

COURT OF BOSNIA AND HERZEGOVINA

No. X-K-06/319

Sarajevo, 19 April 2007

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, Judge Mirza Jusufović, with the participation of the legal officer Bojan Avramović, as a record-taker, in the criminal case against the accused Željko Kovač for the criminal offence Tax Evasion in violation of Article 210 (1) of the Criminal Code of Bosnia and Herzegovina (hereinafter BiH CC), upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-352/06 dated 25 December 2006, following the plea agreement hearing and the trial for pronouncement of the criminal sanction, in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Ismet Šuškić, the accused Željko Kovač, and his defence attorney, Almir Selimović, attorney-at-law from Sarajevo, on 19 April 2007 rendered and publicly announced the following

VERDICT

ACCUSED:

Željko Kovač, son of Mato and Ruža, née Širić, born on 18 October 1966 in Posušje, residing in Kovači, no number, Posušje Municipality, Croat by ethnicity, a citizen of BiH, completed secondary vocational school, major in civil engineering, employed by the *Tehno Star d.o.o. Posušje* company, he was the director of *Kovač d.o.o. Posušje* company, married, father of three, JMBG 1810966153356

HAS BEEN FOUND GUILTY

Because

In the period from 22 March 2005 to 25 March 2005 as the owner and creator of *Kovač d.o.o. Posušje*, with their seat in Posušje and the taxpayer in terms of Article 5 of the Law on Tax on Turnover of Goods and Services (Official Gazette 62/04) with the aim of avoiding to pay the taxes on turnover, he sold the goods procured from different suppliers in total value of 105, 405.00 KM to the clients known to him, and did not calculate or register the sales, in violation of Articles 21, 24, 26, and 27 of the Law on Tax on Turnover of Goods and Services, and did not pay the taxes on the sales, while he covered it with the blank stamped purchase orders and statements that the goods were intended for resale to the legal entity *Uspjeh Prom d.o.o. Sarajevo*; in his account-keeping he produced fictitious invoices and dispatch notes, falsely showing that he sold goods and delivered it to *Uspjeh Prom d.o.o. Sarajevo*. Then the cash which he received for the goods from the clients known to him, was shown on the bank accounts in the payment transactions of *Kovač d.o.o. Posušje* in accordance with these fictitiously created documents, and he directly or through mediators gave the cash to the owner of *Uspjeh Prom d.o.o. Sarajevo* while there was no real turnover, with the aim of depositing the money into the account of *Uspjeh Prom d.o.o. Sarajevo* at *Uni Kredit Zagrebačka Banka d.d. Mostar* and *Hypo Alpe Adria Bank d.d. Mostar* and at the same time transferring that money to the accounts of *Kovač d.o.o. Posušje*; in doing so he avoided and did not pay the sales tax in the amount of 21, 090.00 KM.

Therefore, he avoided the payment of the tax liability in violation of the BiH tax legislation having provided false data about the facts based on which the amount of tax was calculated. The amount of the tax, which was not paid, exceeds 10,000.00 KM.

Whereby he committed the criminal offence of Tax Evasion in violation of Article 210 (1) of the BiH CC.

Therefore the Court, pursuant to the above mentioned legal provision, as well as Articles 39, 46 and 48 of the BiH CC imposes a

FINE

on him in the amount of 10,000.00 KM (ten thousand KM)

which the accused has to pay within 60 days as of the date the Verdict becomes final. Should he fail to do so, the Court shall render a special decision, wherein the fine will be substituted by imprisonment in such a way that **the term of imprisonment shall be calculated as one day of imprisonment per each 50 KM of the total fine that remains unpaid**

Pursuant to Article 188 (1) of the BiH CPC, the accused Željko Kovač is liable to reimburse the cost of the criminal proceedings in the amount of 50 KM and advance of 100 KM, all within 30 days as of the date the Verdict becomes final.

Reasoning

The Prosecutor's Office of Bosnia and Herzegovina by the Indictment No. KT-352/06 dated 25 December 2006, charged Željko Kovač with the criminal offence of Tax Evasion in violation of Article 210 (1) of the BiH CC. The Indictment was confirmed by the preliminary hearing judge of this Court on 3 January 2007.

At the plea hearing, on 29 January 2006, the accused pleaded not guilty under each and every count of the Indictment of the Prosecutor's Office of BiH, No. KT-352/06 dated 25 December 2006, confirmed on 3 January 2007.

On 19 April 2007 the accused Željko Kovač and his defence attorney Almir Selimović, attorney at law from Sarajevo, entered into a plea agreement with Ismet Šuškić, the Prosecutor of the Prosecutor's Office of BiH. The Court of BiH reviewed the plea agreement, in terms of Article 231 of the Criminal Procedure Code of Bosnia and Herzegovina and accepted it, at the hearing held on 19 April 2007. The Court accepted the plea agreement, having been satisfied that it was concluded voluntarily, willfully and with understanding, that the accused was informed of the possible consequences arising from the plea agreement, including those related to a property claim and costs of the criminal proceedings. Also, according to the Court, the evidence submitted with the Indictment by the Prosecutor's Office, to which the defense had no objections, indicates that the accused is guilty. Further, the accused understands that by entering the plea agreement he waives his right to a trial and that he may not file an appeal against the pronounced criminal sanction. Thus the legal requirements for a plea agreement have been met.

After it was accepted, the plea agreement was entered in the record. The pronounced criminal sanction, recommended in the agreement, amounts to 10,000.00 KM.

Having accepted the plea agreement, the Court then deliberated on the criminal sanctions, and having heard the Prosecutor, the accused and his defence attorney, the Court found the

accused guilty of committing the criminal offence of Tax Evasion in violation of Article 210(1) of the BiH CC, and fined him accordingly with 10,000.00 (ten thousand) KM. The Court held that the criminal sanction imposed is commensurate to the gravity of the offence committed and the degree of the criminal responsibility of the accused. Therefore this fine would achieve the purpose of the sanction, not only with regard to the accused but also with regard to all potential offenders and deterring them from committing criminal offences in future.

In deciding on the amount of the fine, the Court took the admission of guilt by the accused as a mitigating circumstance, which resulted in a plea agreement with the Prosecutor's Office of BiH. This certainly contributed to faster and more efficient completion of the proceedings as well as reduced costs. Further, the accused behaved correctly before the Court, cooperated with the Prosecutor's Office of BiH, met the requirements under item 4 of the Agreement, or rather, paid the taxes he had evaded. Also, the accused had no previous convictions and he is a family man with three children. On the other hand there were no aggravating circumstances. The aforementioned mitigating circumstances were important when the Court decided about the criminal sanction and ruled to fine the accused with the said amount.

When pronouncing the fine, the Court ordered the accused to pay it within 60 days starting from the day when the Verdict has become final. Should he fail to pay it within the deadline, the Court shall render a special decision whereby the fine shall be substituted with prison sentence, under Article 47 (3) of the BiH CPC in such a way that **the term of imprisonment shall be calculated as one day of imprisonment per each 50 KM of the total fine that remains unpaid.**

Pursuant to Article 188 (1) of the BiH CPC the accused Željko Kovač is liable to reimburse the cost of the criminal proceedings in the amount of 50 KM incurred by Court appearance of the expert witness Kerima Prašljivić as well as the scheduled amount of 100 KM, all within 30 days as of the date when the Verdict becomes final.

Also, bearing in mind the financial situation of the accused, the Court finds him able to cover the costs and his payment would not affect his maintenance or maintenance of his family, he is legally responsible to support.

Record Taker:
Bojan Avramović
(signature duly affixed)

Judge:
Mirza Jusufović
(seal and signature duly affixed)

LEGAL REMEDY NOTE: An appeal may not be filed from this Verdict with regard to the pronounced criminal sanction due to the signed agreement on the requirements on the admission of guilt (Article 231, Paragraph 4, item c) of the BiH CPC). With regard to the rest of the Verdict, an appeal may be filed to the Appellate Division of this Court within 15 days as of the date of its delivery.