

Coat of Arms of the Republic of Serbia
 Republic of Serbia
 APPELLATE COURT
 IN BELGRADE
 Kžl no. 404/19
 03/07/2019
 Belgrade

stamp affixed hereto:
 HIGHER COURT
 IN BELGRADE
 03/09/2019
 RECEIVED

IN THE NAME OF THE PEOPLE

APPELLATE COURT IN BELGRADE, in the council composed of judges Zdravka Đurđević, president of the council, Dragoljub Albijanić and Olivera Anđelković, members of the council, with the participation of the senior advisor Aleksandar Bagaš as the recording clerk, in the criminal procedure against the defendants Dubravka Đorđević and others, due to 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 and other, deciding the appeal of the Higher Prosecutor's Office in Belgrade filed against the judgment of the Higher Court in Belgrade K no. 127/2014 of 18 June 2018 in the public session held on 2 and 3 July 2019, in absence of the properly notified APP and the defendant Dubravka Đorđević, in the presence of the defendants Aleksandra Gavrilović, Prica Đurđa, Šteger Maja, Nikitović Duško and Vojin Manasijević as well as the lawyer Zdenko Tomanović, lawyer Dejan Dobrosavljević, lawyer Olivera Budakov, lawyer Zoran Pavković and lawyer Zara Tijanić Jeftović on 3 July 2019 rendered the following

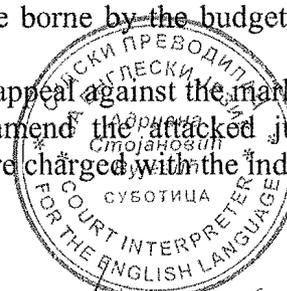
JUDGMENT

Appeal of the Higher Prosecutor's Office in Belgrade **IS REJECTED** as ungrounded, and the judgment of the Higher Court in Belgrade K no. 127/2014 of 18 June 2018 **IS CONFIRMED**.

Reasoning

According to the judgment of the Higher Court in Belgrade K no. 127/2014 of 18 June 2018, the defendants Dubravka Đorđević, Aleksandra Gavrilović, Đurđa Prica, Maja Šteger, Duško Nikitović and Vojin Manasijević are, pursuant to Article 423, item 2 of the LCP, acquitted, in item 1 the defendant Dubravka Đorđević, Aleksandra Gavrilović and Đurđa Prica due to 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, and in paragraph 2 the defendant Dubravka Đorđević, Aleksandra Gavrilović, Đurđa Prica and Maja Šteger due to performance 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, while in paragraph 3 of the attacked judgment the defendants Duško Nikitović and Vojin Manasijević are acquitted regarding committing 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, and in paragraph four, the defendant Duško Nikitović was acquitted due to performance of criminal act of misuse of position of responsible person from Article 234, paragraph 2, regarding paragraph 1 of the Criminal Code. Pursuant to Article 265, paragraph 1 LCP, it has been decided that the expenses of the criminal procedure and lump sum are borne by the budget funds of the court.

The Higher Public Prosecutor in Belgrade filed the appeal against the marked judgment due to wrongly determined facts with the proposition to amend the attacked judgment and sentence the defendants due to criminal acts for which they were charged with the indictment.



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The responses to the appeal of the Higher Public Prosecutor in Belgrade were delivered by:

- the lawyer of the defendants Dubravka Đorđević, Aleksandra Gavrilović and Đurđa Prica, lawyer Zdenko Tomanović with the proposition that the appeal of the prosecutor's office be rejected as ungrounded and the attacked judgment confirmed and that the lawyer and the defendants be notified of the council session.

- the lawyer of the defendant Maja Šteger, lawyer Olivera Budakov with the proposition that the appeal of the prosecutor be rejected as ungrounded and the attacked judgment confirmed.

- the lawyer of the defendant Duško Nikitović, lawyer Dejan Dobrosavljević with the proposition that the appeal of the prosecutor be rejected as ungrounded and the attacked judgment confirmed, and that the lawyer and the defendants be notified of the date and hour of the council session.

- the lawyer of the defendant Vojin Manasijević, lawyer Zoran Pavlović with the proposition that the appeal of the prosecutor be rejected as ungrounded and the attacked judgment confirmed.

- the defendant Đurđa Prica with the proposition that the attacked judgment be confirmed.

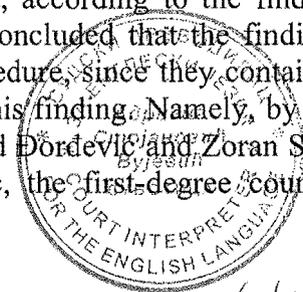
Appellate Public Prosecutor's Office in Belgrade delivered the submission Ktž no. 433/19 of 24 April 2019 in which he proposed that the Appellate Court in Belgrade adopt the appeal of the prosecutor and amend the attacked judgment and sentence the defendants within the basis, act and direction of attack pointed out in the appeal of the Higher Public Prosecutor.

Appellate Court in Belgrade held a public council session in which it considered the acts of the case and examining the attacked judgment within the basis, act and direction of attack pointed out in the appeal, found the following:

- the appeal is ungrounded.

Attacking the first-degree judgment due to wrongly determined fact, the higher public prosecutor in the filed appeal primarily contests the conclusion of the court which did not accept the finding and the opinion of the Company for forensic evaluation "Expertise" since, according to the finding of the prosecutor, the finding and the opinion of the Company for forensic evaluation "Expertise" is valid and from the aforementioned finding, according to the finding of the appeal, it has been determined that the defendants performed the subject criminal acts. Apart from that, the prosecutor states in the appeal that the Company for forensic evaluation "Expertise" also determined that the difference in the value of the lease contract and estimated market price of lease for all purchased objects in all distribution centers is 8.650.794,50 RSD and that the expert witnesses from the Company for forensic evaluation "Expertise" determined that the evaluation of the market value of the real estate which was the subject of the purchase of Ribarsko gazdinstvo is significantly higher than the estimated market value in relation to the Agency "Vukadinović".

However, these appeal statements of the prosecutor have been evaluated as ungrounded by the Appellate Court in Belgrade. This due to the fact that, according to the finding of the Appellate Court in Belgrade, the first-degree court properly concluded that the findings of the expert witness "Expertise" cannot be used in the criminal procedure, since they contain essential deficiencies due to which court judgment cannot be based on this finding. Namely, by the proper analysis of the expert witness of the economic profession Nenad Đorđević and Zoran Sekulić and expert witness of the transport profession Milijan Todorović, the first-degree court properly



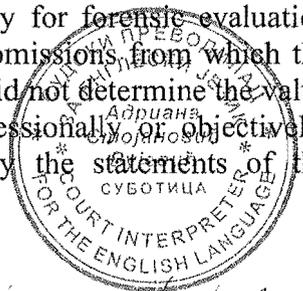
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determined that their findings did not reliably determine the value of objects and vehicles which are the subject of this procedure, as well as the real value of the use of storage space and the amount of lease of object which are the subject of this procedure, and as these values had not been reliably determined, this means that it had not been determined with reliability that the defendants obtained illegal property gain for the company DTD Ribarstvo in the amount as it was stated in the indictment, this amount representing a significant feature of the criminal act with which the defendants are charged, and according to the regular conclusion of the first-degree court, it has not been determined with reliability that now deceased Tomislav Đorđević acted contrary to the provisions of the provision of the contract of the purchase of social capital RGB from 4 June 2007.

Regarding the economic-financial evaluation and the finding of the expert witness of the economic-financial profession, the first-degree court, during taking the attitude that this finding and opinion may not be accepted, determines the fact that the expert witnesses of the economic-financial profession, during giving a statement and after demonstrating the omissions made during the forensic evaluation and writing of the finding, themselves stated that they were wrong in the method of work during determination of value, expert witness Slavica Subotić stating that errors are possible and simultaneously stating that she does not know why they did not take values for retail objects on the day of purchase, and the first-degree court properly evaluated the fact that this expert witness could not answer many questions, and that she did not know the answer to many questions, which definitely affects the final conclusion of the court in terms of validity of this finding and opinion of the expert witness. Expert witness of the economic-financial profession Dragoljub Đuković in his statement also stated that they were wrong during performance of forensic evaluation because with some objects they took the value evaluation performed by the Agency "Vukadinović" and sometimes not, and that they should not have done that, not explaining how Article 422 of the Law on Companies was violated and he claimed that the same was violated. Expert witness Slavica Subotić also did not give any explanation in which manner all stated in the finding was established, stating that they made mistakes during forensic evaluation.

Regarding the finding and the opinion of the expert witnesses of the construction profession, the court evaluated the statement of the expert witness of the construction profession Nenad Đorđević, in which he stated that he gave his finding for harmonization to Radoslav Svičević who already had the finding of the expert witness of the economic profession and the expert witness of the transport profession and that Svičević told them to accept it as such and that he received from Svičević the "order" that he is to treat objects as new ones, and that they, as with the lease of objects, treated objects as new ones, although it was determined indisputably that the objects were not new, which was of deciding significance for determination of value of subject objects. Then this expert witness stated that the director of the Company "Expertise" Radoslav Svičević integrated all their findings on his own into the final text of the finding and that at the moment of the making of the finding Svičević was his director and that he told him that he is the one submitting it and that he wants it to be so, on the basis of which the first-degree court properly concluded that this expert witness did not do his job in the manner as his profession orders him to do, but in the manner that Svičević proposed him to do. Upon mentioning the fact that Radoslav Svičević is a doctor of psychology, first-degree court properly concludes that he was not competent to integrate findings of the expert witnesses of the economic-financial profession, construction profession and transport profession into the final text of the finding, on the basis of which he made the proper conclusion that the findings of the expert witness "Expertise" cannot be used in this criminal procedure.

Apart from this, all the expert witnesses from the Company for forensic evaluation "Expertise" also stated that during determination of value, they made omissions, from which the first-degree court made the proper conclusion that the expert witnesses did not determine the value of the property which is the subject of this procedure adeptly, professionally or objectively. During this, the findings of these expert witnesses were refuted by the statements of the



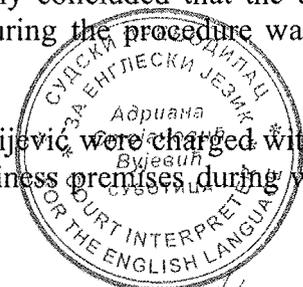
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professional advisors for the economic-financial area Marina Protić and appraiser Danijela Ilić, who were questioned at the main hearing, whose statements the first-degree court properly believed since the same are clear, convincing and confirmed by the written presented evidence, due to which the appeal statements of the prosecutor with which the first-degree judgment is essentially attacked with pointing out that the first-degree court should have accepted the finding and opinion of the expert witness of the Company for forensic evaluation "Expertise" were evaluated as ungrounded, since the finding and the opinion of these expert witnesses was compromised due to essential omissions made by the expert witnesses of the Company "Expertise", and according to the proper conclusion of the first-degree court the same finding and opinion could not have been the basis for determining the facts in this criminal case.

The prosecutor in the filed appeal also contests the statements of the professional advisor for the economic-financial profession Marina Protić who claimed that actually only 12% of the property of Ribarsko gazdinstvo was alienated, during which the mentioned statement was completely unobjective and not based on evidence according to the finding of the appeal. However, these appeal statements of the prosecutor were evaluated as ungrounded since the first-degree court properly believed the statement of the professional advisor Marina Protić who indicated the undoubted omissions of the expert witnesses to the court, of which the expert witnesses of the Company "Expertise" themselves pleaded, due to which the statement of the professional advisor for economic-financial area Marina Protić was properly evaluated as clear and convincing by the first-degree court, during which the Prosecutor did not give any evidence on the basis of which the statement of this professional advisor could be contested.

Apart from this, the first-degree court properly concludes, bearing in mind the fact that the defendant Tomislav Đorđević, during this criminal procedure, died and that by insight into the subject decisions of the Executive Board, it was determined that the defendants Dubravka Đorđević, Aleksandra Gavrilović, Đurđa Prica and Maja Šteger in the executive board made the decision that a certain part of property of Ribarsko gazdinstvo from Belgrade can be sold, and not to sell the same, which clearly indicates that the members of the Executive Board did not affect the evaluation and determination of value of property which is the subject of sale, and the first-degree court properly concluded that the decisions made by these defendants do not indicate the existence of direct premeditation, as the defendants in their defense clearly and in detail stated the reasons for reaching their decision and that they considered their decisions to be proper business moves and not actions allowing DTD Ribarstvo to obtain illegal property gain, their statements not being contradicted by any evidence presented in the main hearing, which the first-degree court accepted. Bearing in mind the fact that Tomislav Đorđević was the owner of the company DTD Ribarstvo, that he was the buyer of the company Ribarsko gazdinstvo Belgrade until the termination of the privatization contract, that until the termination of the privatization contract Tomislav Đorđević invested into the company Ribarsko gazdinstvo, which is confirmed by witnesses Igor Kizor, Marijana Srijemac, Gordana Gašparović who stated that the objects had to be invested into, that Tomislav Đorđević began paying the installments of the purchase of the privatized company Ribarsko gazdinstvo, that when he considered that his rights were violated, he submitted the appeal for the realization of his rights, bearing in mind that the business documentation of the company Ribarsko gazdinstvo recorded every document marked for this procedure, that the defendants did not hide their decision, and taking into account the fact that during the procedure it was not determined that illegal property gain for the company DTD Ribarstvo was obtained, the first-degree court properly concluded that the defendants undertook their actions as business moves and not as actions calculated for obtaining illegal property gain for DTD Ribarstvo on the basis of which the first-degree court properly concluded that the direct premeditation of defendants for the performance of criminal act during the procedure was not proved.

Finally, the defendants Duško Nikitović and Vojin Manasijević were charged with the subject indictment that they concluded contracts on the lease of business premises during which



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the first-degree court properly concludes that the lease contracts do not alienate property but give property for use, and that the actions of these two defendants may not be connected to the obligation of the now late Tomislav Đoršević from the contract on sale of social capital of 4 June 2007, that he will not alienate basic funds in the higher amount than provided for since the defendants Duško Nikitović and Vojin Manasijević could not alienate basic funds by their actions for which they are charged, in the amount higher than provided for by the subject contract on the sale of social capital, since the legal nature of the lease contract excludes the possibility of alienation of property. Apart from this, the prosecutor's office during this procedure, did not prove that the defendants Nikitović and Manasijević by conclusion of the subject lease contract, obtained illegal property gain for DTD Ribarstvo in the amounts stated in the indictment. Namely, the statement of the prosecutor's office from the indictment as well as the appeal, that there is a difference between the contracted lease value and estimated market value of lease is also based on the finding of the Company for forensic evaluation "Expertise". However, the finding of this company was not properly accepted by the first-degree court since it contains essential deficiencies which make it unusable in this criminal procedure. When it comes to the part of this finding relating to objects which were sublet, expert witness Nenad Đorđević pointed out that during evaluation, he received the order from Svičević that he should treat objects as new although it was obvious that the objects were not new. Expert witness Zoran Sekulić in his statement stated that during the making of findings they determined the amount of lease and that they did not determine the condition of refrigerator installations when it comes to refrigerators, and that they did not ask questions as to which standards should be met by the refrigerator. The expert witness further in the statement stated that the amount of the lease was determined by calling the business premises and obtaining information on the amount of lease in that manner and that they also called some companies engaged in the same job. Bearing in mind the aforementioned, the first-degree court makes the proper conclusion of the impossibility to use such a finding of the Company for forensic evaluation "Expertise" since the expert witnesses during the making of the finding and the evaluation of market value of lease of real estate did not bear in mind the parameters affecting the increase or reduction of the market value of lease. Treating real estate which are the subject of the lease as new although they were not new and failure to determine the functionality of objects which are the subject of lease, the circumstances of which significantly affect the evaluation of market value of lease, the expert witnesses according to the proper evaluation of the first-degree court made a series of omissions compromising the finding to the extent that court decision may not be based on it, due to which the contrary appeal statements of the prosecutor were evaluated as ungrounded.

Bearing in mind that during the procedure it was not proved that the defendants obtained with their actions illegal property gain for the company DTD Ribarstvo and that they undertook their actions with direct premeditation to cause such a consequence, the first-degree court properly concluded that it was not proved that the defendants performed the criminal acts for which they were charged by the indictment and by virtue of application of Article 423, item 2 of the LCP, the court acquitted them properly.

Considering that the defendants were acquitted, the first-degree court, by virtue of application of provision of Article 265, paragraph 1 of the LCP, properly concluded that the expenses of the criminal procedure and the lump sum are borne by the budget funds of the court.

Due to all aforementioned, Appellate Court in Belgrade rendered the decision as in the wording of the judgment pursuant to Article 457 of the LCP.

Recording clerk
Aleksandar Bagaš, duly signed

Council president, judge
Zdravka Đurđević, duly signed

For the accuracy of the engrossment



Adriana Stojanovic Vukovic

Chief clerk
Jasmina Đokić

signature illegible
round seal affixed hereto:
Coat of Arms of the Republic of Serbia
Republic of Serbia, Belgrade
Appellate Court in Belgrade



Adriano J. Vujesvic

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HIGHER COURT

In Belgrade, 10 September 2019

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round seal affixed hereto:

Coat of Arms of the Republic of Serbia

Republic of Serbia, Belgrade

Higher Court 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, 26/09/2019

File No: 3331/19

Adriana Stojanović Vujević, Court Interpreter for the English Language



Adriana S. Vujevic