case as he had been summoned to the Municipal Court of Prizren.¹⁰ On the same day, A.T. then Director of the Directorate of Geodesy and Cadaster issued the request No 07-029-12903/Z ordering the Cadastral Lawyer B. B. to assess the case in conformity with the law and ordered the cadastral clerks E. H., L. Sh. and A.L. to annul the existing ban on the property in question and execute his decision.

On 23/11/2011 Raiffeisen Bank sent a letter to the Directorate of Geodesy and Cadaster in Prizren stating that the loan of 120.000 EUR of J.A. had been paid and that the mortgage on the land parcel No 8619/2 in the size of 137 m² should be lifted and evidenced in the cadastral records.

On 29/11/2011 A.T. issued the decision No 07-029-12903/Z approving the changes of the cadastral records according to the Supreme Court judgment. He signed the decision together with B. B.. On 12/12/2011 new possession lists were issued for the land parcels No 8617 and 8619 CZ Prizren. The Municipality of Prizren is now registered as their lawful owner.

Any petitions for re-trial have no impact on the finality of the Supreme Court judgment. In fact they demonstrate the opposite: a re-trial is possible only after a court concluded the previous trial by a final decision. The applications for retrial has do not stay the execution of Supreme Court judgement. The Law on civil procedure and the Law on contested procedure are relevant here.

The *Law on Cadastre no. 2003/25*, which applied until August 2011 specifically Article 16. 5 of Law no. 2003/25 applies to the present situation there was a need for *amalgamation* of the divided parcels as the Supreme Court decision required the land in question to be brought back to its original state. Despite the continued failure to refer to paragraph (b) of this article by the defence counsel, paragraph (b) *does* exist and states clearly that an amalgamation can be registered if there is only one mortgage on the concerned land parcels.¹¹ Therefore, the existence of one mortgage provided no legal obstacle to execution of the decision in question.

From August 2011 Article 14 of the Law on Cadastre no. 04/L-013 applies. Under this law, the amalgamation is permitted where there is a mortgage (which is the case here)

¹⁰ See page 5, testimony B.M., dated 12 September 2013;

¹¹ See letter from the bank, dated 23.11.2011

after consent is given by the mortgagee or other possessors of property rights for a new order of priority in the new amalgamated parcel. The Supreme Court decision was executed approximately 4 months after this new law came into force. It was revealed that the debts had been paid and the mortgage lifted.

In accordance with Article 62 of the Law on Local Self Government each municipal directorate shall be managed by a director and in accordance with article 9 of the “Ruling on internal structure and posts distribution of staff in municipal civil service bodies”, adopted by the Municipal Assembly of Prizren in its session held on 22 April 2004¹² “The work of the Municipal Directorate is managed by the Director of the Directorate...”. Further, Article 62 of the Law on Local Self Government stipulates that the directors shall manage their directorates in accordance with the strategic and political strategies of the Mayor and in accordance with Laws and municipal applicable regulations.

The Article 8.7 of Law No 2003/25 on Cadaster dated 04/12/2003 establishes that relevant changes in the Cadaster shall be registered as soon as the required documentation, in this case the Supreme Court judgment, is reviewed and approved. He did the opposite, by placing a ban or ‘prohibition’ on dealing with the property after the Supreme Court judgment was received. **Witness B. B.** stated clearly in his testimony that he never even saw the memorandums 621/08 or 622/08 or the Supreme Court judgment. His only reasoning for this was that K.U. received the documents but did not then direct them to him for his assessment.

According to Article 62.2 of the Law No 03/L-040 on Local Self Governance dated 20/02/2008 (LLSG) as the Mayor **R.M.** had the power to employ and dismiss K.U. as the Director of the Directorate of Geodesy and Cadaster and also had the right to give instructions to him regarding the execution of the duties of the Directorate, Article 13 of the LLSG. M.’s violations include Article 58 of the LLSG dealing with the ‘Responsibilities of the Mayor’ and in particular point a) and c) of this provision which states that the Mayor ‘acts on behalf of the Municipality’ and that acting in his official capacity he ‘exercises all competencies not explicitly assigned to the Municipal Assembly or its committees’.

E.M.(testimony dated 12 September 2013) public lawyer of the Prizren municipality from 01 July 2001 until 30 September 2008 issued submission No. 622/08,¹³ and a letter No. 621/08 dated 01/07/2008.¹⁴ Both the submission and the letter were properly registered in the protocol office.¹⁵ Any argument that the documents did not reach their

¹² See page 000883 of the case file;

¹³ See page 1202-1203 (English version) and page no1203-1204 (Albanian version) of the case file;

¹⁴ See page 1200 (version) English and page 1201 (Albanian version) of the case file;

¹⁵ The relevant protocol number is 027 Nr. 1949/B, 01.07.08 ;

destinations carries no weight. **B. B.**, professional associate in the Directorate for Geodesy and Cadastre, explained during his testimony on 12 September 2013, that *every* document sent to the Directorate goes first to the Protocol office, is registered with a protocol number and then goes to the Director of the Directorate, who “filters” the documents and sends them to the competent office/person for review/execution; **A.H.** (testimony 12 September 2013), Municipal public lawyer from 15 September 2008 to May 2011, signed and sent an official reminder letter to the Directorate of Geodesy and Cadastre on 12.11.2008.¹⁶ The Directorate was requested to provide information on the execution of the Supreme Court judgment. The reminder is officially registered in the protocol office.¹⁷ No action was taken. **B. M.** (testimony 12 September 2013) public lawyer (from 01 November 2011) on 16 November 2011 also sent a request to the Directorate of Geodesy and Cadaster¹⁸ requesting execution of the Supreme Court judgment. The request was properly registered in the Protocol office of the directorate.¹⁹

These witness statements demonstrate that the issue *was* dealt with public lawyers, but they were then thwarted by M. and U..

U. claimed in court that never received the memorandums. This is clearly untrue and in complete contradiction to his previous statements. The Court trusted more his previous statement because it corroborates with fact of omission in non-execution of the judgment. U.’s assertion that the judgment was unenforceable because of the existence of mortgages is purpose-built. This issue was not in his mind at the time the offences were committed – he never approached the lawyers to discuss any issue of the mortgage and never even gave the submission or the judgment to the lawyer in the cadastral office. This was confirmed by **B. B.**

The defendants knew that M. K., then Deputy Mayor and director of the Directorate of Administration, was in possession of one parcel of land and also knew that he was constructing on the land. The intention behind non-execution of the final judgment was, without any doubt, to provide benefit for M. K. and therefore also the other possessors of the land. The indirect or eventual intent was to cause damage to the Municipality. The defendants knew that the Municipality was suffering as a result of their inaction and yet continued to ignore the law.

The argumentation that the judgment cannot be executed because it was not final due to the existence of reopening proceedings is incorrect. (It is necessary to say that such arguments occurred in pleading/main trial stage and the only purpose of it is to cover criminal intent).

¹⁶ See page no. 1213 (English version) and page no. 1214(Albanian version) of the case file;

¹⁷ Protocol number 029 nr.3483/Z, 13.11.08;

¹⁸ See page 1253 (English version) and page 1254 (Albanian version) of the case file;

¹⁹ Stamp on the upper right side with a number 07-029-12903/Z, 16.11.2011;

Factual findings COUNT II

- On 13/05/2009 Education Center “Gulistan” submitted to the Municipality of Prizren the request No 09/05/051302 for allocation of 5-6 ha of public land for the construction of a school building with adjacent infrastructure. The applicant wanted to have the land for 99 years and to be released from any duty to pay for the use of the land on the other hand Education center proposed benefits for the Municipality of Prizren. On 18/06/2009 the Municipal Assembly of Prizren convened its meeting during which the proposal of Education Center “Gulistan” was discussed. The Municipal Assembly voted on the general authorization for the competent bodies to allocate Municipality land without specifying the place in order that the latter could subsequently find the land parcel to be leased to ‘Gulistan’. As a result of this decision (No 01/011-4325) 6 ha of Municipality land was given for 99 years without compensation and Municipality officials were authorized to find an appropriate location. On the same date N.K. issued another decision No 01/011-4539 giving ‘Gulistan’ agricultural land in the size of 5-6 ha located on the local road to Nashec village for permanent use without compensation for the construction of the school compound including the auxiliary infrastructure. The same decision authorized **R.M.** to take the decision on the transfer of the right to use this land without compensation, the length of the use of land and other details. It was not possible to allocate the land parcel stipulated in the aforesaid decision No 01/011-4539 in the area of Nashec village due to the protests of local villager. As a result it was necessary to find another appropriate location for the planned investment of ‘Gulistan’. New location was found in the land parcel No 800 of the size of 474,434 m² in ‘Boka Boka’, possession list No 553 CZ Korisha. This land was not the property of the Municipality of Prizren but was registered in the name of the Labour Organization of Forestry ‘Sharri’– OPB Economy of Forests. As such it was under the management of the Privatization Agency of Kosovo and any transfer of rights to use this land by the Municipality was dependent on a positive decision of the PAK. Despite the fact that the land on new location in Boka-Boka was under the management of the PAK, **on 24/11/2010 R.M.** issued the decision No 01-370 by way of which the Municipality of Prizren took into possession part of the aforementioned land parcel for the sake of the planned investment. **On the very same date**, following this decision, M. K., the Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, submitted the request No 03/3 to the Directorate of Geodesy and Cadaster in which he indicated that immediate changes shall be made in the cadastral records regarding land parcel No 800 in conformity with the aforementioned decision of the Mayor of Prizren. This document was signed by **G.S.**, the Coordinator of the Sector of Property-Legal Issues within the Directorate of Administration, who stated in his testimony that M.K. told him to

- sign the document. On the same date acting upon this request, **A.A.**, the Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, by way of the ruling No 07-025-6976/Z approved the transfer of ownership from the Labour Organization of Forestry 'Sharri'– OPB Economy of Forests to the Municipality of Prizren. **B. B.**, professional associate, drafted the ruling approving transfer of ownership, upon the request of his Director - **A.A.**. On 24 November 2010 at 12:08 PM, changes in the cadastral records were made evidencing the Municipality of Prizren as the owner of the said land parcel.
- Having taken possession of land parcel No 800 in 'Boka Boka', **R.M.** signed Contract No 01/17 (registered on 11/02/2011) on the conditions of use of real property with 'Gulistan' represented by its director T.S.. The contract states that it is based on the Law No. 03/L-226 on allocation for use and exchange of immovable property (LAP) and the decision No 01/011-4539 (issued by the Chairperson of the Municipal Assembly, allocating a parcel on the road to Nashec village). The land parcel No 800/2 was handed over for use to 'Gulistan' for a period of 40 years. 'Gulistan' was exempted from any payments for the use of the land with the exception of the payment for the change of the 'form' or the land from agricultural to construction land (Article 12). On 11/02/2011 M. K. submitted to the Directorate of Geodesy and Cadaster of the Municipality of Prizren the request No 03/3 to register the right of 'Gulistan' to use the allocated land for 40 years. This document was signed on behalf of M. K. and according to his instruction by **G. S.**

Despite the fact that the initiative for this contract resulted from the decision No 01/011-4539 of the Municipal Assembly of Prizren, it was not respected as another land parcel was allocated to 'Gulistan'. The Municipal Assembly was not even informed of the change of location and signing of the aforementioned contract with 'Gulistan' and neither was the public.

The benefit given in rental value, through signing the contract with Gulistan for forty years, is 20,120 Euro. This benefit is estimated according to the rental value of the land estimated by the expert A. Sh. in the expertise ordered by EULEX Judge Anne Marie Meister, when the expert estimated the rental value of parcel 800/2 to amount 503 EURO per year.

Factual findings Count III

In 2010 'Kamila', based in Gjakova, approached the Municipality of Prizren to assist in the search for an adequate piece of land to build a chocolate factory. On 04/03/2010 during a meeting Municipality officials promised 'Kamila' that they would find an appropriate location for the planned investment. On 10/05/2010 the CEO of 'Kamila' E. S. sent a request to the Mayor of Prizren and the Directorate of Urbanism and Spatial

Planning for the allocation of 2 ha of Municipality land at the location of the Business Park across from Hotel OK along the Prizren-Pristina road²⁰.

- On 15/12/2010 **R.M.** acting as the Mayor of Prizren signed an Agreement on Public-Private Partnership and Concessions on the Use of the Immovable Property of the Municipality dated 15/12/2010 with E. S.²¹. According to this Agreement different land parcels amounting to a total of 13.935 m² in Prizren, possession list No 593 CZ Lubizhde, which were included in the existing Regulatory Urban Plan, were supposed to be allocated to 'Kamila' for use for the period of 10 years with the possibility of extension for another 10 years. 'Kamila' in return was obliged to use the allocated land for the construction of its chocolate factory valued at 2 million EUR, to pay all municipal taxes for the construction permit, cover other expenses, and also employ a number of workers. As to the law governing the Agreement, the parties indicated the Law on Public-Private Partnership and Concessions in Infrastructure and the Procedures for their Award No 03/L-090 of 25/06/2009 (LPPP).
- On 03/03/2011 'Kamila' made the required initial payments (taxes) to the account of the Municipality of Prizren.
- The Law on Allocation and Exchange of Immovable Property of Municipality was in force at the relevant time. When **R.M.** signed the contract with Kamila, 15 December 2010 there was no Municipal Assembly approval for allocation of the relevant land parcel at Lubizhde as required by the LAP.
- The preparatory works on the construction of the chocolate factory were soon interrupted as the villagers living in Lubizhde claimed ownership over the allocated land. Consequently, **S.P.** and **R.M.** decided to allocate to 'Kamila' instead the land parcel No 688/2 of the size of 20.000 m² in 'Boka Boka' in Prizren in the value of 40.000 EUR, possession list No 257 in CZ Lutogllave. This area had not been included in any Regulative Urban Plan and both M. and P. were aware of that.
- On 4 March 2011, **S.P.**, the Director of the Directorate of Urbanism and Spatial Planning, issued the Decision No 04-351-2051 permitting construction of the chocolate factory of the value of 1.294.690,50 EUR on the land parcel located in Llutogllave.²² At that time, the land parcel at Llutogllave had not been allocated by

²⁰ See page 2005 (English version) of the cease file;

²¹ See page 2007 (English version) of the case file;

²² See page 20136 (English version) of the case file;

the Municipal Assembly and, in fact, no contract had been signed between anyone at the Municipality and Kamila, allocating the land for use.

- Over a month after permission was given to construct on the land parcel at Llutoglave by P., the contract permitting use of the land (Contract for Use of Municipal Land and Setting the Lease Price for Construction of the Structure) was signed between P. and S.²³ Still no Municipal Assembly approval had been given. The Contract permitted 'Kamila' to use the land parcel No 688/2, a completely different parcel of land to that in the initial contract dated 15/12/2010.
- At the time P. signed the contract with 'Kamila', giving away Municipal property, the land in question at Llutoglave was not included in any Regulative Urban Plan.

On 15/04/2011 the contract giving away municipal land was signed by **S.P.** and 'Kamila'. The Contract permitted 'Kamila' to use land parcel No 688/2, and was exempted from any payments for the use of the said land parcel except for payment of required municipal taxes.

The benefit given in rental value, through signing the contract with Kamila for 10 years, is 4500 Euro. This benefit is estimated according by calculating the rental value of the land (estimated by the expert A. Sh. in the expertise ordered by EULEX Judge Anne Marie Meister), where the expert estimated rental value of parcel 688/2 in the amount 450 EUR per year.

Factual findings count 4

- In the period preceding 02/08/2011 private individuals submitted to the courts in Prizren their civil claims for restitution of land. In these cases, before the judgment could be issued, geodesy experts had to be heard in order to give their professional opinion on cadastral data, i.e. history of properties, their legal status, entries and changes in the cadastral records. Some such claims were filed against the Municipality of Prizren which is still in possession of a number of land parcels that the said individuals claim to be theirs.
- The court preferred to summons geodesy experts employed by the Municipality of Prizren instead of private experts because the former had unlimited and easy access to the cadastral records whereas private experts encountered obstacles.

²³ See page 2040 (English version) of the case file; On 15/04/2011 the contract No 04-353 for Use of Municipal Land and Setting the Lease Price for Construction of the Structure - Chocolate Factory was signed between S.P. representing the Municipality of Prizren and E.S. as representative for 'Kamila'

This was expressed in the letter of Judge Valon Totaj C.No 583/11 dated 01/09/2011²⁴ as well as that the latter's opinions were not as precise and detailed as the opinions of the municipal geodesy experts.

Y. H., president of the (then) District court in Prizren, gave evidence confirming that he was informed by Judge Valon Totaj about the conclusion banning the geodesy experts from appearing in court.²⁵ The witness, who is also the current president of the Basic Court in Prizren, stated that he was aware of the existence of private licensed geodesy experts. However, he specified that “the judges contacted private geodesy experts, but those private experts told them they don't have access to information....”²⁶. The witness also referred to the right of the court to use every expert as “an individual [who] has necessary qualifications”²⁷.

During the main trial it was revealed that there were only approximately 5-6 licensed geodesists in the entire Prizren region²⁸ and they did not always able to respond to the summons. Further, the performance of their tasks depended on the experts from the municipality. **B.S.**, also confirmed that the private experts, when engaged by the court, could not proceed without information which is in the sole possession of the directorate of geodesy and cadaster. He described the procedure which a private expert needs to follow: they (the private experts) “present an official request and we acquire information and data they are obliged to provide...”²⁹

K. G., also a private geodesy expert, confirmed that he didn't have easy access to the records of the cadastre. As a result it appears that the directorate of geodesy and cadaster is engaged in the court procedure, even when a private expert is assigned.

- Further, the municipal geodesists themselves gave testimony that the work of the directorate was not suffering as a result of their absence. They were obviously following some kind of procedure to ensure the work flow. **L. R.**, was clear that whenever she went to court, she had someone to replace her in the municipality.³⁰ **R.S.**, another municipal geodesy expert, also confirmed that the work in the Municipality didn't suffer when the experts were in court.³¹

²⁴ See page 2104 (English version) of the case file;

²⁵ Testimony, 10 October 2013.

²⁶ See page 10, testimony, I. H., 10 October 2013;

²⁷ See page 7, testimony, Y. H., 10 October 2013;

²⁸ See page 4, testimony, B. S., 12 November 2013; Page 7, testimony, K. G., 12 November 2013;

²⁹ See page 6, testimony, B. S., 12 November 2013;

³⁰ See page 25, 28, testimony L.R., 10 October 2013;

³¹ See page 36, testimony, R. S., 10 October 2013;

- The issue of municipal geodesy experts' participation in court hearings was the subject of a discussion within the Board of Directors of the Municipality of Prizren. During the meeting dated 02/08/2011 M. K., the Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, submitted orally the proposal to issue a decision whereby such participation would be banned. In the official Agenda of the meeting, document No. 01/06-8121 dated 02/08/2011³², there is no such point envisaged to be discussed which means that the proposal was not submitted formally to the Board but was put forward *ad hoc* by M. K., during the discussion on point 10 of the Agenda³³. To justify his proposal M. K. simply stated that '[t]he employees of the municipality cannot be experts in the court' and that 'the other municipalities have implemented this prohibition too'.
- Following this proposal, the Mayor of Prizren **R.M.** issued a Conclusion by way of which he banned geodesy experts employed by the Municipality of Prizren from attending court sessions and giving expert opinions in the civil cases pending before the court.³⁴ On the same date A.T., the Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, communicated the conclusion No 01/06-8121 to the cadastral experts telling them that from that time until further notice no expert was allowed to respond to court summonses.

L.R. during her testimony confirmed her statement, given to the prosecutor where she said that A.T. gave a copy of the conclusion to B. B. who distributed it.³⁵ **R.S.** also confirmed that A.T. informed them about the conclusion, issued by the mayor.³⁶ Both witnesses testified that they did not attend several trial sessions, as a result of prohibition. Both knew it was their obligation to respond to court summons, but because of the conclusion they didn't. **L. R.** stated: "I am aware [of the obligation to respond], but since the decision, I am an employee of the Municipality, I had to comply with the conclusion" adding that she was worried about her job.³⁷

I. K. (a witness, proposed by the defense), Head of the Legal Directorate at Kosovo Cadastral Agency, testified that the Law on Courts foresees an obligation for everyone to respond to court summonses.³⁸ He identified no exceptions.

³² See page 2071 (English version) of the case file;

³³ See page 2082 (English version) of the case file;

³⁴ See page 2100 (English version) of the case file;

³⁵ See page 27, testimony, L.R., 10 October 2013;

³⁶ See page 35, testimony, R. S., 10 October 2013;

³⁷ See page 27, testimony, L.R., 10 October 2013;

³⁸ See page 21, testimony, I.K., 12 November 2013;

- As a consequence, several court hearings could not take place and these cases were stalled. It was confirmed that as of 06/09/2011 experts had not appeared in any court hearing they had been summonsed for 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.

Y. H., president of the Basic Court, explained the effects of the conclusion. He stated that the conclusion obstructed its work. He stated: “A lot of cases remain unprocessed. There were cases involving temporary measures...”³⁹ The work of the court was so disrupted by the ban that the president of the court informed both defendants, **R.M.** and **A.T.** as such.⁴⁰

The president of (then) Municipal Court in Prizren, **H.D.**, in his statement, to the prosecutor and read in in court on 12 November 2013 experienced similar problems. He stated that “None of the property disputes can be resolved without the presence of [municipal] geodesy [experts]...” and further “now we cannot schedule any new hearings as we don’t know what to do with the parties in the dispute.”⁴¹

- on 07/09/2011 the District Court of Prizren sent to the Mayor of Prizren letter No 1/2011-65 calling for the withdrawal of the Conclusion.⁴² The letter specified that the act of the Mayor of Prizren was in contradiction with Article 18 of the Law on Regular Courts of Kosovo dated 26/04/1978 which empowers the courts to require the assistance of public entities whenever necessary and such authorities are obliged to comply with the court’s request and summons’.
- A letter of the same content was also sent to the Director of the Directorate of Geodesy and Cadaster **A.T.**

Y. H., testified in court that in the evening of the same date (07 September 2011) he had a phone conversation with **R.M.** The witness tried to solve the problem requesting the mayor to lift the ban.⁴³ In his statement, given to the prosecutor which he confirmed in court, he said that during the course of the conversation he explained to the mayor that by the letter he was urged to lift the ban, advised that he is in violation of the law, and informed that civil claimants were suffering as a result of the Conclusion. **R.M.** replied that despite all this he was not going to change his position and the geodesy experts would not attend court sessions because he wanted to stop court disputes in which Municipality land could be ‘given’ to private individuals.

³⁹ See page 6, testimony, **Y. H.**, 10 October 2013;

⁴⁰ See page 6, testimony, **Y. H.**, 10 October 2013;

⁴¹ See page 721, statement, **H. D.**, 12 December 2011;

⁴² See page 2159 (English version) of the case file;

⁴³ See page 5, testimony, **Y. H.**, 10 October 2013;

On 12/09/2012 **Y. H.** also called A.T. and in the phone conversation the defendant told him that “he is unable to do anything about correction of this conclusion”. Then, in yet another attempt to resolve the issue, on 13/09/2012 Y. H. invited A.T. and the Deputy Mayor of Prizren R.R. to find a solution. During such time R.R. called **R.M.** on the phone. At this time, the latter, **R.M.**, reiterated he would not withdraw the Conclusion.⁴⁴

- EULEX prosecutor became involved. On 07/12/2011 the EULEX prosecutor submitted to the Supreme Court of Kosovo the motion to initiate an administrative conflict against the Mayor of Prizren **R.M.** alleging that the Conclusion was unlawful and as such should be annulled. After the officials received a copy of this motion one of the officials, namely M. K., on 6 January 2012, send a letter to the President of the District Court Y. H. inviting him to the Municipality. K. stated in the letter that he also wanted the president to sign a commonly agreed memorandum of understanding “for offering of legal remedy by experts of Geodesy and Cadaster of Municipality of Prizren, including the cooperation terms, criteria and real capacities of this remedy.”⁴⁵ In this letter it was indicated that the signing of this memorandum was the precondition to withdraw the Conclusion.
- After the initiation of the administrative conflict, on 26/01/2012 through his decision No 01/06 **R.M.** withdrew the Conclusion.⁴⁶

5. Legal findings, qualifications of acts committed and defendants

a. Count I - Supreme Court Judgment

In regard to the first act of the Indictment where the Supreme Court judgment rev. no. 209/2005, dated 25 May 2006 was delayed in execution, it is the firm stand of the trial panel that the Supreme Court Judgment should be executed immediately as the highest and the last authority in judicial system in Kosovo, meaning that the judgment mentioned above was res judicata and as such was final decision.

The Supreme Court judgment was contested during the trial by some of the defence counsel stating that there were obstacles in execution of that judgment since there was a mortgage in one of the three parcels, hence the three parcels could not be re-joined in one, while the mortgage was binding. The trial panel acknowledges that the Supreme

⁴⁴ See page 5, testimony, Y. H., 10 October 2013;

⁴⁵ See page 2211 (English version) of the case file;

⁴⁶ See page 223 (English version) of the case file;

Court is the highest authority in the judgment of an issue, it is clear to this panel that the Judgment could not be contested in an appellate procedure anymore, therefore it was an executable judgment.

In this regard elaboration of the legal acts is needed. Law on Cadaster no. 2003/25, which was applicable until August 2011 specifically Article 16. 5 of Law no. 2003/25 apply to the present situation clarifying the process of uniting the parcels into one and in this regard the law states;

16.5. Amalgamation can be registered only:

- a. if concerned land parcels are free from mortgages and other encumbrances or*
- b. if only one of the concerned land parcels is mortgaged or encumbered or*
- c. if concerned mortgages and others possessors of property rights have given their consent to a new order of priority in the new amalgamated land parcel.*

From August 2011, Law on Cadaster no. 04/L-013 was applicable in this regard Article 14 of the Law on Cadaster is applicable which states;

4. Amalgamation can be registered only:

- 4.1. if concerned parcels are free from mortgages and other encumbrances, or*
- 4.2. if a mortgagee concerned or other possessors of property rights have given their consent to a new order of priority in the new amalgamated parcel*

Under this law, the amalgamation is permitted where there is a mortgage (which is the case here) after consent is given by the mortgagee or other possessors of property rights for a new order of priority in the new amalgamated parcel.

Therefore, the existence of one mortgage in one of the land parcels provided no legal obstacle to the execution of the Judgment by the Supreme Court of Kosovo.

The defendants allegation that despite the mortgage there was a petition for a re-trial, contradicts their statement, while it is evident that a petition for re-trial can be filed against a decision which is already final. The Law on civil procedure and the Law on contested procedure should be stated here, Article 421 and 422 which were applicable until 2008 at the time when the petition for re-trial was filed foresees the opportunity for a trial, which has been duly completed by a decision of a court, on the proposal of a party, furthermore, Article 422 of the Law on Civil Procedure as a precondition to request a retrial is that a previous trial is concluded by a final judgment. It should be noted that when the Supreme Court judgment was executed in the end the retrial issue did not provide any obstacle.

Any suggestion that the existence of one mortgage precluded execution of the judgment is also incorrect. There was only one mortgage on one parcel of land – the parcel owned by J.A. Importantly, each of the public lawyers that gave testimony before the court stated that there were no obstacles in execution of the Supreme Court judgment. Indeed, if they thought that there were obstacles they would not have made the proposals for execution.

Any potential argument that changes could not be made in the cadastre until the land was physically repossessed is also invalid. Changes in the cadastre had to be made before anything else could be done by the municipality to get the parcels back in its physical possession. Article 37 which sets out that, after the changes in the cadastre have been made, a possession list (defining the borders of the acquired property) can be obtained and the procedure as described in art. 37 can be initiated. Property must first be legally acquired before it can be protected or physically recovered.

The same situation exists in the new Law 03/L-154 - art. 93, which foresees an option for the owner to demand the delivery of the particular property from anyone who is not entitled to possess it.

Article 422 of the Criminal Code of Kosovo reads that *An official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not execute his or her official duties with the intent to acquire any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person.....*

Based on the Law No 03/L-040 on Local Self Governance dated 20 February 2008 the Mayor **R.M.** had the power to employ and dismiss K.U. as the Director of the Directorate of Geodesy and Cadastre and also had the right to give instructions to him regarding the execution of the duties of the Directorate as per Article 13 of the same law. But it has to be said that **R.M.**'s Conclusion could be theoretically effective without the assistance of K.U. bearing in mind the chain of command in the Municipality.

The law on local self-government states that the Mayor represents and acts on behalf of the Municipality and that acting in his official capacity he exercises all competencies not explicitly assigned to the Municipal Assembly or its committees. Therefore the mayor had an obligation to ensure that the Supreme Court Judgment was executed.

In the same manner Article 62 of the Law on Local Self Government provides that each municipal directorate shall be managed by a director and in accordance with article 9 of the "Ruling on internal structure and posts distribution of staff in municipal civil service bodies", adopted by the Municipal Assembly of Prizren in its session held on 22 April 2004. Further, Article 62 of the Law on Local Self Government stipulates that the

directors shall manage their directorates in accordance with the strategic and political strategies of the Mayor. U. did not act pursuant to Article 8.7 of Law No 2003/25 on Cadastre dated 4 December 2003 which establishes that relevant changes in the Cadastre shall be registered as soon as the required documentation is reviewed and approved. In this case the Supreme Court Judgment should have been executed immediately, while they both acted contrary to the judgment, by placing a ban on dealing with the property after the Supreme Court judgment was received.

b. Count II - Education and Schooling Centre QEA ‘Gulistan’

Allocation of the land to Educational School Center Gulistan is the second act in abusing of official position in the Municipality done by Mayor **R.M.**, M. K. and **A.A.** in corroboration. All three defendants while acting together have managed to acquire the ownership to Municipality of Prizren from Labor Organization of Forestry ‘Sharri’– OPB Economy of Forests.

The Forestry Sharri organization is a publicly owned enterprise which according to the law falls under the administration of Privatization Agency of Kosovo⁴⁷. Therefore transferring the land without consent of the Privatization Agency constitutes a violation while the above law states the following:

- *Article 2.1 provides that the Agency ‘shall have the Authority to administer – which shall include the authority to sell, transfer and/ or liquidate – Enterprises and Assets as defined under the present law’ which according to Article 6.1 (n) extends to all Enterprises and Assets*

In a notification letter of the Privatization Agency of Kosovo dated 09 February 2012, it is confirmed that the land parcel in question (No 800/2) is a socially owned property and pursuant to Article 5.1 (a) of the Law on Privatization Agency of Kosovo it is under the administrative authority of the Privatization Agency, who was never informed about any transfer of ownership of this land parcel to the Municipality of Prizren.

The land parcel was not included in any urban regulative plan and the defendants also failed to obey the Law on Local Self Government where Article 40.2(c) provides that in order to decide on an investment plan the Municipal Assembly consent is needed. In connection with Article 25 of the Statute of the Municipality of Prizren No 01/011-5643 dated 15 August 2008 which states that decision of the Municipal Assembly is required in cases of signing of contracts, and the lease of Municipality property.

⁴⁷ (Law no. 03/L-067 on the Privatization Agency of Kosovo)

In this regard each defendant has also an individual responsibility in the allocation of the land. While the mayor **R.M.** had an obligation to follow the procedure in allocation of public land i.e providing consent from the Privatization Agency of Kosovo and as stated before a decision from the Municipal Assembly, regardless he took a decision by which the land parcel in Boka Boka was acquired by the Municipality. The defendant M. K. knew that Municipal Assembly approval was required for the specific parcel of land and that consent is required from PAK before land can be transferred, despite this M. K. in capacity of Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren, submitted the request to the Director of Directorate of Geodesy and Cadaster **A.A.** on which he indicated that immediate changes shall be made in the cadastral records and allocate the land in Boka Boka for the use and construction of the school to Gulistan Center. The third defendant in this act **A.A.** have followed the instructions of M. K. and issued a decision approving the transfer of the land although he was aware that for the allocation of the land, there were certain procedures to be followed. The A.'s indirect intent to breach rules in favour of private entity is visibly from the speed of the proceedings.

The changes were made in violation of Article 3.3 (a) of the (amended in 2003) of the Law on Registration of Immoveable Property Rights (**Law No. 2003/13**)⁴⁸ which requires that the cadastral office maintain a public notice board where notices of requests for registration shall be posted and visible to the public. Article 3.3 (b) states that the cadastral office shall post any notice of request for registration on the public notice board for at least five working days prior to issuing a decision authorising registration. This is so that interested parties can appeal the making of any changes.

The mayor in this case allocated the land to a private entity, which started construction before any Regulative Urban Plan took place on that parcel. The urban regulative plan regarding that parcel started on 19 April 2011 when the mayor issued a conclusion granting permission to compile the regulative urban plan for land parcels 800/1, 800/2 and 801.

c. Count III 'Kamila' chocolate factory

P. and M. told Mr. S. that the consent of Municipal Assembly was required for the allocation of the land, nonetheless on 15 December 2010 **R.M.** signed the agreement on private public partnership and a concession for the use of Municipal immovable property.

⁴⁸ (Law No. 2003/13 ON AMENDMENTS AND ADDITIONS TO LAW NO. 2002/5 ON THE ESTABLISHMENT OF THE IMMOVABLE PROPERTY RIGHTS REGISTRY)

From the statement of **R.M.** it was understood that he was aware that consent from the Municipal Assembly was needed in order to allocate public land to a private company, however he stated that it was in the common interest to make the investor stay in Prizren since he had an offer to invest in Macedonia and this way he wanted to keep him in Kosovo, therefore he tried to justify his acts. The contract signed with the Kamila was a public private partnership which is in contradiction with the law, since Kamila is a private profitable company and it does not carry on any public function. **S.P.** as co-perpetrator knew also that the consent of Municipal Assembly is required, this was testified by E. S., who stated that P. told him that consent from Municipal Assembly is needed.

Both defendants had the capacity of official persons working for the Municipality, hence committing the criminal offence of abusing official position or authority, thereby taking advantages of their official authority by exceeding the limits of their authorisations and by failing to execute their official duty, while enabling material benefit for the third person and causing damages to the Municipality.

d. 'Conclusion' on banning the cadastre experts - Count IV

The conclusion issued by **R.M.** on where he banned cadastre experts from attending court sessions was in force for a period of 5 months. **R.M.**, in the capacity of the Mayor of Prizren, M. K., in the capacity of the Director of the Directorate of Administration/ Office of Property and Legal Affairs and A.T., in the capacity of the Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, M. and K. acted in co-perpetration and thereby seriously violating the rights of other persons. A.T. assisted them.

By issuing the Conclusion and complying with it all three defendants have violated Article 18 of the Law on Regular Courts of Kosovo, which states that the courts can require the assistance of public entities whenever necessary and such authorities are obliged to comply with the court request and the conclusion itself led the cadaster experts to breach the law and disobey courts summonses.

In the same manner M. K. and A.T. had an obligation not to comply with the conclusion of the mayor, since the decision was a call for disobedience to the court, thereby, influencing the flow of proceedings in several civil cases dealing with property ownership.

In this regard the trial panel is of opinion that M. and T. as Municipal Officials had the capacity to acknowledge that banning the cadastre experts from court sessions is a serious violation, hence putting the experts in an ambiguous position, while being afraid

of losing their job and in the other hand depriving claimants of their constitutional right of having a fair and speedy trial.

In this regard all three defendants have violated the law by exceeding the limits of their authorization and damaging third parties with the decision of banning cadastre experts from attending court sessions thereby committing the offence of Abusing Official position or authority for M. and K., while T. committed the offence of assistance to the commission of abusing official position or authority. A.T., as a person aware of the illegal conclusion reached, assisted the illegality by informing the cadastre experts rather than preventing the execution of the conclusion as he should have done

Finally such conclusion disobeyed the courts *sui generis* decision – summon and effected the fair civil contest- trial. M. and K. in cooperation and using their executive power indirectly influenced the civil contest resulting in the deprivation of rights of participants in civil contest.

Application of criminal law.

The criminal offences were committed before 1st January 2013, it means that court had to use Article 3 of Criminal Code for the test which law is more favourable for each defendant. The most favourable law is the law pursuant which the less severe punishment should be imposed. In practice it means to compare the possible punishments but not only from the aspect of the length of the punishment but also from aspect of variability of punishment etc. The Article 422 of Criminal code (new code) establishes the range for criminal repression for criminal offence of Abusing Official Position or Authority from 6 months to 5 years of imprisonment. The consequences did not change the qualification. Opposite the Article 339 of Criminal code of Kosovo reflects the consequences of this criminal offence. For that reason the old code is more favourable in cases when consequences as material benefit/ damage are lower than 5000 Euro. (paragraph 2). It is valid also for grave violation of rights of another person. But on the other hand the new criminal code is favourable when material benefit, damage exceeds 5000 EURO. The damage, material benefit and grave violation of the rights of another person were taken in to account. Therefore the new criminal code is more favourable for offences committed by **R.M. A.A.**, K.U. and M.K. The old criminal code is more favourable **S.P.** and A.T. as it is visible from the found consequences in the specific Courts.

Criminal offense in continuation.

The Court opines that **R.M.** and M. K. committed criminal offense in continuation as it is stipulated by Article 81 of Criminal code because more than 2 conditions existed. **R.M.** and M. K. took advantage of their situation of public officials in Municipality of

Prizren, concretely in the premises of the offices. The intent (direct /indirect) of both of them was to obtain material benefit for other persons was the same. The object to abuse an official position is visible in every single criminal offence of Abusing Official Position or Authority.

Co-perpetration and assistance.

K.U. and A.T. have not from their functions created conditions for commission of such offence. K.U. did not use his authority to stop the execution **R.M.** memo no 621/08 although he was aware about the illegality of such memo and although he was aware that his position allowed him to disobey illegal instruction. On the other hand he has not substantially contributed to the action of **R.M.** Same argument has to be used in case of A.T. The banning conclusion was thanks to assistance of Mr. T. imposed although he was aware about illegality of such decision.

The co - perpetration in commission of criminal offence requires substantial contribution of the other persons. This substantial contribution means in this specific case issuing and signing the decisive documents. **R.M.**, M. K., **S.P.** and **A.A.** issued and signed decisive document which were necessary for commission of criminal offence. The act of one defendant cannot be finalized without the contribution of the other defendant. (The offence described in Count 1 was committed by **R.M.** individually, K.U. only assisted him. From that reasons court founded that **R.M.** committed criminal offence of abusing official position or authority in continuation only partially in co-perpetration.)

6. Rejected proposals

R.M.

The allegation of the defence counsel R. B. are mainly focused on the elements of the criminal offence, in particular '*mens rea*'. Mr. B. stated that, in order to commit the criminal offence the official persons ought to exploit the authorizations, he supposes to supersede competences or fails to meet the official duties according to both codes in order to:

- To gain any kind of profit for himself or another person,
- To cause damage to another person,
- To seriously violate the rights of another person

Without the existence of the intention as it is envisaged by law there is no criminal offence. During the whole procedure there was no evidence that could corroborate the element of willingness made by professor **R.M.**

Furthermore, lawyer added that the drafter of the indictment and its representative at the main trial is trying through witnesses, wherewith it is required to comment on the legal provisions or other normative acts, to confirm that certain activities of the mayor or other officials violated the law, regardless if it is the procedural or the substantial law. Therefore the major part of the trial, took the character of the administrative conflict, as per the claim filed for assessment of legality of individual administrative acts wherewith the competent bodies of the public administration, decide upon the rights, obligations and the legal interests of natural, legal or other persons, and the legitimacy of the activities of administrative bodies. The violation of procedural or substantial Law where the rights of natural or legal persons are infringed does not mean the commission of criminal offences of abuse of official position or authority and does not mean the commission of criminal offence and every violation made by the Judge. Only the intentional violation of Law, with purposes as it is envisaged by Law constitutes the criminal offence. Based on the administered evidences it was not possible to confirm the willingness to obtain the profit for himself or another person or cause the damage to the third person. These circumstances which represents the basic elements of this criminal offence, thus without them there is no offence.

Trying to admit these suppositions as true, as it is seen from the indictment and as it is attempted by the representative of the indictment, in some occasions the damaged party is indicated to be municipality of Prizren and in other occasions the municipality is represented as the obtainer of material / property benefits whereas as damaged party the forest enterprise “Sharri” which in fact does not exist, or the KPA, representative of the latter saw it unreasonable to appear at this trial, herein we have also that the beneficiary is the foreign investor, and for this the government of Kosovo is committed to have some of foreign investments, including every state, especially transitional countries of the Balkans.

The violation of rights and legal interest of parties with the actions of the administrative authorities enjoys the legal defense as per law for administrative conflicts.⁴⁹ The legitimacy of acts and activities of administrative bodies is estimated based on application of the party indicated at the claim addressed to the competent court. If there would be the violations of the rights of the natural or legal persons or other parties the conflict against those acts and activities would be initiated against the administrative bodies as it was initiated by the EULEX prosecution in Prizren

⁴⁹ Law no. 03/L-202 for administrative conflicts dated 16th September 2013.

against the conclusion of the mayor of Prizren municipality no. 01/06-8121 dated 02.08.201, whilst the initiated⁵⁰ procedure has been suspended.

Further to that the defence counsel B. elaborates specific action count by count in regard to his client mayor M. A. referring to the first act, while stating that it is not an obligation or a competence of the mayor to deal with the registration of immovable properties at the registry for property rights, he further alleged that changes of the cadastral registry for these real estates in no way and in no manner depended on the willingness of the municipal mayor.

The trial panel evaluated that the Law on Local Self Governance (No 03/L-040) dated 20/02/2008 gives the power to the Mayor to employ and dismiss K.U. as the Director of the Directorate of Geodesy and Cadaster and also had the right to give instructions to him regarding the execution of the duties of the Directorate, Article 13 of the same law.

M.'s violations include Article 58 of the Law on Local Self Governance dealing with the 'Responsibilities of the Mayor' which states that the Mayor 'acts on behalf of the Municipality' and that acting in his official capacity he 'exercises all competencies not explicitly assigned to the Municipal Assembly or its committees'.

The trial panel while assessing the claims made by the defence counsel came to conclusion that the rights, obligations and competences of the mayor are far greater than the one alleged by defence, stating that he was not aware about the Judgment is yet again unreliable, having in mind that, most of the witness knew about the judgment and the municipal public lawyer have send a letter to the cadastre office asking for the execution of the judgment.

His stand of the defence that even if he knew about the judgment it was the cadaster office who should deal with it cannot stand either, defendant M. is an educated man, a professor and he was the highest authority in the Municipality. The panel is aware that he cannot control constantly every decision which is filed in the Municipality, however, this was not an ordinary decision. Considering that the final Judgment, from the highest court authority, was not executed for several years is completely unacceptable, taking into account also that a parcel of land belonged to his deputy, M. K., brings down the line of his defence. Defendant M. constantly have tried to throw the ball to his subordinate K.U., who then used certain legal obstacles to which make the execution impossible, however, the panel considers that it was an obligation by

⁵⁰ The Ruling of the Supreme Court of Kosovo was attached to the application on dismissal of the indictment dated 15th April 2013 filed to that Court by the defence counsel of the accused Professor R.M.

the mayor to ensure the execution, and failing to do so is considered a serious violation by someone who should lead a Municipality.

In the second count the defence counsels points out that that the offence could be committed by exceeding the competences or failing to perform the official duties as required. In this regards he further states that the land appointed to the chocolate factory was a construction land, therefore the law on construction lands assigns that such land should be administered by the Municipality, then after defence claims that several requests were field by the local community since the land in 'Boka' was a waste depository and represented a danger to the community. Furthermore, the ,and was a social owned property, it was used by Labor Organization 'Sharri', but that ceased to exists years ago and since it is a socially owned property, no one had the right to claim the property ownership but only the right to use it or possess it of certain period of time. By stating so the defence was trying to eradicate the fact that consent from the forestry Sharri or the consent of the Privatization Agency of Kosovo was needed.

Mr. B. stated that the issue of transferring the land is an administrative act issued through an administrative procedure. As in the court proceedings, as well as in an administrative procedure, when issuing a decision it may occur the law is not implemented properly, the law is violated or a procedure is not run in accordance with the law. Therefore according to him against any given decision, whether administrative or judicial, the right to appeal is provided. There was no appeal against this, neither by the Kosovo Privatization Agency nor the Forestry Labor Organization "Sharri" OBPB Forestry Economy, (though the latter does not exist), therefore it is effective. The panel considers that the defendant in this case was aware of the breach he is committing, and by acting all the elements of the criminal offence were fulfilled, it is not a situation where he acted unwillingly or by mistake and thereafter made efforts to improve it, moreover his actions he cause a certain amount of damage and was taking advantages of his office.

In addition to the defence Mr. B. also mentioned protests of the villagers to improve the part of land used as garbage depository and to remove the remains; therefore the allocation of land to a private school was seen as a solution. It is noteworthy to state here that the issue to be evaluated here is the transfer and allocation of land done in breach of the law.

Referring to the third count of the Indictment, assessing again the allocation of a land to a Chocolate factory 'Kamila' without the consent of the Municipal Assembly and without following the legal procedures, where a contract on private public partnership was signed. The defence counsel draws attention to the agreement and that this immovable property was registered under the name of former Federative

Secretariat for People's Defence of former Yugoslavia (if the representative of the indictment, in the case of count I of the indictment, considers that the cadastral evidence shows always and the right of ownership of the person on whose behalf it was registered the immovable property. Therefore, stating that if the Municipality cannot use it or administer it then who is the owner of the land. It should be noted once more that the socially owned property as described above was under sole administration of Privatization Agency of Kosovo, therefore, their approval on leasing the land to a private company was required. In addition the contract signed is a private public partnership, while the only basis for using the public private partnership is of course when the private contractor carries out an economic activity which would otherwise be carried out by a public authority. Again it is evident from the statement of the witnesses that the defendant simply decided to overpass the Municipal Assembly and more important the procedures required.

The defence counsel states **R.M.** signed this agreement in the capacity of the Mayor; however as an agreement it was compiled by legal officers of Municipality of Prizren. He further alleges that there is no dilemma that it was not compiled by the Mayor Prof. **R.M.** himself and it could not be established who was the compiler of the agreement, because none of the legal officers admitted to have been the authors of it. In this regard the trial panel acknowledges that a contract before it is signed have been discussed as such by the Mayor and his subordinates, they were aware that such an allocation of land and the contract were in breach of procedures and yet again they decided to proceed. It is evident from the testimonies obtained that there is an intention to take advantage of his office and to benefit for the third person, in this case a completely private business, which produces chocolates for his own profit.

As to the fourth count referring to the conclusion issued by the Mayor, while banning cadastre experts from attending court sessions. The defence counsel claims that prior to the issuance of the decision from the mayor there were no board of directors as executive bodies. Therefore there were meetings organized by the mayor, his deputies and the 9 directors of directorates. During one of the meetings a conclusion was issued by which it was ordered the Director of the Directorate of Geodesy and Cadastre that by a separate decision to ban the participation of cadastral experts of the Directorate of Geodesy and Cadastre, that in the capacity of municipality officials to perform judicial expertise for the needs of competent courts. Therefore according to the lawyer the criminal responsibility should be equally distributed among all other participants. Furthermore the lawyer states that at the time there were other private cadastre offices which could be dealing with issues required by the court. The trial panel came to conclusion that M. issued the decision on the proposal of M. K., being aware about the consequences which will cause, and by breaching the law directly, while it is known even to uneducated people that court summonses are to be respected. It is evident that by issuing the conclusion he abused his official position

once more by indirectly causing damages to the parties in court proceedings and causing the court to postpone session in period of months. Only later when the situation was becoming more serious he acknowledged the need of reconsidering his doings and find a solution.

- **S. P.**

S. P. is accused in the third count while corroborating with the mayor awarded who unlawfully land to business chocolate factory 'Kamila'. The defence counsel of Mr. P., S.B. had his closing speech on 12 February 2014. The defence counsel initially stated that at the time of the suspected commission of this criminal offence by the accused the provisional Criminal Code was in force and this was sanctioned by Article 339. With the new code the qualification of the offence provides a broader description of the offence and that according to the old and the new code an essential element of this offence is establishing by the fact that the perpetrator of the offence has obtained material benefit for himself or anyone else. The defence counsel pointed out the need of building a new school and that the investor had already much better conditions offered in the neighbouring country in Macedonia and they had a permit from the Minister of Spatial Planning Ministry. The contract was in the interest of the citizens of Prizren because as a result of the construction over 100 people were employed which was beneficial to the Municipality.

Lawyer further states that Municipality of Prizren had public interest from the construction of the factory which after 7 years if the contract with the company is not renewed, under the new conditions and after the expiry of 10 years, the premises are left as property of the Municipality as per the contract signed by both parties. Mr. B. further cites the law number 03/L.40, Article 62.3, Directors manage and lead their Directorates in according to the strategic and political instructions of the Mayor and according to applicable laws and regulations while the employment contract of the accused under 'obligation' part, are described is quoted that *"the employee has the obligation to perform and execute orders of his superior"*.

The trial panel must emphasize here that the issue is not in evaluating the benefits the Municipality would have from the employment of people nor by constructing a building and cleaning the parcel from the garbage, the issue at stake is the allocation of land and the procedure to be followed in that allocation. It is clear that certain procurement procedures had to be followed prior to the allocation of land, the consent of Municipal Assembly was needed also and the private public partnership basis could not be used in such a contract. The trial panel is aware that the defendant claimed that he did not even know what the conditions are and did not even read the contract he signed (first contract), however the responsibility cannot be avoided by giving such a statements., while the defendant had the capacity of the Director of the

Directorate of Urbanism and Spatial Planning of the Municipality of Prizren, in such an important position should be aware of the responsibilities he had to perform, moreover during his examination he clearly gave evidence that he was aware of the procurement procedure but this case was specific. The trial panel was not convinced in his statement, he was collaborating with the mayor together knowing all the way they were in breach of the law.

- **A.A.**

A.A. was accused as to the second count while acting in the capacity of Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren to have transferred the property from the Labour Organization of Forestry 'Sharri' to Municipality of Prizren, then after leasing the land for long period of time to educational School center Gulistan. The defence counsel Mr. R.H. states that even mayor M. stated that **A.A.** did not take part in decision making in when the contact was concluded between Prizren Municipality and ED "Gulistan". In relation to this request he pointed out that the request for allocation of land plot for Education Center dates since 13.05.2009 under number 09/05/051302 and decision for allocation of land plot for construction of the school ED "Gulistan" was taken by the Municipal Assembly of Prizren on 18 July 2009, i.e. negotiations were conducted and decision was taken in time when the accused **A.A.** was not part of decision-making structures. At that time he was professional assistant in the Directorate for Geodesy and Cadaster of Prizren Municipality. Thus, the origin of land allocation to EC "Gulistan" derives from earlier time and the accused has had the knowledge about it but non-officially. Thus, the competencies of these bodies are defined according to the law on local self-government and the Statute of Municipality, meaning these bodies exercise their rights, duties and responsibilities as provided by law.

The defendant **A.A.** stated that decisions were rendered and when they were rendered by these bodies, did not fall under his competencies. He cited the Law on local self-governance no 03/L.040 article 10 of this law, which determines the municipal bodies, specifically Article 10: "the organs of a municipality are the Municipal Assembly and the Mayor". And further article 11 of the same law defines that: "The Municipal Assembly and the Mayor shall have the right to enact acts and take any implementation measure within their areas of competence, all municipal acts shall comply with the constitutional and legal system of Republic of Kosova".

Mr. A. stated that as an acting director of Cadaster, based on his duties he was to carry on, he was not a body that law recognizes, that would take decisions on behalf of a higher authority, meaning it was not his competence to question the decision made previously and competency. No law provides that the lower bodies or someone

acting can examine or assess the legality of the highest municipal bodies or organs of the same level. Only the supervisory authorities shall have this right as per article 80 and 81 of the Law on self-governance. He stated that he was aware that the procedure was being dealt in a speedy manner, but as an official he had only the obligation to ensure that a lawful decision on transfer of property was made, which was the decision of the Mayor to transfer the property to the Municipality and that accompanying documents were attached and he had no right nor obligations to look further into the matter.

The trial panel notes that Section 3 of the Law on the Establishment of the Immovable Property Rights Register obliges the Municipal Cadastral Office to reject registration if the documentation submitted is not sufficient to prove the validity of the request or any supporting documents is in question.

In addition, Article 3.3 of the Law on Registration of Immoveable Property Rights requires that the cadastral office maintains a public notice board where notices of requests for registration shall be posted and visible to the public. Therefore, the trial panel is convinced that the defendant A. was aware from the beginning that the land was acquired unlawfully, and he knew in advance that the transfer of the land had to undergo certain procedures before registering it to the ownership of the Municipality. In addition he was a graduated lawyer, the possession list showed that it was a socially owned property and he knew that for such a transfer the consent of Municipal assembly was required.

Therefore, the trial panel is of the opinion that the defendant knowingly corroborated with mayor and the other defendant M. K. in obtaining unlawfully the land and transferring it to the Municipality.

- **K.U.**

The defendant K.U. involved in the first count of the Indictment was defended by B.S. (minutes of 11 February 2014), referring to the Supreme Court judgment and postponement of execution for several years. The line of defence on this matter was brought that according to the law 2003/25, Article 16 item 16.5 the transfer of the land can be registered only if the said land parcels are free from mortgagers or any other relevant guarantees, and the land parcel belonging to J.A. was under the mortgage. This part of the allegations were already evaluated by the panel and it was clear that the decision of the Supreme Court was executable, even with one mortgage the Supreme Court judgment could be executed as stated above in legal findings. It is the stand of the trial panel that the intention behind non-execution of the final judgment was, without any doubt, to provide benefit for M. K. who was the deputy mayor at the time. The actions of K.U. could not be assigned in this regard to the

lack of knowledge nor the legal obstacles claimed by him, since the judgment was lying there in the Municipality for several years. Therefore, the trial panel is convinced that **R.M.** and K.U. knew both that their colleague was directly benefiting from the postponement of the execution of the judgment and his allegation should be rejected as well.

- **A.T.**

The Defendant A.T. was defended by S.M., the lawyer focused in his defence in the elements of the criminal offence which according to him are absent, specifically the material gain for himself or for a third party and the causing of damage. He further stated that there is no proof that the accused to have committed the said criminal offence and that in his actions the elements of the criminal offence are not formed pursuant to Article 364 paragraph 1 item 1.1 and 1.3 of the Criminal Procedure Code. In regard to A.T. who was an official in the capacity of the Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, the trial panel found it quite difficult in deliberating, since in all of the actions taken he was a sort of mediator; however, the panel could not exclude his responsibility either. It is true that the conclusion directed, A.T. to issue a decision on the ban of Municipal Geodesy Experts, however, the conclusion itself was unlawful and it was proven while hearing the witnesses that the copy of the conclusion was distributed to the geodesy experts by A.T. either personally or through B. B..

- **M. K.**

The defendant K. was accused in the count two and four of the indictment and he was represented by two defence counsels, P. and N.

The defence counsel P. in his line of defence focused on the elements of the criminal offence specifically he stated that in order the criminal offense of Abuse of official position or authority to exist- there must be certain actions of the eventual perpetrator or individual actions in complicity qualified and described separately: Abuse of official position, Exceeding the limits of authority or Failure to perform official duties.

The lawyer further adds that the most important element to exist in the said criminal offence is the eventual aim of the eventual perpetrator acting in one of the ways mentioned above, with the intent as follows:

- to acquire any benefit for himself or another person
- cause damage to another person
- seriously violate the rights of the other person.

So the intent should be personal and undertaken by the official person to acquire any benefit for himself, another person or causing damage to another person.

Furthermore the counsel P. adds that the accused M. K. as being Director of General Administration, in no way could have been implicated in any act related to cadastral changes made in reference to the transfer of ownership of land in the name of the Municipality in regards to the property transfer to “Gulistan”, because the powers and authorities deriving from his position at the top management, namely Director of General Administration, do not allow such a thing. However to the panel the defendant failed to take necessary steps to prevent the commission of the offence while it is clear that the decision to allocate the land went through his office, instead of addressing the issue to the mayor he instructed his subordinate to request the Directorate of Geodesy and Cadastre to make immediate changes, while knowing that the procedure was not followed accordingly.

The defence counsel B. N. in his defence arguments refers in a good part to the first offence of the indictment although, his client is not charged for that. Lawyer N. states that the charge in the transfer of land is without any support, because this issue without taking into account allegations and alleged clarifications related to the competency of the Assembly is not his competence, hence, there is no offence from his client. He further states that the Property management is exclusively in the competency of the mayor of Municipality and Kosovo government.

Furthermore Mr. N. states that the land was regulated with legal provisions and which includes also the property which is managed from Kosovo Forest Agency (KFA). Privatization Agency did not have and does not have any management right as for parcels in the property of KFA. The lawyer refers to Law on Forests – law no. 2003/3 and Administrative Instructions 2000/23 of UNMIK valid before the mentioned law. It should be clarified that the law in which is pretended to be based the indictment – Law no. 04/L-144 on allocation on use and swapping of the immovable property of the municipality has been adopted on 28th October 2010 and it was published on 30.11.2010 and it has entered in effect on 15.12.2010 (Article 15 of the law, see date of publication – Official gazette no. 89 2010). So the Assembly decision respectively the ruling of the Municipal Mayor no. 01/370 dated 24.11.2010 does not have to do anything with this law.

Further on the lawyer makes comments in regard to the certain facts which are not specific to the point and then after elaborates the amount of damage according to the expertise.

The trial panel has already elaborated in this regard as to who has the competence to administrate and deal with the land, in this case the land of socially owned enterprise

labour forestry Sharri. It is the firm stand of the trial panel that the land parcels should have the consent of the forestry Sharri and Privatization Agency in order to be able to transfer it. Now specifically since it was the competence of the defendant, for the property and legal sector, he was obliged to request, prior to the transfer an assessment of the transfer of the property to ensure that it is in line with the public interest was.

7. Punishments of the defendants

Considering the deliberation in regard to each count and every defendant the trial panel have reached to the conclusion to impose the punishments as stated in the enacting clause. After analysing all the evidence the trial panel brought a decision to impose a single punishment in regard to the defendant **R.M.**, considering all four counts from the Indictment as Criminal offence of Abusing Official Position or Authority in continuation as per Article 81 of the Criminal Code, specifically the trial panel considers that items 1.2 and 1.3 of the same Article have been fulfilled.

The trial panel considers that defendant M. has the highest position in the hierarchy of municipality, therefore, while assessing the responsibility, panel believes that during each count the defendant was aware of the situations and that his acts were not in line with the requirements of the law. While in the first act of abuse by failing to execute the judgment of the Supreme Court of Kosovo the panel acknowledges that specifically the office of the cadastre should make the changes, however, the mayor had the knowledge and the obligation to ensure the execution therefore, the higher burden falls on him. In regard to the second act and the third one, while leasing municipal land to Educational Centre Gulistan and Chocolate factory 'Kamila' the defendant M. acted clearly in breach of procedure while failing to obtain the consent of municipal assembly or KPA. It is clear to the panel that M. was aware of the breaches, however decided to proceed further alleging the benefit of the greater good.

The last act of the defendant M., the Conclusion which banned the cadastre experts from taking part in the sessions and give opinion was considered as a severe violation, by entering into the competence of the regular courts, thereby withholding the normal flow of the procedure in the courts.

Therefore taking all into account, the panel took into account all mitigating and aggravating circumstance and came to conclusion to impose a conditioned punishment of 2 years of imprisonment, which would not be executed for the period of 3 years of verification period and additional punishment of prohibition of exercising public administration or public service functions for 30 months.

The second defendant S.P., was involved in the third act of abusing official position in corroboration with the mayor. It is clear to the panel that the land appointed to chocolate factory was awarded illegally in breach of procedures and law. Therefore the responsibility of **S.P.** as a Director of the Directorate of Urbanism and Spatial Planning of the Municipality lies in exceeding the limits of the authorization by allocating the land.

The defendant alleged that he was not aware that the consent of Municipal Assembly was needed for allocation of public land as ascribed by the Law on allocation of public land, the procedure to follow and actually he did not read the contract signed by him.

Nonetheless, the trial panel considers that defendant had a legal duty to be aware of the procedure for allocation of public land and should have made proper efforts to follow the procedure as ascribed by the law. The panel did not believe the allegation of the defendant and considers that punishment of the defendant P. as due by imposing a conditioned punishment of 8 months of imprisonment with execution being suspended for 2 years of verification period if the defendant does not commit another criminal offense and prohibition of exercising public administration or public service functions for the period of twelve (12) months.

The defendant **A.A.** was sentenced to the punishment of 5 months of imprisonment with execution being suspended for 18 months of verification period if the defendant does not commit another criminal offense for the verification period.

The official position of Acting Director of the Directorate of Geodesy and Cadaster of the Municipality of Prizren, and his education as jurist for the panel is sufficient to hold him responsible that he corroborated together with mayor and defendant M. K. in allocating the land to Education and Schooling Centre QEA (Qendra Edukative Arsimore) 'Gulistan'. After the decision has been made by the mayor to allocate the land the educational center cadaster office was responsible to maintain a public notice for at least five working days. The trial panel considered the mitigating circumstances in regard to defendant A., as an official who only executed decision already made by the mayor, however, to the panel, he was aware that the agreement, decision and allocation of land was made in extremely fast procedure, within four hours and failed to follow the procedure to come after the allocation of land by making a public notice as required by law.

The defendant K.U. corroborated with the mayor in the first act of the Abuse of official position by failing to execute the decision of the Supreme Court in regard to the three parcels mentioned above. The allegation of the defendant that were obstacles in execution of the judgment did not satisfy this panel, while it was evident that the judgment was final and executable even for the municipal public lawyer and also for the defendant A.. The trial panel took as a mitigating circumstance the age of the defendant

and his medical condition of the need to perform dialysis twice a week and decided to impose a conditioned sentence of 8 months of imprisonment with execution being suspended for 20 months of verification period if the defendant does not commit another criminal offense for the verification period.

The trial panel found the least responsible in the whole case the defendant A.T. involved in the fourth count of the Indictment in regard to the issuance of the Conclusion. It is the stand of the panel that the idea on the conclusion was incited and issued by other two defendants the mayor and M. K. However, after the issuance the defendant T., should not allow the decision to be distributed to his staff, knowing that the decision was unlawful. The panel decided to impose a light sentence, taking into consideration the mitigating circumstances that he was active in reaching an agreement and have visited the court and the President of the court in order to find a solution. The punishment of one month suspended sentence seemed appropriate to the panel for 1 year of verification period.

The last defendant M. K. was sentenced to the punishment of 1 year and 6 months of imprisonment with execution being suspended for the period of 2 years and prohibition of exercising public administration or public service functions for 18 months.

The trial panel is of the opinion that the defendant in the capacity of official person namely Director of the Directorate of Administration/Office of Property and Legal Affairs of the Municipality of Prizren was aware that the allocation of the land to chocolate factory was awarded unlawfully, yet again he instructed **A.A.** to transfer the ownership of the land prior having the consent of Municipal Assembly. With regard to the fourth count the proposal to issue the Conclusion in order to ban cadastral experts came from M.K. As an official person he knew those court summonses are to be respected and answered by everyone. To the trial panel it is evident that M. K. was using his position and capacity while being negligent in the work of the court thereby obstructing the flow of the procedure.

The court expects from such punishment the signal to the society that officials cannot ignore and breach the law even with the good intents. On the hand the personal benefit from criminal offences for defendant was not proven and also previous decent and proper life has to be taken into account. The lack of self-reflection of **R.M.** calls for longer probative period and for more severe punishment but court opines that such severity is sufficiently secured by the prohibition of exercising public administration or public service. This opinion cannot be implicated in case of the other defendants except M. K. and **S.P.** Defendants M. and K. acted more than once. Their position in the Municipality management was decisive. The position of **S.P.** cannot be compare with position of **R.M.** in municipality hierarchy but his share of responsibility on serious breaching of law in Kamila factory case deserve also the accessory punishment which

would restrict him to be in public functions for period of one year as it is prescribed in the Article 54 paragraph 1, 2 and 56 paragraph 2 of old criminal code. (The court is convinced due interpretation of article 54 paragraph 1,2 of old criminal code that the Article 56 allows imposing the punishment the prohibition of exercising public administration or public service even the punishment of imprisonment is suspended although the old criminal code mentions in the Article 56 paragraph 2 that the execution of such punishment followed after serving imprisonment punishment and the prohibition of exercising public administration or public service runs simultaneously with probative period.

Taking all into account the trial panel decided to the punishment of the defendants.

Claims of injured parties

The claim of the injured parties needs more detail evidentiary proceeding because of possible compensation to the injured parties. Such detail evidentiary proceeding exceeds the needs of criminal trial therefore the parties are advised to file a civil claim for compensation.

Expenses.

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, Municipality of Prizren, 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 Date: 13 March 2014

Presiding Judge
Vladimir Mikula

Court Recorder
Sonila Macneil

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.