

Coat of Arms of the Republic of Serbia
Republic of Serbia
HIGHER PUBLIC PROSECUTOR'S
OFFICE IN BELGRADE
KTO.no.734/10
4 March 2019
Belgrade
LJ/JM

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HIGHER COURT IN BELGRADE
04/03/2019
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HIGHER COURT IN BELGRADE
FOR THE
APPELLATE COURT IN BELGRADE

BELGRADE

Pursuant to Article 43, paragraph 2, item 7 of the LCP and Article 433, paragraph 3 of the LCP to the judgment of the Higher Court in Belgrade, K.no. 127/2014 of 18 June 2018, in the case against the defendant Dubravka Đorđević and other, due to criminal act Misuse of position of responsible person from Article 234, paragraph 3, regarding paragraph 1 of the CC in complicity regarding Article 33 and 61, I hereby file a

COMPLAINT

- Due to wrongly determined facts – Article 437, paragraph 3, regarding Article 440 of the LCP.

Reasoning

By the attacked judgment, the first-degree court, pursuant to Article 423, item 2 of the LCP acquitted the following:

I. def. Dubravka Đorđević, Aleksandra Gavrilović and Đurda Prica that they performed one extended criminal act of Misuse of position of responsible person from Article 234, paragraph 3 regarding paragraph 1 CC in complicity regarding Article 33 and 61 CC,

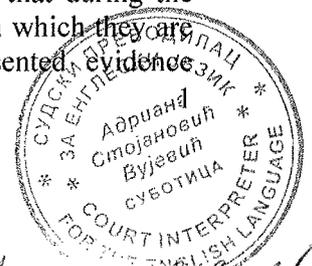
II. def. Dubravka Đorđević, Aleksandra Gavrilović, Đurda Prica and Maja Šteger that they performed one criminal act of Misuse of position of responsible person from Article 234, paragraph 3, regarding paragraph 1 CC in complicity regarding Article 33 CC,

III. def. Duško Nikitović and Vojin Manasijević that they performed one extended criminal act of Misuse of position of responsible person from Article 234, paragraph 3 regarding paragraph 1 CC in complicity regarding Article 33 and 61 CC,

IV. def. Duško Nikitović that he performed criminal act of Misuse of position of responsible person from Article 234, paragraph 2, regarding paragraph 1 of the Criminal Code,

and pursuant to Article 265, paragraph 1 of the LCP, issued the decision that the **costs of the criminal procedure and lump sum are borne by the budgetary funds of the court.**

In the reasoning of the judgment and this decision, the court stated that during the procedure, it was not proven that the defendants performed the criminal acts with which they are charged. The court states that it issued this decision evaluating each presented evidence.



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individually and in mutual connection of one evidence with another, as well as with the defenses of the defendants, and according to judge made law, in terms of Article 16 and 419 of the LCP.

Namely, by reasoning his decision, the court completely believes the defenses of the defendants, stating that they stated the reasons for issuance of its decision clearly and in detail, and that they considered their decision to be correct business moves, and not actions which would obtain illegal property gain for DTD Ribarstvo. The court further states that Tomislav Đorđević was the owner of the company DTD Ribarstvo, that he was the buyer of the company of Ribarsko gazdinstvo Belgrade, until the termination of the Contract on privatization, and that, until the termination of the Contract on privatization, Tomislav Đorđević invested into the company Ribarsko gazdinstvo. The court further states that this is confirmed by the witnesses Igor Kizor, Mijrana Srijemanc, Gorada Gašparović, and that these witnesses state that the objects had to be invested into, that Tomislav Đorđević started with the payment of the privatized company, with payment of installments for the purchase of the company Ribarsko gazdinstvo, and that the moment when he believed that his rights are violated, he submitted an appeal for the legal realization of his rights, because every document of the company which is of significance for this procedure is recorded in the business documentation of the company Ribarsko gazdinstvo. The court claims that the defendants did not hide their decisions, and that the according to the fact that during the procedure no illegal property gain for the company DTD Ribarstvo was determined, the court concluded that the defendants undertook their actions exactly as business moves, and not as actions intended for obtaining illegal property gain for DTD Ribarstvo.

Therefore, the court concludes that the direct premeditation of the defendants for the performance of criminal acts with which they are charged has not been proved, and it concludes that the defendants did not commit the acts with which they are charged, and they were thus acquitted.

We consider that the court wrongly determined the facts and on the basis of such determined facts, acquitted the mentioned defendants, and such attitude was also reasoned by the prosecutor's office in its final address, which is present in the acts of the case.

We disagree with the attitude of the court, that the Prosecutor's Office did not prove that the defendants are responsible for the performance of criminal acts with which they are charged, but contrary to the statement of the court and presented evidence, the guilt of the defendants is proved in this procedure.

This is determined primarily by the finding and the opinion of the Company for forensic evaluation "Expertise" for whose forensic evaluation during the procedure proved that it was completely valid and from whose evidence it is determined that the total debt of DTD Ribarstvo Bački Jarak towards Ribarsko gazdinstvo within debtor-creditor relations on 31 December 2010 with entered and non-entered transactions amounted to 131.349.108,52 RSD. Furthermore, the expert witnesses of the Company for forensic evaluation "Expertise" determined that provisions of the Contract on the sale of social capital RGB item 5.3.3. regulate that the buyer until final payment of the purchase price will not alienate any of the basic funds in one year more than 10%, i.e. for the whole period not more than 30% taking into account the value of funds according to the last balance, and these expert witnesses found that the **buyer in 2008, alienated the funds** amounting to 151.829.787,93 RSD or **38,89%** related to the value of basic funds on 31 December 2007, which amounted to 390.433.000,00 RSD, and **in 2009** the value of alienated property amounted to 95.869.347,60 RSD or **14,75%** related to the value of basic funds on 31 December 2008.

The company for forensic evaluation "Expertise" determined that the difference between the contracted value of lease and estimated market price of lease for all collected objects in all distribution centers was 8.650.794,50 RSD. According to the finding of the expert witness of



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the Company for forensic evaluation "Expertise" it was determined that the Decision of the Executive Board that the evaluation of property, plants and equipment is to be performed, without previous change of accounting policy regulating the valuation of this balance position, is contrary to Article 2, paragraph 1 and 4 of the Law on Accounting and Auditing, and thus these expert witnesses determined that the difference between the contracted sale value and estimated market value for objects and land of the distribution center **in Belgrade** amounts to 64.350.708,30 RSD, that the difference between the contracted sale value and estimated market value for objects and land of the distribution center **in Čačak** amounts to 10.109.910,00 RSD, for objects and land **in Aleksinac** amounts to 1.980.392,50 RSD, and for objects and land **in Jagodina** amounts to 6.783,020,00 RSD, and that this difference for objects and land amounts to 26.706,200,00 RSD, and for prefabricated and brick objects in Contracts no. 090317/2 and 090317/1 amounts to 4.709.900,00 RSD.

Expert witnesses of the construction profession from the Company for forensic evaluation "Expertise" Nenad Đorđević and Zoran Sekulić determined that the evaluation of the market value of property which were the subject of Ribarsko gazdinstvo Belgrade, namely the garage, plateau and roads of the Distribution Centre Belgrade B, with the total surface area 1025,41 m², Distribution Centre object B Belgrade, Distribution Centre Aleksinac, Distribution Centre Čačak, Distribution Centre Jagodina and 16 fish stores, a total of 509.865.385,50 RSD, which is the evaluated market value related to the Agency "Vukadinović" for the amount of 35.553.327,62 RSD.

The expert stated that the subject of the purchase contract was also **the land in construction parcels**, which was not the subject of the evaluation of the Agency "Vukadinović" and whose evaluation amounted to 22.360.900,00 RSD, thus they stated their opinion on the evaluation of value **according to the contract on the lease of business premises** (office and storage), with the company "Juko hemija", where it was determined that the total lease for 18 months amounted to 897.750,00 RSD, and that, according to the lease on business premises in the period from 25 June 2007 until 22 December 2008 for all objects which were the subject of the lease, customs area of 47 m² in Belgrade, refrigerator, storage and auxiliary premises of the Distribution Centre Aleksinac, refrigerator and fish pools Distribution Centre Jagodina, refrigerator and storage in Sremska Mitrovica amounted to 15.049.946,00 RSD.

Contrary to this evaluation which is completely valid and which corresponds to the precise order of the then investigative judge of the Higher Court in Belgrade from 14 January 2011, the court finds that the findings of these expert witnesses did not reliably determine the value of objects and vehicles which are the subject of this procedure, not the real value of the use storage space and amount of lease of objects, which are the subject of this procedure. Contrary to this, the court completely **believes the finding of the expert witness Vukadinović, for whom it is not known who hired him, with what purpose, and which is claimed by Vukadinović himself, when he was examined as a witness during the search, and this witness confirmed that he "had thrown away the papers"**. If he had acted as an expert witness, the question arises as to which expert witness throws away the papers of the subject that he evaluated, and which he would need during the procedure in any case, if the court called him to clarify his forensic evaluation.

The court indisputably determined that Vukadinović performed the evaluation of property of Ribarsko gazdinstvo Belgrade, due to entry of capital. Under entry of capital, Vukadinović refers to change of entry of capital arising due to change of value of capital in the market, due to course of time. It is stated that he gave in the evaluation in December 2008, and all this happened in the autumn of 2008. The court indisputably determines that the expert witness went out on the field, performed verification, formed a professional team for the making of this evaluation.



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The court further determined that all the expert witnesses themselves stated that they made omissions in the determination of value, thus he concluded that the expert witnesses did not determine the value of property which is the subject of this procedure professionally or objectively, finds that the **findings of all expert witnesses were attacked by the statements of the professional advisors for economic-financial area Marina Protić and appraiser Danijela Ilić**, whose statements were trusted by the court claiming that their statements are clear and convincing, and they confirmed their statements with evidence presented in writing, thus they pointed out the the court the undoubted omissions of the other expert witnesses.

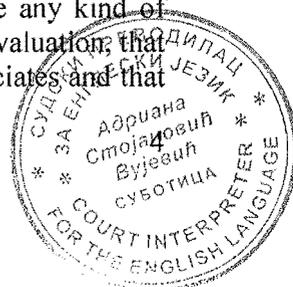
This statement of the court that these expert witnesses confirmed their statements with evidence presented in writing cannot me accepted, but the court believes these expert witnesses stating that their statements are clear and convincing. The question arises as to what is more convincing that the written documentation in the act. What has been determined during the procedure it that the expert witnesses for the evaluation of one object took the evaluation of the Agency "Vukadinović" but not for the other, and expert witness Dragoljub Đuković pointed out these very omissions. The court determined that the **expert witness of the economic-financial profession Dragoljub Đuković stated that the provisions of Article 422 of the Law on Companies have been violated, because for some objects evaluation of value were taken according to "Vukadinović" and sometimes not, and this should not have been done so.** The court then states that the expert witness Dragoljub Đuković did not explain how this provision was violated. It is sufficient that the expert witness pointed out that wrong values were taken for evaluation, called upon the provision of the law and said that it was contrary to the provision of the law and certain article. He is not the one who should interpret the law.

Furthermore, when the expert witness Slavica Subotić states that omissions existed, which is in any case possible during work, the court claims that this expert witness does not provide explanation in which manner they determined all stated in the finding by both expert witnesses Slavica Subotić and Dragoljub Đuković, which is completely opposite to the presented evidence in the main hearing.

Trusting the professional advisor for economic-financial profession Marina Protić, who claims that actually only 12% of property of Ribarsko gazdinstvo was alienated, and this claim is completely unobjective and not based on evidence, during which this professional advisor calls upon the "Official book entry value", which would certainly be the value of the appraiser "Vukadinović" which was also recorded in the business books. This evaluation was also done as an extraordinary evaluation for the reason of intention of sale of business premises of RGB, and that this was exactly as the prosecutor's office claims is confirmed by the evaluation itself, where values of all objects which were sold are lower, and objects that remained in the property of Ribarsko gazdinstvo Belgrade, are higher than the existing book entry values. **In this manner it was included as a book entry value, value not corresponding to the real state of affairs and which, as it was said and done due to forthcoming sales.**

The stated entry of the subject evaluation is contrary to regulations and it has been determined by the claim of an independent auditor, who stated that the company should not have entered the results of the evaluation, i.e. that **the result of the evaluation of Agency "Vukadinović" could have been entered only in the case if the accounting policy of subsequent valuation of material investments and basic funds was changed into fair values, which was not done.** This clearly indicated the effects of change of accounting policies by the authorized auditor.

We especially note that during the forensic evaluation "Vukadinović", Vukadinović was questioned in the capacity of the witness, and he stated that he did not have any kind of agreement concluded with the Ribarsko gazdinstvo Belgrade regarding the marked evaluation, that he does not have any documentation but that he went out on the field with his associates and that



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he threw away the document and that there is no trace of the manner in which he performed these evaluations. Thus, it is completely inconceivable that the court trusts the forensic evaluation of the witness Vukadinović.

By analyzing other presented evidence, the Prosecutor's Office believes that they are of such quality and reliability that it can be said that the defendants: Dubravka Đorđević, Aleksandra Gavrilović, Đurđa Prica, Duško Nikitović, Vojin Manasijević and Maja Šteger are criminally responsible for the performance of criminal acts with which they are charged, that the court determined the facts in a completely wrong manner in the attacked judgment, and thus on such determined facts it rendered the acquitting judgment, due to which we

PROPOSE

That the Appellate Court in Belgrade **AMEND** the attacked judgment of the Higher Court in Belgrade K.no. 127/2014 of 18 June 2018 and the defendant:

Dubravka Đorđević, Aleksandra Gavrilović and Đurđa Prica be found guilty of one extended criminal act Misuse of position of responsible person from Article 234, paragraph 3, regarding paragraph 1 of the CC in complicity, regarding Article 33 and 61 of the CC,

def. Dubravka Đorđević, Aleksandra Gavrilović, Đurđa Prica and Maja Šteger be found guilty of one criminal act of Misuse of position of responsible person from Article 234, paragraph 3, regarding paragraph 1 CC in complicity regarding Article 33 CC,

Duško Nikitović and Vojin Manasijević be found guilty of one extended criminal act of Misuse of position of responsible person from Article 234, paragraph 3 regarding paragraph 1 CC in complicity regarding Article 33 and 61 CC,

Duško Nikitović be found guilty of one criminal act of Misuse of position of responsible person from Article 234, paragraph 2, regarding paragraph 1 of the CC.

DEPUTY PUBLIC PROSECUTOR

Ljiljana Mauković

signature illegible

round seal affixed hereto:

Coat of Arms of the Republic of Serbia

Republic of Serbia, Belgrade

Higher Prosecutor's Office in

Belgrade

I, Adriana Stojanović Vujević, Court Interpreter for the English Language, hereby certify that the above translation is in full conformity with the original document presented to me in the Serbian language.
Subotica, 21/10/2019

File No: 3492/19

Adriana Stojanović Vujević, Court Interpreter for the English Language



Adriana C. Vujević