BASIC COURT OF PRISHTINË/PRIŠTINA
Case number: **P. Kr. Nr. 282/2014; PPS 45/2012**
Date: **4 February 2015**

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 PRISHTINË/PRIŠTINA in the Trial Panel composed of EULEX Judge **Jennifer SEEL**, presiding, Republic of Kosovo Judge **Valbona M.-Selimaj**, and EULEX Judge **Marie Tuma**, panel members, with the participation of EULEX Legal Officer David Hegarty, as a recording officer, in the criminal case against:

1. **B.D.**

Name and surname:	**B.D.**
Name of father:	**S.**
Profession:	**Farmer**
Date of birth:	**Xx xxx xxxx**
Place of birth:	**xxx, Municipality of Drenas**
Place of residence:	**xxxxx street, no number, near the xxxx**
Nationality and citizenship:	**Kosovar Albanian**
Identification number:	**xxxxxx**
Family status:	**Married; four children**

2. **H.T.**.

Name and surname:	**H.T.**
Name of father:	**B.**
Profession:	**Unemployed**
Date of birth:	**Xx xxx xxxxx**
Place of birth:	**xxxx, Municipality of Skenderaj**
Place of residence:	**xxxx Street in Prishtina,xx floor/xx, entrance xx**
Nationality and citizenship:	**Kosovar Albanian**

Identification number:	**xxxx**
Family status:	**Married; two children**

Both charged under the Public Prosecutor's Indictment P Kr. Nr. 282/14, dated 19 May 2014 and filed with the Registry of the Basic Court of PRISHTINË/PRIŠTINA on 21 May 2014 with the offence of:

1. **TRADING IN INFLUENCE**, by requesting, receiving or accepting an offer or promise of any undue advantage to himself, herself or another person in consideration of the exertion of an improper influence by the perpetrator over the decision-making of an official person, whether or not the influence is exerted, or whether or not the supposed influence leads to the intended result, in violation of Article 345, paragraph 1 of the Criminal Code of Kosovo (2004)(hereinafter referred to as the "PCCK"), and punishable by a fine or by imprisonment of up to two (2) years;

And having held the main trial hearing, open to the public, on 29 and 30 October 2014, 04, 11, 12, 25 and 26 November 2014, 17 December 2014, 20 and 21 January 2015 and 2 February 2015 and with the verdict announced on 04 February 2015; all in the presence of the defendants B.D. and H.T.; and when requested by the defendants in the presence of their respective Defence Counsel B.T. and M.H. or their substitutes; and EULEX Public Prosecutor Andrew Carney, after the trial panel's voting and deliberation held on 2 February 2015, pursuant to Article 359 of the Criminal Procedure Code of Kosovo (hereinafter referred to as the "CPC"), pronounced in public and in the presence of the Defendants, their Defence Counsel, and the Public Prosecutor Andrew Carney, issues the following:-

VERDICT

I. The Accused, **B.D.** and **H.T.**, with the personal data recited above,

Are each on Count No. 1 of the Indictment found

GUILTY

Because it was proven beyond a reasonable doubt that in the time period between April 2009 and June 2009 the two defendants requested and received an amount 200.000 Euro from a

group of five individuals in consideration of exerting influence over the decision-making of officials from the Privatization Agency of Kosovo (hereafter "the PAK") in relation to a bid submitted in a privatization tender.

Arising from the announcement of the 34th Wave of Privatization by PAK on 14 April 2009 the above mentioned 5 individuals, namely S.Z., Z.B., I.M., B.K. and A.J. agreed to buy 91 hectares of land in M. village in the Municipality of Obiliq. Prior to their submission of a tender to purchase the land, the defendants and at least four of the members of the group, namely S.Z., Z.B., I.M. and B.K., entered into an agreement whereby the defendants would exert their influence with the PAK to ensure that the bid to purchase land in the name of B.K. would succeed. The consideration for this agreement was to be a payment of at least 200.000 Euro cash to be given to the defendants.

On 20 May 2009 B.K. submitted a bid in the sum of one and a half million Euro for the 91 hectares of land referred to above. This bid was successful. The agreed consideration was paid to the defendants upon their demand. The defendants accordingly received the sum of 200.000 Euro in two instalments. The first instalment of at least 120.000 Euro in cash was handed over to the defendants by S.Z. and Z.B. during a meeting at Restaurant Drruri at the end of May 2009. A second instalment was paid about one week later.

Thereby, the defendants B.D. and H.T., with personal data above mentioned, committed the criminal offence of **TRADING IN INFLUENCE** in co-perpetration in violation of Article 345, paragraph 1 in conjunction with Article 23 of the PCCK.

II. The Defendant **B.D.** is:

SENTENCED

To one (1) year and three (3) months of imprisonment on Count 1 – trading in influence;

The Defendant **H.T.** is:-

SENTENCED

To one (1) year and three (3) months of imprisonment on Count 1 – trading in influence.

III. The Defendants **B.D.** and **H.T.** are jointly and severally obliged to pay an amount of Two hundred Thousand Euro (€200.000) as a compensation for the confiscation of the

corresponding amount of Two hundred Thousand Euro (€200.000) acquired by the commission of the criminal offence.

The Defendants are allowed to pay this amount in 20 monthly instalments of Ten Thousand Euro (€10.000).

IV. The Defendants shall each reimburse the sum of one hundred and fifty Euro (€150) as part of the costs of the criminal proceedings, while being relieved of the duty to reimburse the balance of the costs of the proceedings, pursuant to Article 453, paragraphs 1, 3 and 4 of the CPCK.

REASONING

A. COMPETENCE OF THE TRIAL PANEL

1. According to Article 11 (1) of the Law on Courts, Law Nr. 03/L-199, the Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law. Article 9 (2.1) of the Law on Courts states that the Basic Court Pristina is established for the territory of, among others, the Municipality of Pristina. According to Article 15 (1.19) of the same Law, the criminal offence of Trading in Influence falls in the jurisdiction of the Serious Crimes Department, and according to paragraph (2) shall be heard by a trial panel of three (3) professional judges, with one (1) judge designated to preside over the trial panel.

2. According to the Law on the Jurisdiction, case Selection and Case Allocation of EULEX Judges and Prosecutors in conjunction with the Memorandum of Understanding, cases in which an indictment was filed after the 15 April 2014 should be adjudicated by EULEX judges according to a pertinent decision of the Kosovo Judicial Council. On 29 June 2014 the pertinent request was send to the KJC, and on 2 July 2014 it was confirmed that the case should be adjudicated with a majority of EULEX judges, including a presiding EULEX judge. This decision was sealed under the Blue Seal of the Kosovo Judicial Counsel in their decision No. 01/96 on 02 July 2014 and this case is the third of four cases contained in that decision.

B. PROCEDURAL BACKGROUND

3. On 01.08.11, SPRK Prosecutor Ali Rexha, issued a Ruling initiating the investigation against five (5) defendants, suspected of committing the criminal offences of Organized Crime,

Money Laundering, Giving Bribes, and Accepting Bribes. On 31.01.12 the Pre-Trial Judge extended the investigation for these charges for a further 6 months, until 01.08.12, under case number PPS 48/2011.

4. On 21.05.12, SPRK Prosecutor Ali Rexha issued a Ruling on the initiation of investigation in relation to seven additional defendants, including the two defendants herein B.D., H.T., and five (5) others, suspected of committing the criminal offences of Accepting Bribes, Giving Bribes, trading in influence and Abuse of official position or authority.

5. On 23.05.12, SPRK Prosecutor Ali Rexha issued a Ruling consolidating both cases under PPS number 45/12, and on 18.12.2012, the Pre-Trial Judge extended the investigation until 21.05.2013.

6. On 04.04.13, the EULEX SPRK Prosecutor Andrew Carney issued a Ruling expanding the charges of the investigation against the defendants, and further on 20.05.13, issued a further Ruling expanding the investigation in relation to weapons charges against five defendants.

7. On 16.07.2013 the EULEX SPRK Prosecutor filed an application to extend the consolidated and expanded investigation which had commenced on 01.08.11.

8. On 26.04.2013, and 11.02.2014, the investigation was terminated against a number of defendants, and, in the latter Ruling, against Defendant H.T. regarding the weapons allegations.

9. On 21 May 2014, the SPRK prosecutor Andrew Carney filed an Indictment in case PKr 282/14 against the defendants herein dated 19 May 2014, which charged the Defendants as set out in the enacting clause of this judgment.

10. A main trial was held on 29 and 30 October 2014, 04, 11, 12, 25 and 26 November 2014, 17 December 2014, 20 and 21 January 2015 and 2 February 2015 and with the verdict announced on 04 February 2015

C. ADMISSIBLE EVIDENCE

1. The two defendants made use of their right to remain silent during the whole proceedings. Therefore the facts established in the judgment are based on all admissible evidence after the course of the main trial:-

I. Witnesses

2. During the trial the following witnesses gave statements (referred to below in the order

of their appearance at the trial):-

a. S.Z.
b. Z.B.
c. I.M.
d. A.J.
e. H.K.
f. B.K.

II. Documentary Evidence and Interception Protocols

3. In the main trial session on 15 January 2015 the parties agreed to consider the content of the case file evidence as read. The Court considers the documentary evidence which is contained in Binder 1 and the protocols of the lawful interception of telephone communication which is contained in Binder 3 as admissible evidence. However, it is stressed that all documents and intercept protocols on which the judgement is based were read out in the course of the proceedings[1].

III. Video Clip

4. A private video clip[2] which was recorded by the witness A.J. with his phone was introduced during the main trial session. This video clip is 5:45 minutes long and according to the police files it was recorded in May 2009. The video was handed over to the police by the witness.

IV. Financial Data

5. During the main trial financial data from witness B.K.'s bank account at NLB bank[3] which was obtained based on an order for disclosure of financial data dated 10 January 2012 was examined.

V. During the course of the main trial the following motion was made:-

6. At the session on 30th October 2014 the Panel decided about the general admissibility

[1] See minutes of the main trial session, which indicate exactly which pieces of evidence were examined at which session. It is noted that most of the documents were examined and shown to the witnesses at several occasions.
[2] See transcript of the video in Binder 3, page 206.
[3] See Binder 1, page 223.

of previous statements that witnesses had given in the capacity as defendants. The Panel decided that those statements could not be used as direct evidence, but indirectly as exhibits during witness examination, to refresh a witness's memory or to challenge the witness in the course of cross- or re-direct examination.[4]

7. The Panel concludes that these statements have to be treated as previous witness statements pursuant to Article 123 CPC, because it is irrelevant if they were given as defendant or suspect statements[5]. The Panel is aware that in an opposite situation, where defendants had given previous statements as witnesses, these statements could not be used to challenge the defendant. Such a procedure would violate the defendants' rights to a fair trial by bypassing their rights during pre-trial examination. The case at hand is different. In the constellation at hand the witness only has the right not to incriminate himself. This right is respected, because the proceedings against the witnesses were already terminated due to statutory limitations. In this case the rights of the defendant are not affected, because it remains the obligation of the Panel to assess the quality of the statement. When the credibility of the witness is evaluated, the fact that the previous statements were given in the capacity of defendants will be taken into consideration.

8. However, the Court notes that in this case the answers that the witnesses gave when confronted with their previous statements were not at all taken into consideration, because the Panel classified them in all cases as not fruitful anyhow.

D. FACTUAL FINDINGS

9. After the evidentiary phase of the main trial, upon the admissible evidence presented and administered, the Court establishes the following relevant facts as proven beyond reasonable doubt:

I. Facts considered as proven

10. In April 2009 the Privatisation Agency of Kosovo (PAK) announced the 34th wave of privatization, which included 91 ha of former agricultural land in the Musakaj region

[4] In this regard the Panel decided that the rights described in Article 123 CPC for the cross-examination are applicable during the re-direct examination of a witness as well; otherwise there would be no way to challenge the credibility of a witness for the party that introduced the witness. This would not coherent with the overall aim of the proceeding to find justice and truth.
[5] As far as the Defence Counsel stressed that most of the interviews were conducted without the presence of lawyers, it is noted- that even in case of serious crimes- at that very early stage of proceedings pursuant to Article 58 CPC the presence of a lawyer was not mandatory.

which were to be transferred to a new subsidiary company NewCo Agriculture Land Musaka L.L.C[6]. The witness I.M. heard about the tender and decided to participate. His idea was to buy the land and make profit by selling parcels of it. M. approached the witness Z.B., an old friend, and both decided to file a bid for the land. B. introduced the witnesses S.Z. and B.K.to Islam, because they assessed that they would need a bigger group of people to run the project, to raise the necessary investment and to find buyers for the land. As they lacked financial means to pay the registration fees, K. i introduced his friend A.J.to the group, and he became a member of the group, with the concrete task to pay the registration fee. It was decided that the bid should be filed in the name of B.K., who turned out to be the only one who was able to get the necessary certification from the Court that he was not under investigation. Most of the paperwork was done by S.Z..

11. During this time the group realized, that they would not be able to win the tender in a legal way. S.Z. discussed this issue with his acquaintance B.D., who assured him that he would be able to help him in this regard. D. also said that he had a friend who could help. Following this the witnesses Z. and B. met D. in the Memento Restaurant in Pristina, and D. introduced them to the defendant T.. In this meeting and thereafter the two parties agreed that the defendants would find people who would make sure that the group's bid was successful, and the group would pay 200.000 Euro for this. While these negotiations were mainly done by Z., the witnesses B. and M. were at least partly present.

12. Before the bid was submitted, an agreement between the two defendants and at least four members of the group, namely S.Z., Z.B., I.M. and B.K. was reached. On 20 May 2009 witness B.K. on behalf of the whole group submitted a bid. Even though the defendants had advised Z. to bid the amount of 2.300.000 Euro, he considered that was too much to bid and he bid only 1.500.000 Euro.

13. On 26 May 2009 B.K. was informed in writing that his bid was selected as the winning bid. Thereafter, the defendants approached the group and demanded the agreed reward. As none of the member had funds, the group faced difficulties to discharge their obligation towards the defendants on a short notice. The members of the group found that the only means of raising money instantly was to find buyers for the awarded land,

[6] For further details see Binder 1, pages 1 to 62. According to UNMIK Regulations 2002/12 and 2003/13 the property rights would be transferred in form of a 99 year leasehold.

who would be willing to pay at this early stage.

14. Shortly after B.K. sold 10 ha of land to his relative B. who is the owner of Jugobella/ Kosmonte Food Company. Formally the purchase was realized in form of a loan given from to K. i, and a pre-sale contract. Shortly after this, B.K. received an amount of at least 124.000 Euro in cash, while several other instalments were paid in the following weeks to the bank account of B.K..

15. This cash payment was brought to Z.B.'s house and the notes were counted by all the members of the group on an unspecified day in May 2009. After counting the money it was put in a dark plastic bag and the witnesses B. and Z. (probably accompanied by a third member of the group) met the defendants in a Restaurant called Druri in Pristina. They handed over an amount of at least 120.000 Euro in notes, which they brought in a dark plastic bag. The defendants noted that it was not the agreed amount and demanded the rest of the sum. Around a week later a second instalment was paid to the defendants, so that the total amount of the agreed 200.000 Euro was paid.

16. After this, the defendants or the persons behind them demanded further compensation, and at the same time for various reasons the group began to fall apart. A.J. had first decided to withdraw, and he was shortly afterwards compensated for his investment and left the group. In September 2009 under unknown circumstances the witnesses Z. and B. agreed to withdraw from the group in exchange for compensation, and the defendants became new shareholders of the project.

17. Since September 2009 witness K., who knew B.K.as well as the defendant B.D. for many years, was involved in the project. In the period around October 2009 I.M. also withdrew his participation, and he was replaced by K. as a fourth shareholder of the project. Finally, on 5 October 2009, the two defendants and the witnesses B.K. and H. completed an internal agreement to be equal shareholders in the land project. While the witness K. paid 134.000 Euro to become a partner, the defendants entered the contract without an obligation to contribute financially. Therefore it is believed, that their partnership was a compensation for previous exertion of influence, and also a means to secure their further influence on the institutions, as the process was still not completed.

18. In the meantime, the witness K. i met the demands for money owed to the PAK, and accordingly paid the total amount of 1.500.000 Euro in four instalments from his bank

account. The necessary funds for these payments were raised from further sales of the pertinent land.

19. Even after all instalments were paid, the responsible employees at PAK were reluctant to finalize the land contract, because on 16 June 2009 the Municipal Court in Pristina had imposed a temporary measure on a part of the land[7]. The PAK appealed this ruling, but as there was no decision by March 2009, the employers in the legal and the sales department of PAK discussed how to proceed[8]. During this time the defendants had contact with PAK officials. Notwithstanding the unsolved legal issues, on 27 April 2010 the contract was finalized and the New Co Agriculture Land Musakj L.L.C was transferred to B.K..

II. Facts considered as not proven

20. After the evidentiary phase of the main trial the following facts were not proven:

21. It could not be proven what kind of influence the defendants offered to exert, and on whom exactly they would exert influence. Even though it is quite probable that the defendant exerted some influence, it remained unproven as well, to what extend this eventual influence was decisive in the decision-making process of the responsible PAK employees.

22. While the Panel found it proven beyond a reasonable doubt that the parties agreed on an undue advantage of 200.000 Euro to be paid for the defendants, it remained unclear to what extend a further compensation was agreed upon. According to some documents it seems that the defendants were to be rewarded by another 100.000 Euro or by a parcel of the pertinent land. As the information about this compensation varies, it is most probable that the agreement was still under negotiation, and that the agreed compensation depended on the exact time and the involved people. The Panel concluded that any promised compensation beyond 200.000 Euro remained unclear and could not be proven beyond reasonable doubt.

23. Similarly, the Panel was not convinced that the defendants received an amount exceeding 200.000 Euro. While it is undisputed that the defendants benefitted from

[7] For details see PAK Memorandum in Binder 1, pages 145 to 150.
[8] Initially it was planned to adjourn the proceedings and pay the deposited funds back to witness K.. He was informed about this in writing on 16 March 20010, see Binder 1, page 151 to 152.

their engagement in the later course of the proceedings, it is not proven beyond reasonable doubt that this compensation was not related to legal activities conducted by the defendant, namely the search for land-buyers, or to the exertion of additional influence later on.

24. Further, it remained unclear if the witness A.J. was part of the agreement between the group of witnesses and the defendants, or if he was aware that such an agreement existed before the bid was placed. Similarly, the involvement of the witness H.K. before he became a member of the project group in October 2009 remains unclear.

E. ANALYSIS OF THE EVIDENCE

25. The factual findings are based on all admissible evidence, as listed above. The Trial Panel has considered the testimony of the six witnesses, as well as the documentary evidence, the financial data, the above mentioned video and the results of the lawful interception to determine the facts.

I. Analysis of witness's statements

26. After the examination of the above mentioned witnesses during the main trial the Panel assessed the credibility of the witnesses and the quality of their statements as follows:

a) Witness S.Z.:

27. The witness Z. stated[9] to the Court that he was asked to join the project by Z.B., who introduced I.M. and B.K.to him. He described that I.M. had the initial idea that the four would establish a group to win the tender in the 34th wave of privatization. It was decided that B.K. would register with the PAK to make the bid, because he would be able to get the necessary court certificate, while A.J. was asked to join the group, because he was able to pay the registration fee. The witness explained that he was the one responsible to fill out all papers, and to decide on the price. He states that together with Z.B. he would decide on his own, what price to submit in the process. The witness further gave account that during the time before making the bid he met B.D. in the Restaurant Memento in Pristina, where they started to talk about their current projects. When he mentioned the tender, B.D. told him "*I have a friend, he will finish the job*".

[9] See minutes of the main trial session held on 30th October 2014 and 4 November 2014.

One or two days laterD. brought H.T.to another meeting. Both offered to complete "*the affair*" and told the witness to file a bid of 2.300.000 Euro. The witness stated that besides giving him this advice, which he did not follow, he was unaware whether the defendants did anything else to help the group to win the tender. He described that 3 or 4 days later and as soon the defendants learned that the group was awarded with the tender, the defendants called and asked for the agreed sum of 200.000 Euro. The group jointly decided to raise the money by selling a part of the land. He testified that a part was sold to a person named G., while he stated to not have accurate knowledge of the sales to the owner of Jugobella Company.

28. The witness testified that together with Z.B. and I.M. he meet the defendants in Restaurant Druri and handed the sum of 130.000 Euro in cash to the defendants. He described in detail that the three of them brought the money in a plastic bag and handed it over to the defendants, who were both present. He testified that the defendants said that the sum was incomplete, because it was not the combined 200.000 Euro, and the balance of the monies were paid about a week after. Asked what the money was paid for, the defendant stated that it was given under threat. Z. further recounts that some time later he and Z.B. were asked by H.T. for another 600.000 Euro, 300.000 Euro each. He states that he was threatened, and that he took the threats very seriously, but that he still refused to pay any money, simply because he did not have that much money.

29. The witness was confronted with the interceptions of two text messages which were send from Witness B.'s number to Z. and back on 29 April 2009 and read: *"what can I tell that friend we see him B., Respect"* and *"you don't have to do anything 200 pieces the job is being done"*.[10] The witness confirmeded that the "*200 pieces*" meant the amount of money that the two defendants demanded. Confronted with the agreement contained in Binder 1, page 164 the witness clearly stated that the mentioned "*persons that helped the tender process will be rewarded with 300.000 Euro*" were the two defendants.

30. The Panel assessed the witness's statement as generally credible. While it was obvious to the Panel that the witness was reluctant to talk about the issue in question, and especially to talk about the involvement of the two defendants, he confirmed the main facts of the factual allegations, namely the agreement with the defendants and the fact

[10] See Binder 3, pages 114 and 136.

that the defendants received a sum of 200.000 Euro. When the witness testified about this, he was mostly coherent, and he provided details, which make the Panel believe that he was telling the truth.

b) Witness Z.B.

31. The witness Z.B. testified[11] that he together with I.M., S.Z.- whom he calls X.- and B.K. filed a bid in the 34th wave of privatization of the KPA. He stated that the first initiative came from I.M.. Later A.J., a friend of B.K., joined the group. First the witness stated that no one else was involved in the tender, but at the same time he mentioned that he would meet with the defendants, to whom he referred as "X.'s friends", in coffee bars in Pristina to discuss the tender before it was decided on 20 May 2009. He said that those were X.'s friends, and that mainly X. would talk with them, when they discussed how to win the tender. He emphasized that S.Z. was the main actor during that time and that he took care of all the paperwork. Only when questioned again he explained that before filing the bid Z. introduced him and I.M. to H.T. and B.D., whom they meet at Memento Restaurant around one and a half months before the tender was won. He explicitly stated that S.Z. told him that they would have to pay 200.000 Euro to the defendants, in order that they recruit a person who would ensure that they won the tender. He further stated that this money was to be raised by land sales.

32. B. confirmed that after winning the tender 10ha of land were sold to Jugobella for a sum of around 300.000 Euro, and that this money was counted in his house. He stated that the money then went straight to the PAK bank account, and that he did not give money to anybody. Confronted with the agreement which contains the paragraph: "*The payment in amount of 120.000 Euro was paid to x persons as obligation to them while the payment was done by Z.B., I.M. and the witness S.Z. (X.)"*[12] he stated that he did not know what it means and that he did not remember signing it.

33. The Panel had the impression that the witness was visibly reluctant to talk about the whole issue and that he was trying to avoid to give answers. He repeatedly referred to his illness and his bad memory. He was obviously trying not to burden the defendants, to an extent that he even denied their involvement several times without being asked about them. Further he tried to downplay his own involvement, and persisted on his

[11] See the minutes of the main trial session held on 4 November 2014.
[12] See Binder 1, page 168 and 169.

role as a victim. Still the Panel noted that the witness tried not to give false answers, but to remain vague. Therefore the Panel assessed his statement as partly credible, but his statement did not ultimately yield significant amounts of probative information.

c) Witness I.M.

34. The witness I.M.[13] stated that he heard about the privatisation and decided together with his old friend Z.B. to participate in the tender. As he and B. lacked financial means, B. introduced him then to S.Z., whom he introduced as owner of a building company, and B.K.. They needed more partners who could raise money and added A.J.to the group, who was introduced by B.K.. M. stated that the group made some oral agreements and agreed that the tender would be filed in the name of B.K., and that the tender was won shortly after.

35. The witness denied having any knowledge about the involvement of anybody else in the tender process. Confronted with the various agreements and documents which were examined during the main trial[14] he testified that he did not remember what they were about, and that the content of the agreements was never clear for him. He highlighted that he had no idea who the "*x persons*" were, that were several times mentioned in the documents. He admitted to not merely signing but also writing those documents, but he insisted that he just copied them from originals to have a proof.

36. M. further testified that one day after winning the tender he was informed on the phone that B.K. had sold 10 or 11 ha of land to the owner of Jugobella, and he was invited to come to Z.B.'s house, where they counted some of that money. Confronted with the above mentioned video clip he affirmed that during this counting he took the notes corresponding to the documentary evidence[15]. He stated that after that counting he went to his home. Asked why he signed a document saying that he delivered that money to someone[16], he stated that he was obliged to sign this because otherwise he would have been excluded from the group.

37. During the examination the witness was confronted with the protocol of the interception evidence, namely the SMS messages send by him to a number in

[13] See the minutes of the main trial held on 11 and 12 November 2014.
[14] See Binder 1, pages 164/165, 168/169, 176/177 and 178/179.
[15] See Binder 1, page 168/169.
[16] See Binder 1, page 176/177.

Switzerland on 16, 20 and 21 April 2009, which read: "*O selam alekum. How are you how are you doing. Did you know that the tender came out on Monday, inshallah, congratulations, as I struck the deal with those buddies. The place is ours and nobody can take it away from us. I need to explain in more detail what the matter is. Please make the money ready as we must pre-qualify. A lot of respect. I.*", "*Hey friend, 91 ha have been tendered this wave. The rest will be included in the next tender, because this is our agreement with those buddies. We have agreed that 300 thousand be given to them before, and 200 thousand afterwards. The rest will be tendered when we wish. We will take as much land as we want. Don't care about it at all. Now there are also few factories etc*" and "*These days we will put things on paper and they are only doing this good for me, as there is great competition there for that location. I told A. Ok.*"[17] Witness M. stated that these messages were related to another parcel of land, which coincidently measured 91 ha as well.

38. The witness stated firmly that he did not know the defendants and that he never had any personal contact with them. Only after re-questioning he admitted to have met them for coffee. Confronted with SMS which were send from his number to defendant D. on 27 October 2009[18] he said that his phone was used by others, even though the message send from his phone to defendant D. was signed with "*Respect I.*".

39. The Panel evaluated the statement of the witness as not credible at all. The witness was obviously lying through most of his statement. He was reluctant to talk about the issue and to talk about the two defendants. He persisted in the assertion that he did not know the defendants and never entering any agreement with them. During all his statement the witness was very vague and tried not to answer to any question, or to express that he did not understand the question. The Panel took into account that the witness is a well-educated person, and in the Panel's view he was able to understand the questions and to answer them properly. For this reason the Panel assessed it as absolutely not credible that the witness signed several documents with agreements concerning huge amounts of money, without understanding them or even agreeing to them. The witness even admitted that it was him who wrote the documents which were afterwards signed by all present parties. Further the witness was obviously lying when he stated that his SMS messages were referring to another piece of 91 ha of land. And he gave a false statement when he denied to have had contact with the defendant D..

[17] See Binder 3, pages 105 and 128.
[18] See Binder 3, pages 107 and 130.

d) Witness A.J.:

40. The witness A.J. stated[19] that he was approached some time before the bid was placed by his long-standing family friend B.K., who was accompanied by I.M.. These two told him about the project and offered the chance to participate in the group, if he would supply the registration fee of 25.000 Euro, which the group was not able to raise. The witness decided to participate and paid the money, however he was not able to file his bid officially because he was under investigations. Therefore the bid was filed in the name of B.K..

41. J.gave account that shortly after the tender was won the two defendants wanted money from the group. He testifies that he was first informed about this by B.K. and I.M., who came into the common office and said that the group encountered a problem. The witness stated that this was a shock for him, as he never had heard about the involvement of others before. The others told him that two people, among them H.T., wanted 300.000 Euro because they allegedly made it possible for the submitted tender to succeed. He then realized that the group played tricks and asked to have his money back and withdraw from the group as soon as possible.

42. The witness testified that to his knowledge an amount of 200.000 Euro was paid to the defendants in two instalments (p.6). He explained that B.K. had sold 10 ha of land to L. B., the owner of Jugobella Company, to raise money, which was counted by the group and given to H.T. and "the other one". On this occasion he was told by B.K., S.Z. and I.M., that the two defendants threatened Z.B.. Z.B. was on the telephone most of the time and told the group he would talk to H.T., who would tell him to hurry up. He explained in detail how after the counting the money was put in a dark plastic bag, and a group of 3 people went to meet H.T.. He wanted to join the group to see where the money would be delivered to, but B.K. told him explicitly that he could not join.

43. The Panel assessed the statement of the witness as partly credible. While the witness explained some of the background and circumstances of the case in a coherent, detailed and ultimately credible manner, it remained unclear if the witness was really not aware of the agreement beforehand. As his testimony in this regard is corroborated with the documentary evidence, which shows that he indeed left the group very early, it deems the Panel possible that he was not aware of agreements, which makes his statement

[19] See minutes of the main trial held on 26 November 2014.

even more credible.

e) Witness H.K.:

44. The witness K. testified to the Court that in September 2009 he was contacted by witness B.K., who offered him the chance to become a partner in the so called land project. He was sceptical about the project and discussed it with his family, but after 1 month accepted the offer. While I.M. had been a partner in the project in September, K. i informed him later that M. had withdrawn. The witness stated that he knew the defendant D. since 2000, while he was introduced to T. only in October 2009. They both became partners of the project, so that all four would hold shares of 25% and benefit equally from land sales. While K. paid 137.000 Euro to become a partner, the defendants had no obligations. Their task was to find buyers for the land. Further the witness stated that B.K. told him that the two defendants had already received 200.000 Euro.

45. Confronted with the SMS that was sent from his phone on 10 May 2010 *"Mention those 200 thousand of L.'s money that they took*"[20] sent from his number, the witness said that he would know nothing about the message and that it might have been sent by B.K., who allegedly used his phone. Confronted with intercept from April 2010[21] that deal with meetings with the PAK director and the signing of a "Category C" the witness denied to have any knowledge, and he would not have memory of his messages.

46. The Panel assessed the witness's statement as partly credible. While the statement of the witness was coherent in regard to the development of the land project after September 2009, the Panel continues to have real doubts about his description of his previous involvement. Obviously the witness wanted to downplay his involvement in or knowledge about any unlawful activities. In this regard the Court finds it not credible that the witness claims that someone else used his phone.

f) Witness B.K.

47. The witness B.K. stated that he was the main driver of the project to submit a bid for the 91 ha of land. He testified that he only sought the help the other witnesses when he

[20] See Binder 3, page 35.
[21] See various messages sent in March, April and May 2010, Binder 3, pages 34 and 35

faced problems raising the money he needed to pay to PAK. When confronted with the various pieces of documentary evidence, he stated that the other witnesses put pressure on him to sign the mentioned documents, and that he did this without even reading them. Further he stated that the witnesses Z., B. and M. blackmailed him, and that they borrowed money from him without paying him back. He then testified that witness H.K. put him into contact with the defendants, whom he accepted as business partners, because they promised to find buyers for the land parcels.

48. The Panel evaluated the testimony of K. i as very incredible. The statement of the witness is highly inconsistent. K. i tried to convince the Court that he was primarily responsible for the whole process and just asked the other four witnesses for help when he faced problems to paying the PAK; In the view of the trial panel his testimony is highly incredible, not only because all other witnesses stated something else, but as well because there is reliable evidence in the form of agreements and intercepts that show the involvement of the whole group right from the start. Further, it is absolutely not credible that K. i was under pressure and signed the agreements without knowledge of their content. The whole course of events demonstrate that he was the one in charge of the process, therefore it is not credible that the other witnesses were in a situation to compel him. Additionally it is not credible that a person as educated as K. i would sign something like this, without reading it or even without being interested in it, as he stated.

49. As far as the witness stated that he lent money to S.Z. which he did not return, the further evidence in the case file demonstrates the opposite. According to the financial data, in fact S.Z.'s father paid 100.000 Euro to K. i´s account[22]. Regarding the contract with the defendants it is not credible that the witness would accept them as equal shareholders, only because they offered to try to find buyers for the land. As well this activity could not explain why the witness paid at least 100.000 Euro to each of the defendants.

50. K. i denied that he sold any land to L. B. in May or June 2009. Confronted with the respective agreements[23] he told the Court that he only had an agreement to lend money from B., who was a friend of the family, and that he was not selling land. This again is highly incredible, as it is in contradiction to what all other witnesses stated, and

[22] See Binder 1, page 183.
[23] See Binder 1, pages 186 to 189.

is contrary to the documents presented as evidence. It is not disputable though, that the contract was realized in form of a loan contract, which was natural at this stage, because the group at this point was far from being legal owner of the land.

51. K. i confirmed that he was present when part of the money he received in cash from B. was counted. He stated that this money was loaned by him to Z.B. who was facing problems paying for the apartment he was living in. This again is highly incredible, and the witness could not at all explain why he would borrow this enormous amount of money from a family friend, to give it to a person who he hardly knew, at that time.

III. Analysis of evidence in regard to the elements of the criminal offence

52. The Court bases its conclusion in regard to the elements of the criminal offence in particular on the following evidence:

a) General development of the tender process and the bid group

53. The factual findings in regard to the establishment of the bid group and to the general development of the bidding process are based on the statements of the witnesses as well as on the documentary evidence. While detailed information about the tender process is contained in the documentary evidence of the case file[24], the development of the group was explained in detail by the witnesses. Regarding the establishment of the group the statements of the witnesses were generally concurring. The only significantly discordant version was presented by witness K. i; the Panel found his version not credible for the reasons elaborated above.

b) Agreement between the defendants and the bid group

54. The factual allegations in regard to the agreement between the defendants and the group members are based on the documentary evidence, as well as on the witness statements and on the results of the lawful interception of telephone communication and text messages.

55. The witness Z., whose statement the Court assessed to be most credible, explained in details how the two defendants got involved in the process. He described how he met

[24] See Binder 1, pages 1 to 163.

first B.D. and then H.T., and he provided details about the circumstances of the meetings. He did not state what exactly the defendants were to do, but he was clear about the fact that they offered to influence the decision making of the PAK to "*complete the land affair*", and that they asked to be rewarded with 200.000 Euro. The development in this early stage was also confirmed by the witness B., who provided concurring details about the first meetings with the defendants. While the witness J. stated not to have known about an agreement himself, he was very clear that the other witnesses told him about an agreement with these two defendants. Even the defendant M., who was very reluctant to speak about the defendants involvement, finally stated that there were meetings with them in some cafes in Pristina before the tender was won.

56. The Panel considers as convincing evidence the various documents which were several times examined in the course of the main trial. It is noted that, even though some of the witnesses testified not to remember the content of the agreements, or to have signed them without having read or understand their content, the authenticity of the documents was not substantially challenged. Notwithstanding minor discrepancies, all available agreements put together show a logical and chronological sequence of events, which support the established facts. It derives very clearly from the documents that the group had an obligation to pay at least 200.000 Euro, deriving from an agreement which was made before the bid was submitted, and that this amount would have to be paid in consideration for the influence on PAK in the tender process.

57. This obligation to pay an amount of 300.000 Euro to "*persons that helped the tender process*" is first mentioned in an internal agreement signed by I.M., Z.B., A.J., B.K. and S.Z.[25]. Another internal document of the bid group states that "*based on the agreement of 12 May 2009* (…)*The payment in amount of 120.000 Euro was paid to x persons as obligation to them while the payment was done by Z.B., I.M. and the witness S.Z. (X.)"*[26]*.* This document is written by I.M. and was signed by B., M., J. and K. i, and by Z. and V. J.as "witnesses".

58. The fact that the group of witnesses entered into an agreement with someone who would help them win the tender is confirmed as well by the results of the lawful interception. The messages sent by witness I.M. on 16, 20 and 21 April 2009 show

[25] See Binder 1, pages 164 and 165.
[26] See Binder 1, page 168 and 169.

clearly that the witness was very confident that the group would be awarded with the tender, and that a kind of deal was involved[27]. And in the SMS exchange between Z. and B. dated 29 April 2009[28] Z. wrote: "*you don´t have to do anything 200 pieces and the job is being done*". In the main trial the witness confirmed that 200 pieces were the 200.000 Euro to be paid to the defendants.

59. After examining the admissible evidence the Panel comes to the only convincing conclusion, that the persons with whom this agreement was reached were actually the two defendants. This is not only explicitly confirmed by the witnesses Z., B. and J., it is also the only logical explanation why this exact amount was finally paid to the defendants (see below). As to the fact that in the written agreements the names of the defendants were not mentioned, a possible explanation seems that the group members were aware of the illegal nature of this agreement. It is more probable though, that they referred to "x persons" because they believed that the final destination of a major part of the money would be other persons, whose identity they did not know.

c) Receiving of 200.000 Euro as compensation

60. The Panel is convinced beyond reasonable doubt that the two defendants received an amount of 200.000 Euro, in compensation for a promised exertion of influence on the decision-making of the PAK. This conviction is based on the witness statements, the documentary evidence, the video which was examined in the main trial, the financial data and the result of lawful interception during the investigations.

61. On the video clip which was made by A.J.[29] it is shown that on a certain day in May 2009 the witness were united to count out a large number of cash. All witnesses that were seen in that video and that were confronted with it but B.K. confirmed that this money was shortly before received from someone who gave it as compensation for the pre-sale of land. Witnesses B., J. and M. mentioned LL. B., the owner of Jugobella. Witnesses Z. and J. explicitly confirmed that this money was counted out to be given to the two defendants. The witness Z. described in detail how the money was counted and after that put in a bag and delivered to the defendants by him and B.. The witness J. stated that he was not aware of any agreement beforehand, but he confirmed that the defendants demanded an amount of money because they allegedly helped the group to

[27] As quoted above, see Binder 3, pages 105 and 128.
[28] See Binder 3, pages 114 and 136.
[29] See transcription Binder 1, page 206.

win the tender. He described how during the counting the witnesses Z. and B. were in contact with the defendants.

62. The Panel further took into consideration the various documents examined during the course of the main trial, which clearly imply that an amount of money was paid as an obligation for a previous agreement. An internal agreement, written by M. and signed by M., K. i, B. and J. states: "*100.000 Euro have been spent as payment of obligations toward x persons, and the transfer has been carried out by Z.B., I.M. and S.Z. (…)*"[30]. Similarly the calculation contained in the documentary evidence contains under "Expenses" the item "Rewards for x persons= 300.000 Euro".[31] The Panel took into consideration that the majority of items found on that calculation matches with the established financial transactions.

63. As the indictment alleges that a first instalment of 160.000 Euro was paid, this information was not corroborated with the information that was received through admissible evidence. The documents mention different amounts between 120.000 and 130.000 Euro. All witness referred to the long time that passed since then and declared themselves to be unsure about the exact amount. From the internal agreement in the documentary evidence[32], it seems most probable that the amount that was counted and delivered on that very day, was between 120.000 and 130.000 Euro.

64. Nevertheless, independently from the exact amount that was paid in a first instalment, the Court is convinced that in fact a second instalment was made shortly after to pay the remaining amount to the defendants, so that a total of 200.000 Euro was paid. The witnesses Z. and J. explicitly stated that this amount was paid in two instalments. The payment of the total sum was further confirmed by H.K., whose statement in this regard is credible, as he was not involved in those events. His statement is corroborated by a further significant piece of evidence. In a text message on 10 May 2010 he wrote *"Mention those 200 thousand of L.'s money that they took*"[33], which makes clear that an amount of 200.000 was actually paid.[34]

---

[30] See Binder 1, pages 176 and 177.
[31] See Binder 1, pages 178 and 179.
[32] See Binder 1, pages 168 and 169.
[33] See Binder 3, page 35.
[34] As far as there is evidence, e.g. in form of the document p. 178/179 of Binder 1, that the defendants in fact received more than 200.000 Euro, a sum up to 300.000 Euro, the Panel evaluated this not as proven, because it was not corroborated by other evidence.

65. The Panel is further convinced that this money was raised by the pre-sale of land. This fact was confirmed by the witnesses Z., B., M. and J., and it is corroborated by the documentary evidence, namely the respective cash loan contract with LL. B., and the pre-sale contract[35], as well as by the financial data. The examination of B.K.´s bank account shows that he received an according amount of money after the agreement with L. B. was finalized, while a part of the amount was paid in cash. Therefore, there is no doubt that in fact the group had enough cash to pay this respective amount.

66. The Court is convinced that this money was paid as an obligation towards the defendants according to the previous agreement. As far as the witness Z. said that the money was given under a threat this is not corroborated by any other statement, does not tally with the documentary evidence and therefore not credible. These items of evidence show that the sum was actually a compensation for "helping" with the tender. This is further corroborated by the video which shows the witnesses in a good mood, which seems to be justified because they were shortly before closing a deal, and not under a serious threat.

d) Further development of the land project

67. The Court's conclusion in regard to the further development of the project group and the involvement of the defendants is based on the documentary evidence, the interception results, financial data and the statement of the witness K..

68. The available documents in the case file[36] show that from September 2009 on the defendants were shareholders in the project group, which from October 2009 comprised of the defendants, K. i and K., while later on other people were involved as well as directors of NewCo Agricultural Land M. LLC. The bank accounts of B.K.[37] show that the defendants were rewarded with at least 40.000 Euro each, and the witness K. i in his statement estimated that both defendants made a profit of about 100.000 Euro. While the Panel was not convinced by K. i´s statement at all, the bank account and the documents show that the defendants were shareholders of the project and that they received significant amounts. The documentary evidence shows very clearly that the pertinent departments at PAK between March and April 2010 discussed how to proceed

[35] See Binder 1, pages 170 to 175.
[36] See Binder 1, pages 191 to 196.
[37] See Binder 1, page 183.

with the privatisation of the land[38], after the whole bid amount was paid, but a temporary measure for a part of the land was still in force.

69. The protocols of the lawful interception of communication show that during this time, on 15 March 2010, the witnesses K. i and K. and the defendant T., whose well known nickname is R. , were in contact with employees from PAK, and had probably even exerted influence on its director D.A.. In a text message[39] K. i wrote to K.: "*Hey uncle it´d be nice to give those names to R. and show him that category C. That they signed*." And K. responded: "*Yes I told him on the phone, he said don´t worry, D. said we´ll see tomorrow*." As shortly after, on 6 April 2010 the contract was finalized in favour of the group[40], the Panel is convinced that the defendant T. had contact with the responsible officials of PAK who were involved in this decision.

F. LEGAL REASONING

I. Applicable Law

70. The above established events occurred between April 2009 and April 2010, when the applicable law was the Criminal Code of Kosovo, which entered into force on 6 April 2004 under the name of Provisional Criminal Code of Kosovo. It was amended on 6 November merely by changing its name to Criminal Code of Kosovo. However, the new Criminal Code of Kosovo (hereinafter referred to as "CCK", Law No. 04/L-082) entered into force on 1 January 2013.

71. The Trial Panel points out that both the old law (PCCK) and the new law (CCK) express the common principle in criminal law: "The law in effect at the time a criminal offence was committed shall be applied to the perpetrator."[41] However, both laws also express the universally accepted exception: "In the event of a change in the law applicable to a given case prior to a final decision, the law more/most favourable to the perpetrator shall apply."

72. The Panel interpreted this as primarily looking at the substantive elements of the offence but also the level and calculation of any associated punishment. It is noted that the substantive elements of Article 345 (1) PCCK and 431 (1) CCK are equal, even though

[38] See documents in Binder 1, pages 145 to 162.
[39] See Binder 3, page 35.
[40] See final agreements Binder 1, pages 224 to 234.
[41] Article 2 (1) PCCK and Article 3 (1) CCK.

the wording of the provisions is slightly different. The main difference is that according to Article 345 (1) PCCK Trading in influence is punishable by a fine or by imprisonment up to two years, whereas according to Article 431 (1) CCK the criminal offence is punishable by a fine or by imprisonment up to 8 years. The applicable law, therefore, is the law which was in effect at the time the criminal offence was committed.

II. Elements of the Criminal Offence

73. The defendants D. and T. have committed the criminal offence of Trading in Influence in co-perpetration pursuant to Article 345 (1) PCCK, which was the law in effect at the time of the commitment of the criminal offence between April 2009 and April 2010, and is the more favourable law in comparison with the current regulation.

Art 345 (1) PCCK stipulates:

74. *Whoever requests, receives or accepts an offer or promise of any undue advantage for himself, herself or any other person in consideration of the exertion of an improper influence by the perpetrator over the decision-making of an official person, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result, shall be punished by a fine or imprisonment of up to two years.*

75. The objective elements of the criminal offence are fulfilled. The defendants requested and received an undue advantage of 200.000 Euro, which was paid to them on the basis of the pertinent agreement by the witnesses Z. and B.. The consideration for this amount was the exertion of an improper influence, namely the influence over the decision to award the tender in the 34th wave of privatisation to the bid which was made in the name of B.K..

76. While the evidentiary procedures did not disclose detailed information on how exactly this influence was to be exerted, it is proven beyond reasonable doubt that the defendants had offered to exert influence. The Panel after carefully considering the legal provision of Article 345 (1) PCCK notes, that the focus of this criminal offence is shifted from the actual influence of a decision making to an earlier stage. In this regard it is noted, that for the objective elements of the criminal offence, the exertion of the influence is not needed. The mere promise to exert influence in exchange for an undue advantage is the behaviour constituting criminal liability. Therefore a lack of concrete knowledge of the circumstances of the exertion of influence, and especially of the

specific person on whom the influence is to be exerted is immaterial, as long as it is proven that there was a serious offer to exert such influence.

77. The Panel has no doubt that in the case at hand the offer of the defendants to exert influence on the decision making in regard to the tender was a serious offer. Further, it deems the Court very likely that a kind of influence indeed was exerted during the decision to award the tender; and it is proven beyond reasonable doubt that the defendants exerted influence on the decision to finalize the privatisation process in April 2010.

78. The intended influence was aimed towards the decision making of an official person. Pursuant to Article 107 (1.3) PCCK an official person is a person who exercises specific official duties, based on authorisation provided by law. Obviously in the sense of Article 345 (1) PCCK the influence has to be targeted on a decision-making in the scope of this authorisation. This is the case here. The Privatisation Agency of Kosovo is a public entity, its employees carry out official duties, based on an authorisation provided by law. The influence was targeted towards the decision to award a tender, for whose execution the pertinent civil servants are authorised by law.

79. As outlined in the factual allegation section, the two defendants mostly acted in concert, therefore their behaviour is to be classified as Co-Perpetration according to Article 23 PCCK.

80. The subjective elements of the crime are also met. According to Article 15 PCCK a person acts with direct intend when he or her is aware of his or her act and desires its commission. The defendants D. and T. desired to receive an undue advantage for the offered influence, and they were aware that this influence was improper and targeted the decision-making of an official person. Further, they were aware that they acted in concert, and desired to do so.

G. DETERMINATION OF THE PUNISHMENT

I. Applicable Law

81. The Panel refers to the assessment made above and notes that the applicable law regarding the punishment is Article 345 (1) PCCK, as it was the law in force at the time when the criminal offence was committed and compared to the law in force now it is

the favourable law *(lex mitior*)[42].

II. General Rules and Purposes of Punishment

82. According to Article 34 PCCK the purpose of punishment is (1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; and (2) to deter other persons from committing criminal offences. According to Article 64 PCCK the Court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of the punishment, all circumstances that are relevant to the mitigation or aggravation of the punishment and, in particular, the degree of criminal liability, the motives for committing the act, the intensity or danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence.

III. Limits of the punishment provided by law

83. Pursuant to Article 345 (1) PCCK the criminal offence of Trading in influence is punishable by a fine or by imprisonment up to 2 years. The Panel found that there are no reasons to mitigate or aggravate the limits for punishment provided for by law, as the conditions set out in Articles 65 to 67 PCCK are not met.

IV. Concrete Determination of Punishment for Defendant B.D.

84. In the case of B.D., the Panel found as significant mitigating circumstance the long period of time that elapsed since the criminal offence was committed. As an aggravating circumstance that panel found, that the danger to the protected value, the functioning and independent public administration, was relatively high. As Kosovo is a country in a transition phase, the privatization process of land is crucial for the development of the country. The impairment of the confidence in public decisions in this regard is seriously harming stability and negatively affecting the development of rule of law in Kosovo. Further it is noted that the material benefit of 200.000 Euro was relatively high, even though the Panel is aware that this sum might have been shared among various persons.

[42] As the substantial difference between the old and the new decision is that the maximum punishment was increased from 2 to 8 years, the old criminal code contains the favourable provision not only abstractly, but in concreto as well.

Concerning the criminal liability of the defendant the Panel finds that he was fully liable, and that the co-perpetration was conducted with equal contribution from both defendants. As a mitigating circumstance the Panel found the defendant's behaviour before committing the criminal offence, as he was never convicted before. The personal circumstances of the defendant, who is married and father of four children, was considered in his favour.

85. In carefully weighing out all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine punishment, the Court imposes a **sentence of imprisonment of 1 year and 3 months.**

86. After carefully considering all the mitigating and aggravating circumstances in this case, the Panel concluded that the sentence could not be suspended in this case. Pursuant to Article 42 PCCK the purpose of a suspended sentence is to give the perpetrator a reprimand which achieves the purpose of a punishment by pronouncing a sentence without executing it. The Court found that even though a long time elapsed since the criminal offence was committed; the mere pronouncement of the sentence without executing it would not achieve the purpose of the punishment. In this regard the Panel notes that the purpose of a punishment according to Article 34 PCCK is not only to prevent the perpetrator from re-offending, but as well to deter others from committing criminal offences, and that criminal offences of the chapter XXIX Criminal offences against official duty are of particular interest for the public[43]. Further it is noted, as outlined above, that in this case the harm for the protected value was very high, as was the received undue advantage of 200.000 Euro.

87. The Panel concluded that it is not proportionate to impose an accessory punishment of a fine against the defendant.

V. Concrete Determination of Punishment for Defendant H.T.

88. In the case against H.T., the Panel found as a significant mitigating circumstance the long period of time that elapsed since the criminal offence was committed. As an aggravating circumstance that panel found, that the danger to the protected value, the functioning and independent public administration, was relatively high. As Kosovo is a country in a

[43] Even though this is not relevant for the case at hand, it is noted that with the new Criminal Code of Kosovo (CCK) the law-maker drastically increased the maximum punishments in this section of the criminal code, expressing the relevance of these criminal offences.

transition phase, the privatization process of land is crucial for the development of the country. The impairment of the confidence in public decisions in this regard is seriously harming stability and negatively affecting the development of rule of law in Kosovo. Further it is noted that the material benefit of 200.000 Euro was relatively high, even though the Panel is aware that this sum might have been shared among various persons. Concerning the criminal liability of the defendant the Panel finds that he was fully liable, and that the co-perpetration was conducted with equal contribution from both defendants. As mitigating circumstance the Panel found the defendant's personal circumstances; he is married and father of two children.

89. The Panel considered the previous conviction of the defendant, who was sentenced to an aggregate punishment of two years for the criminal offences of attempted aggravated murder and unauthorized purchase, possession and use of weapons by the District Court of Pristina on 12 March 2009. This decision was appealed and entirely confirmed by a judgment of the Supreme Court of Kosovo, dated 9 February 2011.

90. The Panel considered that the defendant was not to be considered a recidivist in a formal way, because at the time of committing the criminal offence in the time period following April 2009 he was not convicted with a final decision. Still, when considering his past behaviour it had to be taken into account that at this time the defendant had already spent four month in prison and was aware that criminal investigations and proceedings were ongoing against him. But applying the principle set out in Article 64 PCCK the Panel notes that the previous offence was of a substantially different type, and committed for different motives. Therefore the Panel concluded that these criminal proceedings would be of minor relevance and not decisive for the decision at hand.

91. In carefully weighing out all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine punishment, the Court imposes a **sentence of imprisonment of 1 year and 3 months.**

92. The Panel is aware of the provision of Article 72 CPC. This provision would theoretically be applicable here, because the defendant served a sentence after he committed a criminal offence in this case. As a consequence an aggregated punishment would have to be imposed on the defendant. In this regard the Panel took into account that in this other proceeding the defendant was actually conditionally released after he served a little more than one third of the sentence. He was under supervision until in April 2013 the supervision ended because he was under new investigations. Still there was no

formal decision from the Conditional Release Panel if the suspended part of the sentence- more than 13 months of imprisonment- should be served or not. Therefore the Panel encountered difficulties in calculating the punishment according to Article 72 CCK and concluded that due to these circumstances the application of this rule could be disadvantageous for the defendant. Accordingly, the Panel decided not to apply Article 72 CCK.

93. After carefully considering all the mitigating and aggravating circumstances in this case, the Panel concluded that the sentence could not be suspended in this case. Pursuant to Article 42 PCCK the purpose of a suspended sentence is to give the perpetrator a reprimand which achieves the purpose of a punishment by pronouncing a sentence without executing it. The Court found that even though a long time elapsed since the criminal offence was committed; the mere pronouncing of the sentence without executing it would not achieve the purpose of the punishment. In this regard the Panel notes that the purpose of a punishment according to Article 34 PCCK is not only to prevent the perpetrator from re-offending, but as well to deter others from committing criminal offences, and that criminal offences of the chapter XXIX Criminal offences against official duty are of particular interest for the public[44]. Further it is noted, as outlined above, that in this case the harm for the protected value was very high, as was the received undue advantage of at least 200.000 Euro.

94. The Panel concluded that it is not proportionate to impose an accessory punishment of a fine against the defendant.

H. **FORFEITURE**

I. Applicable Law

95. The Panel notes that the regulations about confiscation/forfeiture of assets differ in the law system before 2013 and now. According to the PCCK, the material criminal law in force at the time the criminal offence was committed, the confiscation of material benefits would be governed under Articles 82 and 83 PCCK. According to those rules, any material benefit acquired by the commission of a criminal offence shall be confiscated by the court judgment establishing the commission of a criminal offence.

[44] Even though this is not relevant the determination of the concrete punishment in the case at hand, it is noted that with the new Criminal Code of Kosovo (CCK) the law-maker drastically increased the maximum punishments in this section of the criminal code, expressing the relevance of these criminal offences.

According to Article 83 PCCK the perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired, when the confiscation is not possible. Article 96 and 97 of the CCK contain similar provisions, while they refer to Articles 276 to 284 of the CPC. The Panel concludes that the provisions are substantially equal; while the only difference is that according to Article 284 (1) CPC the pertinent decision should be issued in the form of an order.

II. Confiscation

96. The Panel notes that it is proven beyond reasonable doubt that the two defendants in May 2009 received a sum of 200.000 Euro in commitment of the criminal offence of trading in influence. Therefore they directly received this money, which is to be classified as material benefit acquired by the commission of the criminal offence. As the pertinent notes are not available for confiscation, the Court concludes that the obligation to pay compensation in the same amount is applicable.

97. The Panel notes that it is irrelevant that the defendants might have distributed a part of that money, as they directly received the amount of money. Further, as the two defendants acted jointly, they carry the obligation to return the money solidarity.

98. Regarding the relatively high amount of money that is to be confiscated, it deemed appropriate to the Panel to allow the defendants to pay this money in 20 instalments of 10.000 Euro.

I. COSTS OF THE PROCEEDINGS

99. The Defendants **B.D.** and **H.T.** shall each reimburse the sum of one hundred and fifty Euro (€150) as part of the costs of the criminal proceedings, while being relieved of the duty to reimburse the balance of the costs of the proceedings, pursuant to Article 453, paragraphs 1, 3 and 4 of the CPCK.

PRESIDING JUDGE:

_____
EULEX Judge
Jennifer Seel

RECORDING CLERK:

_____
EULEX Legal Officer David Hegarty

LEGAL REMEDY:- A Defendant, their legal counsel, the Prosecutor or an injured party have fifteen (15) days from service of this judgment to appeal in accordance with Article 380 paragraph 1, and Article 381, paragraph 1 of the CPC. Any appeal must be filed with the Court of First Instance under Article 388, paragraph 1 of the CPC.