BASIC COURT OF PRIZREN
P 186/13
14 April 2014

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IN THE NAME OF THE PEOPLE

THE BASIC COURT OF PRIZREN in the Trial Panel composed of EULEX Judge Mariola Pasnik as Presiding Judge, EULEX Judge Franciska Fiser and Judge Teuta Krusha as panel members and Christine Sengl as recording officer, in the criminal case against:

1. the defendant S.N.,
2. the defendant M.K.
3. the defendant T.K.
4. the defendant S.K.,
5. the defendant A.B.**,**
6. the defendant N.K.**.**

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

after having held the main trial sessions in closed session to the public on 27 November 2013 and 6 December 2013 and the main trial sessions in open court on 20, 26 November 2013, 9 December 2013, 16, 20, 22, 27 January 2014, 14, 19 February 2014, 14 March 2014, 11 April 2014, in the presence of the defendant S.N., his defence counsel, O.Z., the defendant M.K., his defense counsel K.K., the defendant T.K., his defense counsel P.P., the defendant S.K, his defense counsel H.C., the defendant A.B,

his defense counsel B.S., the defendant N.K his defense counsel E.R., and the Basic Prosecutor of Prizren, Mehdi Sefa, after deliberation and voting held on 11 April 2014,

pursuant to Article 392 of the Kosovo Code of Criminal Procedure (hereinafter "the KCCP") on 14 April 2014, in open court and in the presence of the parties, the Court renders and announces the following:

JUDGMENT

I.

The defendants **S.N., M.K., T.K.,** and **S.K.** with personal data as abovementioned, pursuant to Article 390 paragraph 3 of the KCCP,

ARE ACQUITTED OF THE CHARGE OF THE INDICTMENT

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

Since M. was serving the sentence (in jail) the interest was paid to the defendant T.K, M. brother, for 4 more months, thus on 24.07.2008, he gave the amount of 13.000€ to T.Kj, in behalf of capital debt, the interest in amount of 10.000€ remained to be paid. Also on 31.12.2008, the injured gave him 1.000€. Being unable to pay the rest of the interest, he made an agreement with T.Kj to postpone the debt up to 01.05.2009 but at this date the injured was obliged to pay 15.000€ only for the interest. In the meantime, with a request of the injured the defendant S.K was involved in order to postpone the deadline payment of the debt and interest, but S.K seeks 3.000€ from the injured party as an award for the mediation made between him and the accused T.Kj. Therefore, the injured was obliged to pay 3.000€ to S.K on 01.09.2009. The injured had no possibilities to cover such requirements towards S.K. S. takes his vehicle Golf 4, gray in colour with

number plates XXX-KS-XXX, therefore the debt along with interest reaches the amount of 52.000€.

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

Pursuant to Article 390 paragraph 3 of the KCCP, this court finds that it has not been proven that the defendants S.N, M.K, T.K and S.K have committed the criminal offence with which they have been charged.

II.

The defendant **A.B,** with the personal data as abovementioned, pursuant to Article 390 paragraph 3 of the KCCP,

IS ACQUITTED OF THE CHARGE OF THE INDICTMENT

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

Wherewith he would have committed the criminal offence of extortion under article 267 (2) read with (1) of the CCK.

Pursuant to Article 390 paragraph 3 of the KCCP, this court finds that it has not been proven that the defendant A.B has committed the offence with which he has been charged.

III.

The defendant **N.K,** with the personal data as abovementioned, pursuant to article 390 paragraph 1 of the KCCP,

IS ACQUITTED OF THE CHARGE OF THE INDICTMENT

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

Wherewith, he would have committed the criminal offence of contracting a disproportionate profit from property under article 270 of the CCK.

Pursuant to Article 390 paragraph 1 of the KCCP, this court finds that the act with which the defendant N.K is charged does not constitute a criminal offence.

COSTS OF THE CRIMINAL PROCEEDINGS

Pursuant to Article 103 of the KCCP this costs of criminal proceedings under Article 99 paragraph 2 subparagraphs 1 through 5 of the KCCP, the necessary expenses of all defendants including the remuneration and necessary expenditures of defense counsels shall be paid from budgetary resources.

REASONING

I. Procedural background.

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

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

On 6 January 2010, the confirmation judge of the District Court of Prizren confirmed the indictment against all of the defendants.

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

On 10 November 2011, the District Court of Prizren issued a Judgment P.no.11/10. The panel found the defendants S.N, M.K, T.K, S.K, V.K and A.B not guilty for the criminal offence of Extortion, while the defendant N.K was found not guilty for the criminal offence of Contracting for disproportionate profit from property.

On 4 December 2014, the Supreme Court of Kosovo acting upon the appeal of the public prosecutor against the Judgment of the District Court of Prizren, P.nr.11/2010 dated 10 November 2011, issued a ruling approving the appeal of the public prosecutor. By this ruling the Judgment of the District Court was annulled and the case was sent back for re-trial.

On 20 November 2013, the main trial started and continued on 26, 27 November 2013, 6 and 9 December 2013, 16, 20, 22, 27 January 2014, 14, 19 February 2014, 14 March 2014, 11 April 2014. There were no objections by the parties to the composition of the panel.

On 20 November 2013, the court issued an order for arrest against V.K because of his non-appearance in the hearings.

On 20 November 2013, the trial panel of the Basic Court of Prizren after hearing the parties and defence counsels, at the commencement of the main trial on 20 November

2013, pursuant to Article 34 of the KCCP issued a ruling whereby it severed the criminal proceedings against the defendant V.K.

II. Competence of the Court

Under article 23 item 1 i) of the KCCP, the District Courts are to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. The defendants S.N, M.K, T.K, S.K and A.B were charged with the criminal offence of extortion under article 267 (2) read with (1) of the CCK, which foresees the imprisonment of one to ten years, whereas the defendant N.K was charged with the criminal offence of contracting a disproportionate profit from property under article 270 of the CCK.

Therefore, the District Court is a competent body to hear this criminal proceeding.

On 15 April 2011, the President of the Assembly of EULEX Judges with her decision pursuant to Article 3.6 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors ("Law on Jurisdiction"), assigned the case to EULEX Judges of the District Court of Prizren.

III. Application of Law upon retrial

The new Criminal Procedure Code (CPC) entered into the force on 01.01.2013. Article 544 of the CPC stipules that: "After the entry into force of the present Code, if on the occasion of an appeal or an extraordinary legal remedy the judgment is annulled, the main trial shall be conducted mutatis mutandis under the previous code".

Consequently, the panel of Basic Court of Prizren applied the old KCCP in this criminal proceeding.

IV. Administered evidence.

1. Witnesses

1. Sh.L.M. (injured party)
2. B. A. M.,

3. F. B. B.,
4. A. H. B.,
5. Sh. N. S.,
6. S. M. J.,
7. V. K. M.,

2. Written evidence

The court admitted as evidence the following statements that were considered as read out during the main trial:

1. Testimonies given by Sh. L. M. on 04 August 2009, 14 October 2009, 3 November 2009 and in the first trial on 13 and 14 September 2011.
2. Testimonies given by B. A. M. on 21 October 2009 and in the first trial on 14 September 2011.
3. Testimonies given by F. B. B. on 2 November 2009, and in the first trial on 14 September 2011.
4. Testimonies given by A. H. B. on 24 August 2009, 22 October 2009 and in the first trial on 14 September 2011.
5. Testimonies given by Sh. N. S. on 2 November 2009 and in the first trial on 14 September 2011.
6. Testimonies given by S. M. J. on 3 November 2009 and in the first trial on 14 September 2011.
7. Testimonies given by V. K. M. on 2 November 2009.
8. Testimonies Given by Ar.B on 21 October 2009 and in the first trial on 14 September 2011.

3. List of documents read out or considered as read during the main trial

E1. The judgment P.133/2008.

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

E3. The reply from the Office of the Disciplinary Prosecutor, reference number ZPD/09/KB/0879, dated 9 September 2009, to Sh.M. The complaint was rejected.

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

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

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

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

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

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

E10. The copy of written agreement made on 1 November 2007 between S.N and Sh.M

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

C1. Official memorandum from the regional directorate of Prizren.

C2. Information on different cases filed against the Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

During the session of 26 November 2013 the court admitted as evidence the documents:

D1. Discharge sheet of Sh.M, Prot. No. 164 dated 06.08.2013, reference no 5572.

D2. Discharge letter of Sh.M, Prot.No.182 dated 25.08.2013, reference no 5957.

D3. Thoracic computed tomography of Sh.M, dated 5 August 2013 signed by Radiologist Dr.Sy.K.

D4. Letter from Sh.M, dated 07.11.2013 received on 11.11.2013 log no.2013-COS-1569.

D5. Reply letter dated 21.11.2013, Ref 2013-COS-1569 signed by Office of the Chief of Staff EULEX Kosovo, handed by Sh.M during the session on 27 November 2013.

D6. Letter from Sh.M, dated 23.12.2013 received on 27.12.2013 log no.2013-COS-1569.

D7. Feedback report from diagnostics, dated 26.11.2013 signed by Dr.B. M, specialist doctor, Pulmonologist.

D8. Notification from regional Police Directorate- Police station Prizren reference 04/1-04P-0/1222/2013, dated 05.12.2013 on the implementation of the order imposed against V.K.

D9. Document received from FINCA dated 11.12. 2013,

D10. Document received from Pro Credit Bank dated 19.12.2013,

D11. Document received from Raiffeisen Bank dated 21.01.2014,

4. Statements of the defendants given to the panel

1. S.N.,
2. M.K.,
3. T.K.,
4. S.K.,
5. A.B.
6. N.K.

5. **The court admitted as evidence the following statements that were considered as read out during the main trial:**

1. S.N. statements on 25 August 2009, 15 October 2009 and 15 September 2011,
2. M.K. statements on 2 November 2009 and 15 September 2011,
3. T.K. statements on 27 August 2009, 19 October 2009 and 15 September 2011,
4. S.K. statements on 25 August 2009, 19 October 2009 and 15 September 2011,
5. A.B. statements on 30 August 2009, 20 October 2009 and 4 October 2011,
6. N.K. statements on 26 August 2009, 21 October 2009 and 15 September 2011.

V. Individual analysis of the evidence and legal findings.

Count I of the indictment.

The Injured party Sh.M testified before the Police on 04.08.2013, before the Public Prosecutor of Prizren on 14.10.2009 and 03.11.2009, on 13 September 2011 in the first trial and 26 and 27 November 2013 during the main trial.

On 26 November 2013 during main trial the injured party Sh.M testified that he owned a private shop and mainly worked with textile goods. On 2007 Sh. had one private shop but in 2009 he had three private shops. He does not remember whether it was November or December of 2007 when he asked money from S.N. When he testified on 14 October 2007, Sh.M stated that it was 23 December 2007 when he borrowed the money from S.N.

Sh.M borrowed money in the amount of 23,000 Euros from S.N with a monthly interest of 11%. It was Sh. who asked for the money. He asked for this money in a friendly manner in order to open a shop. Sk. said to him he had no money but he can find him. They made a written agreement.

In the question of Presiding Judge: Can you tell us of the conversation with S.N?

Sh.M: The conversations between myself and S.N was as follows: "S. I need €23.000. Would you give it to me". He said "I have no money to give you but I will find the money to be paid with interest". When I agreed the terms of 11% he brought that money to me on the same day. I took the money and started paying the interest to S.N as he was the one who brought the money to me.

Sh.M paid 2500 Euros interest to S.N. for three months. When testifying on 27 November 2013, Sh.M. stated that in the fourth month he had no money to pay interest to S.. S. went with one of the K. brothers to Sh. and said to him that, he had some debt with one of the K. brothers and asked if it is possible that the debt he owed them to be taken over by Sh.". Sh.accepted it. Sh. was unable to tell the court who of the K. brothers together with S.N went to him.

Sh.M: It was raining, snowing and foggy, we got in the vehicle, I don't remember exactly now, because these two K. brothers resembled each other a lot, one was M., the other one was N.. Due to the stress and the weather condition being foggy, I reckoned it was M.. That is all.

Prosecutor: Did it look as it was him or was it M.?
Sh.M: I am not sure; it looked to me as it was him.

When Sh. received the money form S., they had come to an agreement that the money should be kept by Sh. for 3-4 months. When the deadline came for Sh. to return the money back, he had no money to do this.

In the testimony given on 04 August 2008, Sh.M testified that he paid M.K two additional monthly installments, but on 24 March 2008, the debt was transferred from M. to T.K. (M. brother), because M. was arrested for murder and was put to prison. Sh. paid T.K four additional monthly installments until 24 March 2008 and on that date Sh. paid T.K 13,000 Euro and the remaining debt payable was 10,000 Euro, and Sh. paid him 1000 Euro interest a month until 31 December2008.

In the testimony given on 14 October 2009, Sh. stated that he contacted M.K and he accepted. Sh. continued to pay the interest and the principle loan to M.. He paid to M.K 2.300 Euro per month for the following four months.

When asked by the Prosecutor on 27 November 2013 which statement is correct. Sh. answered that today's testimony is correct.

Presiding Judge: Why did you change your testimony in relation to this circumstance, what is the reason you testified differently in 2009?

Sh.M: It was due to bad weather conditions, I was under a lot of stress and had family problems, the two brothers they look alike and I could not distinguish between them.

Prosecutor: Has he contacted M.K after he continued with the interest payment?

Sh.M: Apart from that night, I have not seen him.

Prosecutor: Who did you pay the debt to; who came to ask for it?

Sh.M: As I said, I continued with the interest payment which was paid to S.N on behalf of the K. brothers.

Prosecutor: Did you pay the interest to S.N because you mentioned you only paid for the first three months?

Sh.M: I answered, after that night I continued with the interest payment which was paid to S. on behalf of the brothers.

In the statement given in the first trial on 13 September 2011, Sh. stated that as for the K. brothers he did not have "dealing of borrowing money with interest". He denied that he had any contact with them.

Sh.M: The K. brothers did not have any role, the money I borrowed in the amount of 23.000 Euro was from S.N. As for the amount I was requested by S.N to pay back to the K. brothers, all the money I paid as interest were paid in the name of S.N and not in the name of K. brothers, I want to emphasise that.

During the main trial Sh.M continued testifying that during the coming months, the debt was paid to S. on behalf of K. brothers.

Presiding Judge: You gave different testimony, it is not the same to say, "I paid the brothers on behalf of S.N" and now you say, "I paid S.N on behalf of the K. brothers."

Sh.M: I paid interest to S. as he told me that the money is of the brothers, which I had accepted sometime in March.

Presiding Judge: I finished reading your previous testimonies, they are completely different. Do you understand?

Sh.M: Yes.

Presiding Judge: Why do you testify differently today?

Sh.M: Because this is the truth.

Presiding Judge: Why didn't you tell the truth on 04 August 2008, 14 October 2009 and 13 September 2011?

Sh.M: I told the truth there and then, this is what I say today.

….

Presiding Judge: Why did you change your mind form 2011, as in 2011 at the Trial Panel you testified that you paid some interest to M. and when he was arrested, your obligation was transferred to T.K. and you did not mention that form 2008 you paid some interest on behalf of M.K and T.K to S.N. Can you explain?

Sh.M: I was under stress in 2009 and 2011.

Presiding Judge: And 2008?

Presiding Judge: I was worse at the time as well, it looks to me the words I say now are the same.

Presiding Judge: It is an entirely different testimony.

Sh.M: It looked to me as if the money was given to S.N. on behalf of the brothers, it looked the same to me; even today it looks the same.

The first three months Sh. paid S.N 11 % interest, 2,500 Euro each month; and for the remaining 5-6 months it was 10 % interest, 2,300 Euro per month, more precisely from

December till March paying 11 %, whereas as of March till August / September 2009 paying 10 % interest.

Sh. took a loan of 13,000 from F., and gave it to S., and at that time he still owed 10,000 to S. to whom Sh. recommenced paying 10 % each month till New Year. After the New Year Sh. told S. there was no business in his shops, and asked if it was possible that he would not pay interest till May 2009. S. told Sh. that if he wants him to wait till May to return the money, the 10,000 € will become 15,000". Then, being in a difficult situation, Sh. agreed.

Presiding Judge: Yesterday you told us you took a 70,000 € loan from F. Bank. Today you told us you paid 13,000 to S.N. What happened to the rest of the money taken from F.?

Sh.M: To get a 70,000 € loan, I had a previous loan with them which was paid off and the previous loan was 50,000 €. I was given the 70,000 €, but I just took 20,000 €. Do you understand?

Presiding Judge: Yes. Yesterday, our injured party said I took three loans, one in 2004 from Pro-Credit in the amount of 30,000 €, the second was from Raiffeisen Bank for 65,000 and 70,000 € from Finca. One day later, you tell us about 20,000 € from Finca and a previous loan of 50,000 € taken from Finca as well.

Sh.M: I had a previous loan with Finca. In order to get a fresh loan with Finca you had to clear the previous one.

Presiding Judge: I have a document from Finca and it looks like only one loan was given to you in the amount of 70,000 €.

Sh.M: I took ten loans from Finca; the 70,000 € loan is the last one.

Presiding Judge: Did you pay back to Finca?

Sh.M: No.

….

Sh.M: Let us make sure we clear this up, just because I am able to comprehend what I say and the Trial Panel is not, I come to contradiction with my words. The second to last loan was in the amount of 60,000€ and including the interest I was supposed to pay 80,000 € back. The instalments consisting of 1,750 € were paid off and cleared the 30,000 € of the total, the remaining debt to the bank was 50,000€. I applied for another loan and the bank told me to clear the first 30,000 in order to receive the 70,000. They kept the 50,000 and gave me 20,000. I owed 70,000 €, however. Do you understand?

Presiding Judge: Yes. To be 100 % sure I will ask Finca about information about your loans taken from Finca as well as the other banks, Pro Credit and Raiffeisen. (See exhibits D9, D10 and D11).

On 14 October 2009, Sh. stated that he asked T. to postpone the deadline of the main loan. T. agreed and postponed it for 5 months, till 01 May 2009, Sh. was obliged to return the total of 15,000 Euro to T.K.

In his testimony during the main trial, Sh.M clarified that it was S.N who postponed the payment on behalf of K. brothers. In May 2009, S.N went to Sh. and said to him that the 15,000 Euro was to be paid to him otherwise, "he will withdraw himself and Sh. will have to deal with T.." He withdrew. S. said to Sh. "as *of now, you do not deal with me any longer, you will deal with T.".*

Sh. went to see S.K, a friend of T., and pleaded with him and asked if it was possible to get in touch with either T. or S. to extend the 15,000 Euro debt deadline till July 2009. S. told Sh. that he had spoken with T. and, it looks that T. asks for 3,000 Euro to postpone the deadline till 1st of July. S. told Sh. that the 3,000 Euro was for T.

Sh. was running a shop and the high season was starting, so he agreed to that as he was in a difficult situation. S. told Sh. that the Gofl 4 vehicle Sh. had, should be left with him as guarantee. Sh. agreed to transfer the ownership of the car to S. name and in case he failed to pay the 3,000 Euro by 1st of July, S. would sell the car and S. would keep 3,000 Euro and Sh. would keep the remaining part. Sh. took the vehicle, drafted the sales agreement, and the vehicle documents were passed to S.'s name and S gave him a certified authorization that he can drive the vehicle till 1st of July. The car registration was due for renewal on 25 or 26 June. Sh. took the car documents to the same individual who did the sales agreement to renew the car registration. He, by mistake, transferred the vehicle back to Sh.'s name. S found this out, and together with Sh. he

went to the same person to do another sale agreement but he said, "Keep it on your name as it is just a few days before 1st of July." Sh. had a friend in Tirana who promised to help him and give him money, so Sh. went there and while Sh. was waiting for him, S came to Tirana with 3-4 people. It was Friday, it was 1.15 or 1.30 p.m. and they forcedly took the vehicle away from him. Sh. did not report to the police as he thought they would be stopped at the border anyway as the car was registered in his name. However S took the car to Kosovo and sold it to the same person who had registered the car and had done the agreement; he also reported Sh. to the police that he had falsified the car documents.

When he testified on 04 August 2009, Sh.M stated, "*S. told me I can do that for you, he talked to him, T.K requested additional 7,500 (in addition to the amount of 15.000). As I was in a difficult situation, I accepted. S requested I transfer the ownership of the Golf to his name as guarantee."*

Sh.M during main trial stated that the amount of 7,500 Euro was the value of the car.

On 14 October 2009, furthermore, Sh. testified "*I was obliged to go to T.'s friend named S.K and ask S. to visit T. and postpone my loan and the interest. S. went to T. and told me yes, he shall postpone the payment for 2 more months from 01 May 009 up to 1 July 2009, but for last two months May and June you are obliged to pay 3.000 Euros only on behalf of the interest, this means that I had to pay an interest of 15 %, whereas the principal loan and the interest I still owned was 15.000 Euros, therefore, the loan increased and it became 18.000 Euros. S.K asked be to guarantee him that I shall be able to pay back the loan and the interest, whereas I was obliged to pay to S 3.000 Euros and T. 15.000 Euros"*.

When asked by Presiding Judge why on 04 August 2009 Sh.M stated differently, that is, "I was obliged to pay additional 7,500 to T.," whereas on 14 October 2009 Sh. stated, "I was obliged to pay additional 3,000 to S.K."

> *Sh.M: Maybe just because I know it, I think the court knows too. We valued the car together with S. to 7,500 Euro. As to the 15,000 Euro S said, "you have to pay 3,000 Euro which is again 10 %, 1,500 Euro each month.*
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> *Presiding Judge: To whom?*

Sh.M: S. said he had spoken to T., the two months as of 1st of May till 1st of July, S said we had to pay 3,000 € to T..

Presiding Judge: What does 'we' mean?

Sh.M: Me.

Presiding Judge: So S. has not taken any money for intermediation and he did not request any?

Sh.M: No, apart from the vehicle being taken forcedly.

Presiding Judge: You said the car was taken as a guarantee for the 3,000 €?

Sh.M: The agreement I stroke with S was in case I failed to pay the 3,000 €. In such a case, we would sell the car, he takes 3,000 € and the remaining money stays with me.

Sh. went to Tirana with the Golf 4 vehicle. A friend promised Sh. to give him money to help him and Sh. went to take the money. Whilst waiting the friend, S went to Tirana with 3 other people and took the car away from Sh..

Prosecutor: What was the final issue with the total debt of 15,000 Euro owed to T. or S.N. plus the 3,000 Euro? Did you pay?

Sh.M: Regarding the 3,000 Euro that the deadline was postponed for, S.K took the car form me, the 15,000 Euro remained. As of 01 July the business season starts, I don't remember if it was end of August or beginning of September, but I took the 15,000 Euro to S.N and he said he would give it to T., the debt was cleared. S never paid that money for the car. The debt was paid by me.

In the opinion of the court, the statements of the Injured Party Sh.M contain a lot of irregularities, inconsistencies, incoherencies, contradictions and discrepancies regarding the defendants mentioned in the Count one of the Indictment.

The witness B.M.

He testified during the main trial on 9 December 2013 and confirmed his earlier statements given to the Prosecution Office on 21 October 2009 and in the first trial on 14 September 2011.

On 9 December 2013, B.M stated that during the year 2009 it was Sh.M. who asked for a loan. The witness did not have this amount of money. At Sh.M. request, B.M asked for a loan from S.K. S was renting a premise from the witness B.M. Sh. and B. contacted S.K. The amount of 7.000 Euros was given to Sh.M. by S.K with no interest. As a guarantee for the loan S.K took Sh.M. vehicle and transferred the rights of Sh. car to S.K. S. did not take his vehicle from Sh., he only transferred it to his name and he gave the vehicle to Sh. Mifatri to drive. The witness B.M was not present when the money was handed over to Sh.. The deadline for Sh. to return the loan taken from S was within a month. Then Sh. did some under-dealings and transferred the vehicle back to his name and ran away to Albania. They went to Albania and met Sh. in Tirana. According to the witness, Sh.M voluntarily gave the keys to S.K. When asked by the Court:

> *Presiding Judge: In 2009, in your first interrogation on 21 October, you told the prosecution that the loan was 7,500 Euros and then in 2011 on 14 September on Page 12, you said the amount was 7,000 Euros and today you said the same, that it was 7,000 Euros. Why did you change your mind, what happened between 2009 and 2011?*
>
> *B.M: The difference between here and then is that he actually estimated his vehicle to the sum of 7,500 Euros.*
>
> *Presiding Judge: But you didn't say this in front of the previous Main Trial panel, you said the loan was 7,000 Euros and you didn't mention anything in relation to a vehicle.*
>
> *B.M: No, I did mention the said vehicle and I stated then that he actually transferred ownership of the vehicle to S.K and the vehicle was estimated at a sum of 7,500 Euros.*

The testimony of witness B.M was coherent and corresponding to the statement given by the defendant S.K.

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

S.N

S.N stated that Sh.M. presented himself as an agent of SHIK (Kosovo Intelligence Agency). S.N denied any alleged business relation with K. brothers or S.K; he denied lending any money to the injured party. He denied compiling an agreement on the 1 November 2007 with Sh.M in relation to a loan of 23.000 Euros with interest. He admitted that he provided the Injured Party with an ID but not by borrowing or lending any money. S.N. stated that B.C. visited him and told him he was a guarantor for the loan to be taken by Sh.M. Be. said he formally needed another guarantor. Sh.M. used the opportunity to do something with his identification card.

M.K

M.K stated that he had never heard Sh.M. name before. He denied borrowing any money to S.N. in order to lend to Sh.M. M. remembers during a conversation with N. and his father, his late brother N. K said that a person whose name is K. owed him 10.000 Euros. Four years later this person, meaning Sh.M., returned the money he got from N. to M.K. without any interest.

T.K.

T.K. stated that he had had no relation with Sh.M. He had not lent him any money and he did not know about any money given to him by S.N.

S.K.

S.K testified that it was 13 May 2009 when he met Sh.M. for the first time. Sh.M. and B.M. went to Sk. business premises and asked for money. S had never known Sh. before. When he testified before prosecution office on 19.10.2009, S.K stated that B.M. came along with Sh. to his business premises. B. asked S. to give Sh. 5.500 Euros[1] as a loan, for a period of 1 month. Therefore, on that night S. gave Sh. 7.500 Euros on condition that it be returned in 1 month without any interest.

[1] In the Court's opinion the sum of 5.500 Euro prescribed in the testimony of S.K. given to the Prosecution office on 19.10.2009 should be a mistake. This sum of 5.500 Euro was not mentioned by the defendant in any other testimonies.

In the main trial S. stated that he gave Sh.M. a loan of 7000 Euro with no interest. As a guarantee for the loan S.K. took Sh.M. Golf 4 vehicle and transferred the rights of the car to S.K. They made an authorization in court that Sh. might drive the car for one month and in case he did not pay the money back, the car would come to S., as it had already been transferred in his name. Sh.M. falsified the car documents and transferred the vehicle back to his name. Three or four days before the deadline of the agreement expired, S met Sh. at the restaurant Mullini and asked him to pay him back the money on the following day. Sh. pleaded that he shall pay him back tomorrow. Until that day S had no knowledge that Sh. had transferred the car in his name. When S asked if Sh. could collect all the money to pay him back, Sh. said he would go to Skopje and his brother-in-law from Sweden would bring the money. It was then that S. realized that Sh. had transferred the car in his name as it had been without registration for 10 days. The next day S. met Sh.M. near an auto school in Prizren. There were A.H., B.M. and a person called Mu. from Dushanova. On 30 of June, S. drafted an internal contract with Sh.. Based on this contract Sh. was obliged to pay back the money till 1st of July and, if not, give the vehicle to S. Sh.M fled to Albania. S took with him the police commander Z.S. and they went to the Albanian border to check whether Sh.M. had crossed the border with the vehicle. They learnt that one day before at 15:00hrs Sh. had crossed the Albanian border. S together with B.M went to Albania. There they met Sh.. S. asked Sh. for the money and Sh. gave him the car. S.K sold the car for 6.300 euro, which was less than the unpaid loan given to Mi..

Factual state

Sh.M. from Prizren is a tradesman. He owned a private shop and chiefly worked with textile goods. In 2007, Sh. had one shop, but in 2009 he had three shops. In November 2007, Sh.M. asked from S.N 23.000 Euros to open a shop. S.N said to Sh. that he had no money to give to him but he would find the money to be paid with interest. They compiled a written agreement. Sh. took the money from S.N in the amount of 23.000 Euros with a monthly interest of 11% or 2.500 Euro per month. Sh. paid Sk. for three months at 2.500 Euros interest per month.

Sh.M claimed that he had not been forced by the use of violence by anyone to borrow money from S.N. Sh. did not tell S.N that he was in a difficult financial situation. He only asked for the money to open a shop. He had not been forced by the use of violence by anyone to borrow money from S.N.

K. brothers had no role in borrowing money from S.N. Sh.M did not have “dealing of borrowing money with interest” with K. brothers. Sh.M also admitted the fact that M.K was imprisoned and serving his sentence for a murder.

Both Sh.M. and K. brothers stated that there was no money transfer from them to the Injured Party; in other words, no money was lent by them to him.

M.K. was not even able to get involved at that time into criminal activities (compare exhibit C10).

T.K. stated that he had no relation with Sh.M; T. had not lent him any money and he did not know about any money given to him by S.N.

When asked by the defence counsel K.K., page 4 of the minutes dated 14 March 2014:

> *Would you join the criminal prosecution against T.K and M.K?*
> *Sh.M: No, because in my case they are not guilty.*

The Indictment treats S.K. as one of the defendants involved in the extortion against the Injured Party, acting as a member of an alleged group. According to the Indictment, the defendant S.K. was involved in order to postpone the deadline payment of the debt and interest but he seeks 3000 Euro from the Injured Party as a reward for the mediation made between him and the defendant T.K. Allegedly the injured party had no possibilities to cover such requirements towards S.K and the last one took his Golf 4 vehicle.

The above circumstance does not reflect the truth. According to the witness B.M., it was Sh.M. himself who asked for a loan of 7.000 Euro. The witness did not have this amount money. B.M. contacted him with his friend S.K. The money was given to Sh.M by S.K with no interest. As a guarantee for the loan, S.K took Sh.M’s vehicle and Sh. transferred the rights of the car to S.K. Meanwhile, when the time of paying-back came, Sh.M went to Albania by car. It seems clear that Sh.M. falsified the car documents and transferred the vehicle back to his name. For this Sh.M. was indicted (see exhibits C3 and C13). According to the witness, Sh.M. voluntarily gave the keys to S.K. At the border B. M. and S.K reported Sh.M. to the police and the ownership of the vehicle was transferred back to S.K. The testimony of witness B.M was coherent and corresponding to the statement given by the defendant S.K.

There is no evidence of S being “a member of the group” in the meaning provided by the art.267 paragraph 2 of the CCK. S.K was not acting on behalf of S.N and K. brothers. S.K stated that he sold that car for 6.300 Euro, which was less that the unpaid loan given to Sh.M.

Article 267 of the CCK stress:

> *(1) Whoever, with the intent to obtain an unlawful material benefit for himself, herself or another person, uses force or serious threat to compel another person to do or abstain from doing an act to the detriment of his or her property or another person’s property shall be punished by imprisonment of three months to five years.*
>
> *(2) When the offence provided for in paragraph 1 of the present article is committed by a perpetrator acting as a member of a group, is committed using a weapon or a dangerous instrument or results in a great material benefit, the perpetrator shall be punished by imprisonment of one to ten years.*

The criminal act of extortion, pursuant to Paragraph 1, exists when the perpetrator, by using force or serious threat, coerces/compels another person to do something or not to do something to the detriment of his or of other persons’ property, with the intention of obtaining for himself or another person illegal property benefit.

The criminal act of extortion implies the intention of the perpetrator to, for himself or another person, obtain illegal property benefit. Without this intention, there is no criminal act.

The act of committing this criminal act is the use of force or serious threat. The force or threat should be applied with the objective of coercing/compelling a person to do something or not to do something to the detriment of his or other persons’ property.

So, the injured person is compelled/coerced to perform a certain action or to fail to perform it, which will have detrimental consequences upon his or other persons’ property.

The Injured Party Sh.M from the beginning of the trial was not consistent in his testimonies. The only thing that was not changed in all the testimonies of Sh.M was the amount of 23.000 Euros borrowed from S.N.

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

The injured party Sh.M. admitted that none of defendants had known about his difficult economic situation. Even assuming his trustworthiness as to the fact that he really borrowed this money from S.N., T.K. and M.K., there is no element of the criminal offence of contracting for disproportionate profit from property established by the article 270 of the CCK, either. Sh.M. used to present himself as a successful businessman and that way he was perceived by everybody. There was no single sign of his inexperience or inability either.

In the opinion of the Court, the statements of the Injured Party contain a lot of irregularities, inconsistencies, incoherencies, contradictions and discrepancies regarding all the defendants.

It was not proven beyond reasonable doubt that the defendants S.N., T.K., M.K.and S.K. used force or made serious threats against the injured party Sh.M. or forced the same one to act in such a way as to damage his own property.

There was no description of the way how a force or threats were used and when it happened. One can of course ask another question whether S.N., K. brothers and S.K. did act in the same time and in the same way. It is impossible to learn something about it from the Indictment. It should be concluded that the position of each and every defendant was not individualized and does not reflect their contribution to the criminal offence.

In the court's opinion, there was no organized group; there was no planning, no individual assignments and no coordinated action according to an operational plan. The provision establishes the fact of being member of a group as an aggravating circumstance and therefore article 267 paragraph 2 institutes a more severe sanction.

The definition of a group should be based on objective elements. The prosecution does not explain what kind of group was established by the defendants, on what agreement it was based, what the rules of its functioning were. Did they use force and threats altogether or separately? There is no evidence on the circumstance that K. brothers, S.K. and S.N. acted as a group committing or attempting to commit this criminal offence.

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

Count II of the indictment.

In the testimony during main trial on 6 December 2013, Sh.M stated that on 1 December 2007 he took a loan in the amount of 10.000 Euro from V.K with an interest rate of 10%. Sh. paid 3 months interest, meaning 3.000 Euros, to V.K. Since Sh. was not able to pay the interest, V. introduced him to Ar.B. Sh. took from Ar. another 15.000 Euros. 10.000 Euros from V. were transferred in the name of Ar., so the overall amount owed to Ar. was 25.000 Euro and Sh. started paying interest to Ar. in the amount of 10% monthly. Sh. paid 4 or 5 months interest, until July or August 2008. Sh.M further stated that he had asked from Sh.S 25.000 euro. Sh. told him "I don't have that money but I can find it for you through a friend, A.B, who will give you this money with an interest rate of 10%." Sh. received the money from Sh. with a monthly interest rate of 10%. Sh. paid the interest rate for this amount for 12 months, 2.500 Euro every month, to Sh. who told Sh. that he gave the money to A..

Prosecutor: What happened with the debt you owed to Ar.?

Sh.M: We gathered, the four of us, and I gave him the parcel of land and the debt was cleared.

Prosecutor: How did you give the parcel and what was its surface?

Sh.M: The parcel was 6 ares.

Prosecutor: Whose property was this?

Sh.M: My father's. We negotiated the amount of 87,500 Euro for the price of land. I owed to A. and Ar. 70,000 Euro. They gave me the remaining 17,500 Euro which I gave to my mother.

Prosecutor: Was this parcel in the name of Sh. S.?

Sh.M: When my father bought it, this was not in the name of Sh. either but was in the name of another person from whom Sh. bought it. Then Sh. registered the land in his name.

Prosecutor: So it means that the parcel of land was not your father's but Sh.'s?

Sh.M: As I stated before, we bought that land based on an oral agreement. However, there was no sale contract with Sh. because we were cousins.

Prosecutor: How much did you pay and who bought it?

Sh.M: My father, for the amount of 100,000 German marks.

Prosecutor: What did you do with this amount 87,500?

Sh.M: I paid for the debt to V., Ar. and Sh. on behalf of A.. The remaining 17,500 I gave to my mother.

Prosecutor: Were you forced or obliged by V., Ar. and A. to sell this land or did they threaten you; if yes, who, how and when?

Sh.M: We negotiated for this land at Paqarizi Petrol, I was threatened and forced into this by Ar.B and V.K. I was forced to do this, to give them this parcel of land, to clear the debt.

Prosecutor: In what form were you threatened concretely, by words or actions or how?

Sh.M: They did not use force. They threatened me by saying, "We will kill you or kidnap your son until you return us the money," this kind of words.

Prosecutor: Did A. threaten you?

Sh.M: No. I met A. for the first time when the price for land was being negotiated. …..

In the testimony given in front of the police on 04.08.2009, Sh.M. stated that the other person he borrowed money from is V.K.. On 01.12.2007, he borrowed from him 10,000 Euros at a 10% monthly interest rate. He paid him 1000 Euro monthly installments for two months. On 01.02.2008, he borrowed from V. an additional amount of 15,000 Euro at 10% interest rate and the total amount became 25,000 Euro. He paid him 2500 Euro monthly installments until May 2008.

After that, through V.K. mediation, Sh. borrowed from V. partner, Ar.B., an additional amount of 10,000 Euro at a 10% interest rate. Sh. paid Ar.B. 3500 Euro monthly installments till September 2008.

At the same time, in addition to Ar.B., he also borrowed from his relative, A.B, an amount of 25,000 Euro at a 10% monthly interest rate. Sh. paid the latter 2500 Euro monthly installments between 22.09.2007 and 31.09.2008.

Those relatives, Ar. and A.B., forced Sh., both of them, to sell them Sh. parcel at Hotel MENA, a 6 ars parcel, for 87.500 Euros and Sh. transferred ownership of this parcel to the name of A.B. Sh. already owed them 70,000 Euros, so they paid him 17,500 Euro in cash, which Sh. gave to his mother because the parcel was in the name of his late father.

When testifying in front of the Public Prosecutor on 03 November 2009, Sh. stated Sh. N.S. from Prizren owed an amount of 100.000 DM to his late father L.. Since Sh. was not able to pay the amount instead of that, Sh. gave a plot to his father L. with a surface of 6 ars at the place called Jagllenica as compensation. This event occurred after the war in 1999 or 2000. The plot was valued at 100.000 DM. During this agreement Sh. mother Va. and his brother Vll. M. were present. They made no written document, only a verbal agreement; thus this plot was a property of Sh.S and it was not transferred into the name of Sh. father. It was September 2008 when Sh. was called on the phone by Sh. and A. to meet them and they met at the gas station “Paqarizi”. They asked Sh. to pay the debt and he owed A. 30.000 Euros, as a principal loan, whereas the interest was paid earlier. Also he owed 40.000 Euros to Ar. though he also paid the interest earlier. To both of them Sh. owed only the principal loan. At that place present was Sh. invited by A. and Ar.. Sh. was not able to pay back the loan to A. and Ar.. They got the information that Sh. owned a plot at the place Jagllenica with a surface of 6 ars, and they asked him instead of loan to give them a plot as compensation. Sh. agreed but they brought a conclusion for price of a plot in the amount of 87.500 Euros. A. and Ar. agreed upon this.

Since Sh. owed them both 70.000 Euros, the rest of the amount of money on behalf of the price of the plot 17.500 Euros A. gave on hand to Sh., since the plot was registered in his name, and Sh. along with Sh. went to Sh. mother Va. and gave her the money.

Whereas in the testimony given on 14 October 2009, Sh.M. stated that he took a loan from the person named V.K, 10.000 Euros on 01.12.2007 with monthly interest of 10%, or 1.000 Euros per month. The deadline to pay back the money was 3 months or up to 01.02.2008. He did not know V. but he got to know through a person named F.B..

Sh. was not able to pay back the principal loan as per the anticipated date. V. told Sh. that there is another person who gives money as usury and he is Ar.B. Along with V. they went to Ar. in Suhareka. On 01.02.2008, Sh. took a loan from Ar. in the amount of 15.000 Euros with a monthly interest of 10% or 1.500 Euros per month. V. and Ar. agreed to pay the loan and the interest from V. to Ar. from now on. Sh. took from V. 10.000 Euros and from Ar. 15.000 Euros, thus the total amount of the principal loan was 25.000 Euros and 10% of interest, or 2.500 Euros per month.

Furthermore, he continued to pay Ar. only the interest of 2.500 Euros commencing from 01.02.2008 up to 01.05.2008 or the payment was for 3 months. When the deadline approached, meaning 1st May 2008, Sh. had no money to pay back the loan to Ar., therefore, he was obliged through the mediator named V. to take 10.000 Euros more from Ar.. Sh. took the last 10.000 on May 1st 2008, again with an interest of 10%. The total loan was 35.000 Euros with 10% interest, or 3.500 Euros per month, starting from May 1st 2008. The deadline to pay back the loan was 1st September 2008.

On 22.09.2007, Sh.M also took from A.B from Suhareka, a loan of 25.000 Euros with monthly interest of 10% or 2.500 Euros per month. He paid the interest to A. for 10 months in a row, only the interest starting from 22.09.2007 up to 31.09.2008. He did not pay the principal loan.

In the meantime since Sh. was not able to pay back the money, both of them, Ar. and A.B, went to him and asked Sh. to pay his dues. They heard that Sh. owned a plot of 6 ars situated in Jagllenica quarter near the restaurant “Mena”.

Sh. sold the plot in order to pay the loan taken from Ar.B and A.B. The plot was sold on 31.09.2008. At that time Sh. owed Ar. 35.000 Euros for the principal loan and 10.000 as interest, or a total of 45.000 Euros. Sh. also owed A. 25.000 Euros. No interest to be paid to him. Therefore, the total amount of both loans was 70.000 Euros. Sh.’s plot was

87.500 Euros; Ar. gave the rest of the money, meaning 17.500 Euro, to Sh. and Sh. gave the said amount to his mother.

When Sh. sold the plot to Ar. and A. they drafted a written contract. Immediately they transferred the plot to their name, since this plot was registered in Sh.S's name. The contract was signed by Sh.S and A.B.

In the opinion of the court, the statements of the Injured Party contain lot of irregularities, inconsistencies, incoherencies, contradictions and discrepancies.

The witness F.B

The witness F.B was heard in the court on 9 December 2013. When asked by Prosecutor and Presiding Judge, in most of the cases he answered, I do not remember. The version of his statements given in the first trial on 14 September 2011 and during main trial deviates a lot from the version given in the pretrial stage. In the testimony given to the Prosecution Office on 02.11.2009, the witness mentioned in his statements that Sh.M. took from V.K. a loan in the amount of 10.000 Euro with a 10 % interest per month. During the first trial on 14 September 2011, the witness stated that he was not sure about the sum of the loan taken by Mi.. It was 5.000 or 10.000 Euros borrowed from V. to Sh.. It was Sh. who asked for the money because he needed it to buy goods. He did not remember about the interest rate of the loan.
In the opinion of the court, the witness was not trustworthy.

The witness Sh.H.

The witness Sh.H. was heard in the court on 16 January 2014. The witness stated that he did not sell and buy any parcel of land from Sh.M. father, named L. Mi.. The witness owed a debt to Sh. father, owed him money, and told him that if he could not pay this money back within a period of time, the witness would give him a parcel of land located in Jaglenica neighborhood, Prizren. The land was never transferred to the name of L. Mi.. Sh.H bought this parcel from M.R, with a surface of 13 ars for 120.000 DM. The witness paid 90.000 Euro to Sh.. Two lots of 30.000 Euro were paid to Sh. and the third lot of 30.000 Euro was paid directly to Sh. mother. Later the witness sold the land with a surface of 6 ars to A.B. in the amount of 90.000 Euro. They prepared a written contract and present were S.J and O.B.

Whereas, in the testimony given in the Prosecution Office on 02 November 2009, the witness stated that in 2000-2001 he bought a plot at Jaglenica quarter from an owner named M.R. The said plot was 12 ars and he bought it for 100.000 DM. The witness registered the plot in his name. Later on, in 2003-2004, he sold one part of this plot, meaning ½, with a surface of 6 ars, to Sh.M. father, L. M. The witness did not transfer the plot in the name of the buyer, respectively L., since they had no written contract. L. Mi. paid the whole amount of money for the plot he bought. Later L. went to the witness and asked him again to purchase the plot he bought from the witness, because he was in need of money. Again the witness bought the said plot with a surface of 6 ars for 90.000 Euro. He gave the money to his son Sh.. In 2007 the witness sold the plot to A.B from Suhareka. Present during the purchase were S.J and O.B. The contracting price was 90.000 Euro.

When he testified during first trial on 14 September 2011, the witness Sh.H testified that immediately after the war he bought 12 ars land at Jaglenica quarter from an owner named M. R. He was not sure if he paid 145.000 or 155.000 DM. Sh. at that time owed L. 90.000 Euro and through a verbal agreement he sold 6 ars of the land to L. Mi. The land was not transferred in the name of L. Mi.. The witness later on again verbally agreed with L. that the witness would return 90.000 Euro to L.. Sh. gave the money back when he sold the land to A.B.

As the court sees it, the testimonies of the witness Sh.H contain many incoherencies and contradictions and as a result they are not credible in many points. Only two facts were supported by the objective evidence that in 2007 the plot of 6 ares was sold by Sh. to A.B and at that moment land was formally registered under name of Sh..

The witness S.J

The witness S.J was heard in the court on 16 January 2014. The witness stated that together with O.B he was present when A.B bought the land in Jaglanica with a surface of 6 ars in the amount of 90.000 Euro from Sh.H. First amount of 30.000 Euro was paid in Suhareka on the day the land was bought, the other 30.000 Euro the witness was not present when that was given and last amount of 30.000 Euro was given at Kabashi restaurant they had dinner on that day and the money was paid.
The testimony of this witness S.J was coherent and corresponding to his previous statements given on 03 November 2009 and 14 September 2011.

The witness V.M.

On 22 January 2014 the court summoned the witness V. Mi who stated that she knows Sh.H., he is from the same village. Her husband L. Mi. bought the parcel of land in Janglanica from Sh.H for 100.000 Euro. When asked by presiding Judge that on 2 November 2009 in front of the prosecutor the witness stated it was DM. The witness said I am unable to know now. Indeed Sh. owed 100.000 DM to her husband; though Sh. was not able to pay back the money thus on behalf of the debt Sh. gave to her husband a plot in Jaglenica. The plot remained on the name of Sh. since they drafted no written contract. Five- six years ago they sold the same parcel to Sh.H. They received 70,000 Euro from Sh.H. and she also received 17,500 Euro directly from Sh. together with Sh..

On 2nd November 2009 the witness V.M. stated in 2007 her husband got sick and he wanted to sell the plot and give the money to her son Sh. since he was a tradesman and he owed some money. He asked Sh. if he is interested to purchase the plot, though Sh. agreed to purchase again the said plot. The agreed amount of money was 90,000 Euros but Sh.H never paid that money even though he was under obligation to pay that money within 2 weeks and finally Sh. went to witness house with Sh. and they gave her 17.500 Euro. They told her that they sold the plot, but did not tell her to whom and who sold it.

On 22 January 2014 she further stated that 70,000 Euro was given to her son Sh. by Sh.H. The reason why they sold the land was because they had debts to the banks.
In the opinion of the court, the testimonies of the witness V.M. contain some irregularities, inconsistencies and discrepancies. As the court sees it, the testimony of the witness V. M. is not credible in some points.

Only two circumstances were supported by the objective evidence that in 2007 the plot of 6 ares was sold by Sh. to A.B and at that moment land was formally registered under name of Sh. (exhibit E9).

The testimony of Ar.B given to the Prosecution office on 21 October 2009

The court tried to summon as a witness Ar.B but the court received information from the mail office that he is abroad. During the trial on 27 January 2014 the court with agreement of all parties considered as read the testimony of Ar.B. given to the Prosecution office on 21 October 2009.

When testified before prosecution office on 21 October 2009 the witness Ar.B. stated that Sh.M. never took any money as a loan from him. In the question of the Prosecutor, whether if he knows or if he is aware that Sh.M. took a loan from A.B., the witness Ar.B. stated that he does not know. The witness denied knowing if A.B. had bought a plot in Prizren at quarter Jaglenica from the injured party Sh.M.

The defendant A.B

He testified during the main trial on 19 February 2014 and confirmed his earlier statement given to the Prosecution office on 20 October 2009 and in the first trial on 13 and 14 September 2011.

On 19 February 2014 the defendant A.B. stated that he never give the money to Sh.M. against the interest, he bought the parcel in the surface of 602 square meters from Sh.S., the contracting price was 90,000 Euro. The amount of 90.000 Euro was paid in three times, meaning three times 30.000 Euro. Witnesses S.J and O.B were present from the beginning when he made bargain with Sh.H. until the last instalment which was paid to Sh..

Factual state

There is no doubt that that the plot of land mentioned in the indictment is the 600 m2 plot No 5215/4 in the Prizren Municipality, close to "Mena" restaurant". There is a valid confirmation of the contract by Kosovo Cadastral Agency. The parties of the contract are A.B and Sh.H.

The transfer of the real property (agricultural land, construction land, forest and forestland, buildings, apartments, business premises) during the period in question 2007-2008 was regulated by the following Laws: a/Law on transfer of real property of Kosovo (published in Official gazette of SAP Kosovo No. 45/81, 29/86 with amendments from 31.Dec 1990); b/Law on Regular Courts with amendments (Official gazette SAPK No.21/78, amended 2/89); c/Law on basis of ownership relationship (Official Gazette SFRY, No. 6/80, 36/90 (which was applicable until 2009); d/Law on contracts and torts (Off. gaz. SFRJ", no. 29/78, 39/85, 45/89 i 57/89); e/Law on verification of signatures, manuscript and copies (from 1971); f/Law on the Establishment of the Immovable Property Rights Register (Law No 2002/5, UNMIK/REG/2002/22 as amended by the Law No 2003/13 on Amendments and Additions, promulgated by UNMIK Reg. 2003/27, in force as of 18 August 2003). Under art. 455 of LCT a contract of sale of real property

must be in written form; otherwise it shall be null and void. Article 33 of Law on basis of ownership relationships provides that on the basis of the legal work the property ownership right over real estate shall be acquired by the registration into the "public notary- cadastral books" or some other appropriate way that is prescribed by law.

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

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

The injured party claimed that he was the owner of the land but according to the documents he was not. Exhibit E9 issued but the Kosovo public authority has never been undermined by anyone. Taking into consideration the mandatory form of the agreement and its formal approval by the Kosovo Cadastral Agency dated 11 Dec. 2008 there is no legal way to declare the agreement void. The ruling (Exhibit E9) contains the instruction on legal remedy. The Injured Party should have filed a complaint if unsatisfied but he did not.

The other supporting evidence is the testimony of S.J who testified that the plot was sold by Sh.H to A.B. O.B. and S.J were both present at the moment when the contract was concluded and when the first installment of 30.000 euro was paid. According to the witnesses everything was consensual and in mutual agreement.

Sh.M. claimed differently however his version was inconsequent and not supported by any evidence except of his own statement.

There is no evidence for involvement of A.B. in a criminal offence under art.267 par.2 of the CCK, there was no trace of acting as "a member of the group"; the injured party

denied on any use of force against him by A.B. Sh.M. stated that A.B. did not make any threats towards him. (Minutes of 6 December 2013, page 8).

It has not been proven that the defendant used any threat or force in getting his money back as it was explained above and therefore also the art.267 par.1 of the CCK is not applicable.

Even though the defendant consequently denies any loan given to the Injured party Sh.M. and if we bear in mind that the fact of giving loan was not proven beyond reasonable doubt, theoretically speaking A.B. most likely would have not agreed on giving the loan if he had known about a real financial situation of the Injured Party.

As to the alternative legal qualification of the criminal offence with the Article 270 of the CCK of contracting for disproportionate profit from property is not enough to prove the fact that "an evidently disproportionate amount of property" was negotiated "in return" but there is other mental element of the criminal intent such as committing the criminal offence by taking advantage of the injured person's difficult financial circumstances, difficult housing circumstances, hardship, inexperience or inability to make judgments. None of those elements has been proven by the Prosecutor.

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

Count III of the indictment

In the testimony during main trial on 6 December 2013 Sh.M stated that it was winter 2007 when he took money as usury also from N.K. an amount of 50.000 Euros with monthly interest of 11%, or 5.500 Euros per month. Sh. did not know Ne. but Arb.B. introduced him to N.K.

Prosecutor: What did you ask from Arb.?

Sh.M: Arb. wanted to open a car mechanic workshop in Jagllanice neighbourhood and I needed some money and Arb.B told me, "I will receive some money as I worked in Reforma car delaer", I don't know if it is a BMW car dealer in Prishtina, and I needed money so I asked him, "Do you know somebody we can take some

money from?" Arb. said, "I have a friend from Suharekë," then Arb. contacted him and we took 50,000 Euro from N.K.

Prosecutor: Where did you meet with N.K and who was present and did you make any written agreement?

Sh.M: I don't know where Arb. met him but when we took the money from him, we went to his house in Suharekë, to Ne.'s house.

Prosecutor: Before going to his house, who negotiated the terms of this?

Sh.M: Arb.B did.

Prosecutor: Were you present?

Sh.M: During the negotiations between Arb. and N.K, no. We were together only on the occasion when we took the money.

Sh. paid to Ne. only the interest, meaning 5.500 Euros for 10 months. Later on Sh. did not have any more money to give to Ne., and Ne. went to Sh.'s shop approximately 10 to 12 times and took goods for the value of 12.000 or 13.000 Euros.

Prosecutor: Did you give this to him on your own initiative or by free will or he took it by force?

Sh.M: He did not take it by force but I was not happy to give it either. It was not my consent either.

Prosecutor: Has N.K ever threatened you or has he ever used any force?

Sh.M: None of them used force, only words, threatening and insulting words.

Presiding Judge: You did not answer the question. It was whether N.K has used any force.

Prosecutor: Did N.K use any threatening words?

Sh.M: Yes.

Presiding Judge: What were they?

Sh.M: I am a peasant, this thing between us won't finish well, there is not enough place for both of us in Kosovo.

Prosecutor: When was this?

Sh.M: As long as I kept paying for interest rate, nothing happened and I was the best person in the world but when I could not pay any longer, I was the worst one.
….

Prosecutor: In your statement given to the Prosecutor you did not mention at all that N.K threatened you. Why do you say so today? I am referring to his statement dated 14th October 2009, page 5, last paragraph, so this part of his statement is about N.K where he mentions all these facts that he took money from him and paid the interest rate but he does not mention any threats he mentions today.

Sh.M: Because I have a notebook where I wrote every detail and I put there also the threats and this is why I am stating it today.

Prosecutor: Why do you remember it today? Why didn't you remember this in 2009 which is 4 years ago and your memory should have been fresher then?

Sh.M: Because I read the notebook and saw all this including the threats.

Prosecutor: Which notebook?

Sh.M: My personal notebook.

Prosecutor: Didn't you have it at that time?

Sh.M: I had it but I didn't read it.

In the testimony given before Police on 04.08.2009 among others Sh.M stated that it was Arb.B. who introduced him to N.K. Out of the 50,000 Euro he borrowed from N.K, Sh. lent Arb.B. 17,000 Euro in order for the latter to open his D. Service in L.. The agreement was that Arb.B would pay the loan back to Sh. in two months. But that was not the case. Arb. has already paid the money back to Sh. in small installments.

On 14.10.2009 before Public Prosecutor Sh.M stated that he took money as usury also from N.K on 01.11.2007 an amount of 50.000 Euros with monthly interest of 11%, or 5.500 Euros per month. Sh. paid to Ne. only the interest, meaning 5.500 Euros for 10 months starting from 01.11.2007 up to 01.09.2008. He was obliged to pay back the main loan within 6 months. Nevertheless Sh. was not able to do so, thereof Ne. went to Sh. shop, approximately 10 times and took goods, textile clothes on behalf of the interest an amount of 13.500 Euros.

His testimony is partially supported by Arb. B. testimony also by N.K. statement. Both the witness Arb.B. and the defendant N.K. testified that there was no interest as it was a short-term loan. Except of Sh.M. statement the Court has no supportive evidence on the amount of interest if any. Bearing in mind the inconsequence of the Injured Party's testimonies the court is not allowed to treat them as reliable and trustworthy.

The witness Arb. B.

The witness Arb.B. testified during the main trial on 16 January 2014, he stated that he Sh.M. met him and asked him for some money, he told to Arb. that he is experiencing financial crises and asked 50.000 Euros as a loan, without any interest, for a period of time, for 2 weeks or 1 month, since he wanted to bring some goods from Singapore. Since Sh. was going to take a loan from the Raiffeisen Bank in the amount of 80.000 Euros, Arb.B. decided to find him the amount of 50.000 Euros from his friend N.K. Ne. was good friend of Arb.. The witness decided to be as guarantor since he knew for sure the Sh. would get the loan being prepared from Raiffeisen Bank. Ne. than gave 50.000 Euros to Sh. only for a few weeks to one month time; once the money is re-paid by Sh., Sh. would also give him as a present four wheels and four tires of an E class Mercedes, bronze color. Ne. gave the money because of the trust he had on Arb. B. When then Sh. took a loan from Raiffeisen bank he paid different debt he had, he did not paid the money borrowed from Ne.. Ne. was told that goods coming from Singapore were held at the border with Serbia, two Lories with textile and Sh. had to pay customs fees for these Lories. At the moment when the money was asked, Sh.M showed to Ne. the documents of a shop and a parcel and he promised that if he didn't pay back the money,

then he would give him the shop or the parcel, whichever. So this was some sort of proof that was offered by Sh.M and Arb.. Then when Sh.M was unable to return the money within a month, Ne. son got married, there was a wedding party at home, Sh. had a boutique, he that took some clothing from the shop, a cake and went to Ne. to congratulate him. At the same time, a loan was being prepared as the BPB Bank, in the amount of 300.000 Euros, and Sh. managed to convince Ne. that the money would be returned within a month to six weeks.

When testified on 22 October 2010 the witness stated that after Sh. asked to him 50.000 Euros as a loan, he told to Sh. that the amount that he is locking is very huge, it is very hard to find, but since Ne. was his good friend, first he talked to him on phone, whereas next day the witness went to his house in Suhareka. Arb. explained to Ne. the situation, he told him that Sh.M. is well-known to him, is rich and he need some money for period 2 weeks up to 1 month. After 2-3 days Arb. took Sh. and went to Ne.'s house in Suhareka, they talked to Ne., and Arb. guaranteed that Sh. shall give him money back, because according to his opinion Sh. was in such situation that he could return the loan, Sh. owned some shops and he thought we won't have problem.

The testimony of this witness Arb.B. partially supported by Sh.M. testimony also by N.K. statement. Except of Sh.M. statement the court has no supportive evidence on the amount of interest if any.

The defendant N.K

He testified during the main trial on 19 February 2014 and confirmed his earlier statement given to the Prosecution office on 21 October 2009 and in the first trial on 15 September 2011.

N.K during main trail stated that Arb.B. and Sh.M. went to him and Arb. introduced Sh. as businessmen who had a problem at that time, a monetary problem, and asked him to lend some financial means to Sh. for a certain period of time. Ne. further stated the he was betrayed by his friend. Ne. lend the sum of 50.00 Euros to Sh. for 2 month without any interest. With regard to financial means that Sh. asked Ne., Sh. offered the document of a shop, of authorizing person parcel and of an apartment. Ne. did this favor to Sh. believing that said person was really a successful businessman and that he was asking for said money for the goods which were at the customs office.

On 15 September 2011 Ne. stated that he was in need of some clothes as there was an upcoming wedding. He came to an agreement with Sh. to get those clothes from Sh. shops. Sh. valuated the clothes for 10.000-12.000 Euros. Sh. did not return the loan to N.K.

His statement is partially supported by Arb. B. and Sh.s. testimonies.
Both the witness Arb.B. and the defendant N.K. testified that there was no interest as it was a short-term loan. Except of Sh.M. statement, the court has no supportive evidence on the amount of interest if any.

Factual state

N.K. admitted that he gave to Sh.M. a short-term loan of 50.000 Euro but without any interest. The money was not paid back until the end of the trial. The witness Arb.B. also confirmed the fact that N.K. gave money to the Injured Party. Sh.M. claimed that he has two loads of textiles in Serbia coming from Singapore. He provided N.K. this argument as a purpose of asking for a loan. N.K. initially disagreed but afterwards made positive decision by taking into consideration the fact that Sh.M. had a lot of shops and therefore seemed to be able to pay his debt off. Both the witness and the defendant testified that there was no interest as it was a short-term loan. Except of Sh.M. statement we have no supportive evidence on the amount of interest if any.

Bearing in mind the inconsequence of the Injured Party's testimony the court is not allowed to treat them as reliable and trustworthy. There is also another important factual element that this loan was never paid back to N. K who took only some goods from Sh.M. shop as a repayment for the sum not exceeding 12.000 Euro. No other money was paid back. We have to remember also that the Injured Party laid to N.K. telling that the he needed the money to pay for incoming goods from Singapore. Taking into consideration the attitude of Sh.M. admitted by him during the court hearing that he was borrowing money in order to pay back loans previously taken out the court comes to the conclusion that the guilt of N.K. has not been proven beyond reasonable doubt.

As to the Article 270 of the CCK for contracting for disproportionate profit from property is not enough to prove the fact that "an evidently disproportionate amount of property" was negotiated "in return". There are other mental elements of the criminal intent to be fulfilled such as committing the criminal offence by taking advantage of the injured person's difficult financial circumstances, difficult housing circumstances, hardship,

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

Taking into consideration the all abovementioned arguments and the content of the art.396 paragraph 9 of the KCCP the court is obliged to point out in the reasoning the Article 390 paragraph 1 of the KCCP as the direct reason of acquittal.

Pursuant to Article 390 paragraph 1 of the KCCP this court finds that the act with which the defendant N.K is charged does not constitute a criminal offence.

It is therefore decided as in the enacting clause of this Judgment.

_____

Judge Mariola Pasnik
Presiding judge

_____

Christine Sengl
Court recorder

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