

Judgment number / court registry number

Date of judgment 29 April 2020
File name LINDELL Jarno
Note number public prosecution BR. 68.99.1587/11 11N111635

51095 / 2020

Offered on

Dutch-speaking Court of First
Instance Brussels,
criminal cases

Judgment

By default

25th chamber

Ref. registry : 13 - 50 OR Gaudius 2011/124 PP : M. van Aalst

IN THE CASE OF :

Mr. Public Prosecutor at the Public Prosecutor's Office in Brussels, in the name of his office

and

Association BMM, with registered office at 3962 Wijk Bij Duurstede (Pays-Bas), Lodewijk De Vromestr 25,

Represented by M. Andreas Reygaert, attorney.

Civil party

Consignment of civil party : 5.500 eur.

AGAINST :

51362

1) LINDELL Jarno Mikael, born in Tampere (Finlande) on the 4th of March 1979, living at 90630 Oulu (Finlande), Paafikatu 2 a 19, without a known domicile or residence, of Finnish nationality

Deceased.

51363

2) TEMONEN Teemu Petteri, born at Pori (Finlande) the 28th of July 1980, living at 12652 HAGERSTEN (Suède), Huvudfabriksgatan 4 van 1202, without known domicile or residence, of Finnish nationality

Who did not appear.

Defendants

INDICTMENTS

As perpetrator or co-perpetrator within the meaning of article 66 of the Criminal Code;

A. Being part of a criminal organization

even without intention to commit a crime within the framework of a criminal organization or to participate in one of the ways referred to in Articles 66 to 69 of the Criminal Code, knowingly and intentionally participating in a criminal organization, being a structured association of more than two persons for a certain period of time, with a

purpose of committing in mutual agreement crimes and offences punishable by imprisonment for three years or a more severe penalty in order to obtain, directly or indirectly, financial benefits, using intimidation, threats, violence, trickery or corruption, or by using commercial or other structures to conceal or facilitate the commission of offences, the actual purpose of which is not solely political, commercial, humanitarian, philosophical or religious or does not exclusively pursue another legitimate purpose.

to have been part of an organization that intended to commit fraud by means of fraudulent e-mails and to misappropriate the profits thereof, by committing the crimes listed under B,C,D;

(art. 324 bis and 324 ter § 1 Crim. C.)

in Brussels and in cohesion elsewhere inside and outside the Belgian territory during the period of July 20, 2012 until December 6, 2016

By Jarno Mikael LINDELL, Teemu TEMONEN,

B. the falsification of commercial or bank documents, or private documents, and the use thereof

with a fraudulent intent or with intent to cause harm, to have committed the falsification of commercial or banking documents, or a private document, by adding or falsifying any provisions, declarations or facts recorded or contained in this document, and to have used, with the same fraudulent intent or with intent to cause harm, the false document listed above,

to produce an unknown number of invoices, charging the costs of renewing a « trade mark »,

false because the invoices indicate that they were from « ECTO SA » or « EPTO SA » in Brussels, even though there is no such company in Belgium, and

false because the recipient of the invoice has never ordered any services in this regard,

false because the bank account mentioned does not belong to the ECTO, and

false because a logo gives the misleading impression of being a government organization, and

false, because the organization issuing the invoices is in no way authorized to renew the rights of the trade mark;

(Article 193, 196 par. 1 and 5, 213 and 214 Crim. C.)

1. in Brussels and elsewhere on 25 July 2014

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**

an invoice dated 25.07.2014 from EPTO to CAN Insurance Company Ltd for EUR 3.350,-
(K1 F8 S1)

2. in Brussels and elsewhere on 22 August, 2014

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,

an invoice dated 22.08.2014 from EPTO to NEW RAMIC sprl for EUR 3.350,-, (K1 F8 S1)

3. At Brussels and elsewhere on 7 April, 2015

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,

an invoice dated 07.04.2015 from EPTO to REDITUS gie for EUR 3.350,- (KI F8 S25).

C. fraud

with the purpose of appropriating property belonging to another person, to cause the issuance or delivery of sums of money, immaterial goods, commitments, discharges, or debts, whether through the use of false names or false identities, or by using tricks to make people believe in the existence of false businesses, power or imaginary credit, to make them hope or fear a happy ending, an accident or any other delusional event, or to abuse trust or credibility in any other way,

in order to have money paid by bank transfer using the false invoices listed above;

(Article 496, par. 1, Crim. C.)

1. in Brussels, during the period from 8 January 2014 to 13 February 2015

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,

payments for a total amount of EUR 120.600,-;

(K1 F8 S11) (K1 F9 S4)

2. in Brussels, during the period from 13 February 2015 to 5 August 2015

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,
payments for a total amount of 39.100 EUR ;
(KI F8 S42)

D. the conversion or transfer of criminal assets to conceal an illegal origin

the cases referred to in Article 42, 3° of the Criminal Code, i.e. patrimonial benefits derived directly from the crime, property and goods substituted for them and income from profits invested, with the intention of concealing or disguising their illegitimate origin or with the intention of helping a person involved in a crime from which such assets originate, to escape the legal consequences of his or her actions,

to have received money on a BNP Paribas Fortis account 0016287017-38 in the name of International Payment Administration, more precisely the payments mentioned under C and subsequently:

(Article 505, par. 1. 3° Crim. C.)

1. in Brussels and also in Denmark during the period of 11 January 2012 to 17 September 2014

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,

to have transferred sums of money of EUR 214.053,70 from the 'International Payment Administration' to an account Danske Bank DK1130003409006396 on the name of « Skandinavisk IT Central » ;

(KI F9 S12)

2. in Brussels and in cohesion in Denmark during the period of 3 September 2014 to 21 January 2015

by Jarno Mikael **LINDELL**, Teemu **TEMONEN**,

to have transferred sums of money in the amount of 39.980 ,- EUR from the 'International Payment Administration' to 'Nordisk Finans Administration'; (KI F9 S4)

2. PROCEDURE :

Having regard to the interim judgment of November 8, 2019.

The court is aware of the documents relating to the death of the first defendant on 5 June 2019.

At public hearing on 2 October 2019 and 17 January 2020, the case was heard and considered.

The court heard :

- Mr. Reygaert Andreas for and on behalf of the civil party, in its statement and pleas, and filing a note, a submission and 2 files of exhibits ;
- Mr. Van Aelst, deputy public prosecutor, at his request, who filed an explanatory note and an exhibit.

The second defendant was validly summoned, but was not represented.

3. ELEMENTS OF THE CRIMINAL FILE

1.

On 2 August 2011, the Benelux Association for Trademark and Design Law, abbreviated to BMM, filed a civil party complaint with the investigation judge. The reason for this was that several members of this association – trade mark holders or specialists working in trade mark and design agencies – complained that they repeatedly received letters from a company named ECTO S.A. or EPTO S.A., with registered office at 1000 Brussels, De Meëussquare 38/40, in which it was stated that the trade mark would soon be revoked and had to be renewed. Subsequently, invoices were sent by the same company under the same letterhead to the trade mark holders to pay for the so-called renewal of their trade mark registration

The civil party found that the logo used on the letterhead and the invoices of ECTO S.A. or EPTO S.A. was similar to the logo of the official authority responsible for registering trademarks and designs in the European Union, which is the European Union Intellectual Property Office, abbreviated to "EUIPO ". The civil party observed that the names « ECTO » and « EPTO » are similar to the abbreviation of the official authority to whom registration renewals must be paid.

The intermediation of ECTO/EPTO was not necessary because EUIPO contacts the trade mark holders in case a trade mark renewal is necessary. It was also noted that ECTO/EPTO did not wait for any application or order from a trade mark holder, and that it charges exorbitant prices and invoices with VAT, whereas these services are normally exempt from VAT.

The suspicious practices took place at least from 9 February 2010 and still seemed to take place at the time of the confirmation of the complaint on 20 November 2014.

2.

It emerged from the criminal investigation that, since 2011, unsolicited invoices for the renewal of the trade mark registration had been sent to trademark owners, requesting payment to the bank account number BE24 0016 2870 1738 in the name of the company INTERNATIONAL PAYMENT ADMINISTRATION S.M.B.A.

The logo, similar to that of the official authority EUIPO, gave the impression that the invoices were paid to the official entity, while the names used on the invoices were not registered in the Belgian Company Register, and a bank account number was mentioned that did not belong to the official bodies responsible for collecting trade mark payments.

The deceased defendant LINDELL appeared to be the owner and director of the company INTERNATIONAL PAYMENT ADMINISTRATION, which was the holder of the bank account mentioned on the false invoices. This company was initially managed by a certain Mr. SURMONEN, until his death on 8 August 2012 – from that moment on, according to research, his functions were taken over by the late LINDELL.

In addition, the late Mr. LINDELL appeared to hold senior positions in Europe (possibly as a frontman) in several companies based in Germany, Italy, the Czech Republic, Denmark, the Netherlands and elsewhere. LINDELL allegedly took control of these companies by forging signatures. These companies also contacted European trademarks holders by misleadingly informing them that the registration of their trade mark had to be renewed, and obtained exorbitant fees through false invoices.

3.

The bank investigation shows that the profits of INTERNATIONAL PAYMENT ADMINISTRATION S.M.B.A. were transferred to other companies, in particular to the Danish companies NORDIVISK FINANS ADMINISTRATION S.M.B.A. and SCANDINAVISK IT-CENTRAL S.M.B.A., from which the money was in turn transferred to a bank account in Switzerland and a bank account in Hong Kong. At the time of these transfers, the second defendant was the director of SCANDINAVISK IT-CENTRAL.

The second defendant was discovered after he was known to the Berlin authorities as part of a large Finnish investigation into companies offering domain name services. That investigation targeted both the second defendant and Mr. SORMUNEN Markku, the man

from whom the late Mr. LINDELL had taken over a series of companies in order to use these companies for sending out the invoices.

The bank investigations also showed that the practices were maintained for years, with several consecutive companies, names and logos, but always using the same method of operation. This is particularly apparent from the finding that, until the blocking of the bank account BE24 0016 2870 1738 on 20 March 2015, funds were still being received as a result of these illegal practices. On the basis of these and other elements, the public prosecutor concludes that a larger network, more precisely, a criminal organization, is at the origin of sending the false invoices under misleading headings and logos. In the P.V. n. 002721/2017, the illegitimate assets of the criminal organization are estimated at a minimum amount of 1.071.501,02 EUR.

4.

The late Mr. LINDELL declared during his interrogation that he had no knowledge of anything, neither of the transactions on the concerned bank account, nor of his capacity as a manager or director of the concerned companies. According to him, no irregularity was committed. He stated that he had met SURMONEN in Spain, who introduced him to the world of trade mark renewals. Certain questions were not answered because he could not remember.

5.

The address of the second defendant was not known, however he was found at an address in Sweden. During the search carried out at that address, among other things, a bank card, a card reader and documents were found that linked the second defendant to the organization concerning SURMONEN and to the acts committed through the companies INTERNATIONAL PAYMENT ADMINISTRATION S.M.B.A., NORDISK FINANS ADMINISTRATION S.M.B.A. and SKANDINAVISK IT-CENTRAL S.M.B.A.

Norwegian investigators communicated an interrogation of the second defendant. According to information from the Berlin police, the second defendant was the subject of a major Finnish criminal investigation for internet fraud involving companies active in the provision of domain name services. As a result, the second defendant, along with Mr. SURMONEN, were convicted in Finland in 2009 for money laundering and fraud involving companies of which the second defendant was the manager.

The second defendant stated that he worked as a plumber; he also resided in Spain, in Malaga. There he was also in contact with the late Mr. SURMONEN. During his questioning, the second defendant described Mr. SURMONEN as a businessman who tried to make money out of everything. He acknowledged that he had worked for him and talked about importing alcohol and running businesses. He received a reward of EUR 2.000 or EUR 2.500 for signing. It was easy money and he needed money. He does not remember the names

of the companies. He was there when Mr. SURMONEN was killed by a violent crime. He also knows LINDELL as a friend of SURMONEN. He was in contact with LINDELL in Spain until about 2014-15.

As far as the above mentioned companies are concerned, he only gives vague answers. When confronted with what was found in his residence, he also gives evasive answers. He then states that he wanted to protect his family because the entourage of SURMONEN (the group he participated in) is dangerous. He said that he knew nothing about the money transactions carried out to SCANDINAVISK IT-CENTRAL and NORDIVISK.

4. ASSESSMENT OF THE CRIMINAL CLAIM

1.

Due to the death of the first defendant, the termination of criminal proceedings against him must be determined in accordance with Article 20 of the Preliminary Title of the Code of Criminal Procedure.

2.

Invoices are commercial documents that must conform with the public order, as traders must be able to rely on the truthfulness of what is set out in the documents.

Invoices sent to trade mark holders, using various companies, logos and letterheads similar to those of the official body, are false and misleading because they falsely suggest that the payment is made to an official public authority for the renewal of a trade mark registration, while the invoices do not come from an official authority and the company mentioned on the invoices does not exist in Belgium and is in no way authorized to renew trade mark rights or to collect payments in this context, the bank account number mentioned on the invoices is not that of an official public authority authorized to collect payments for trade mark registrations or – renewals.

The offences were committed with the purpose of unlawful self-enrichment, with fraudulent intent and/or with the intention of harming third parties.

False documents, i.e. the false invoices, were used in fraudulent practices, as explained below.

3.

Through the use of falsifications (false invoices), false qualifications, tricks and deceptive means to make people believe in a false business/good result, and thus abuse the trust of

the victims, the second defendant, as co-perpetrator, made him deliver sums of money with the intention of appropriating things that belonged to someone else.

The use of falsifications, trickery or deceptive method was proven, as well as the moral element, consisting of the intention to obtain someone else's goods.

4.

The second defendant is involved in these facts under indictments B and C as co-perpetrator, at least because of his management of the company SCANDINAVISK IT-CENTRAL and the fact that he was the sole mandatary on the bank account of this company, to which money of the unsuspecting victims were transferred. His involvement in the facts also emerges from the finding that he was co-signatory of a mandate, while the late LINDELL was officially the financial beneficiary of NORDISK FINANS, a company which also served to shelter money obtained from fraud and forgery. The late Mr. LINDELL was director and owner of the company INTERNATIONAL PAYMENT ADMINISTRATION, holder of the Belgian bank account number with BNP Paribas Fortis, which was falsely mentioned on invoices and on which unsuspecting trade mark holders thought they were paying for a renewal of their trade mark. During the search for the account of the second defendant, a BNP Paribas Fortis card reader, a business card of the bank's office in Mechelen and extracts of the ECTO/EPTO accounts were found. Also the undeniable cooperation between the perpetrators through the companies ECTO, EPTO and INTERNATIONAL PAYMENT ADMINISTRATION and the second defendant is evident from the second defendant's own statements, in which it became clear that he was instructed by others to carry out monetary transactions and to allow himself to be used as a frontman for the companies that were used to commit the crimes referred to under B and C.

The second defendant therefore committed positive acts that contributed to the completion of the crimes referred to in B and C, with the intent to contribute to the completion of those crimes.

The facts of indictments B and C were proven in respect of the second defendant.

5.

The profits obtained through the fraud (indictment C) were transferred from the account on which unsuspecting victims executed the payments to other bank accounts of companies linked to the larger underlying organisations, i.e. EUR 214,053.70 to the Danish bank account of SCANDINAVISK IT-CENTRAL, and EUR 39,980.00 to the bank account of a Danish company NORDISK FINANS ADMINISTRATION.

The origin of the money transferred is proven.

The first defendant was the director/manager and financial beneficiary of the Danish company NORDISK FINANS ADMINISTRATION. He had an official mandate over the bank account, but the relevant documents were co-signed by the second defendant. The funds were then transferred from the bank account of this Danish company to an account in Hong Kong. All this is demonstrated by the results of the Danish bank investigation.

With the same method, the funds were transferred to the account of the Danish company SCANDINAVISK IT-CENTRAL, and via this company transferred to Hong Kong. According to the police reports, the second defendant was also involved in these operations as director of SCANDINAVISK IT-CENTRAL, the second defendant was also present at the time of SURMONEN's death in Spain, where he died in a fight. From this man, the late LINDELL possibly fraudulently took over a number of companies, spread throughout Europe.

From the manner and the factual context in which the acts were taken, the second defendant knew, or at least should have known, that the amounts transferred were property benefits from a crime.

The transfer/conversion of these sums of money conceals the illegal origin of the funds as it is claimed to be a normal business transaction.

The objective was undeniably to conceal as quickly as possible the sums of money received by fraudulent means in the account of a company posing as a public authority, in order to conceal or disguise the criminal origin of these funds and to help the perpetrators escape prosecution of the main offences (fraud).

The facts of indictment D have been proven in respect of the second defendant.

6.

A criminal organization is defined as any structured association of more than two persons, with a long-term purpose, to commit crimes by mutual agreement, punishable by three years imprisonment or a more severe, in order to obtain, directly or indirectly, property benefits.

The above applies without the organization having only a political, commercial, human, philosophical or religious objective or pursuing any other legitimate purpose.

The Public Prosecutor's Office aims to punish participation in a criminal organization on the basis of article 324ter §1 Crim. C., i.e. a criminal organization that uses intimidation, violence, trickery, threats, commercial or other structures to conceal or facilitate the the

execution of crimes. To be a part of a criminal organization, it is sufficient for a member to be knowingly and intentionally involved in the organization, even if the member does not intend to commit or participate in a crime within the organization or to contribute to the objectives of the criminal organization.

Membership of a criminal organization can be derived by a judge in a sovereign manner, for example, from the inclusion of a function in a corporate structure used by the group to commit or conceal crimes, participation in consultations to commit crimes, provision of financial or material support.

The requirement that participation must be « conscious and intentional » means that the participant in the criminal organization must be aware of the methods used, in this case, under article 324ter §1 (cf. Const. Court 19 September 2014, no. 122/2014, *B.S.* 5 November 2014, 84559-84564).

7.

From the above elements of the criminal case, it must be concluded that there was a criminal organization, i.e. a stable and structured organization, in which the members commit crimes and each, according to a reasonably fixed division of roles, contributes to the commission of crimes and the generation and disappearance of illegitimate assets.

The long-term resilience and functioning of the organization surrounding Mr. SURMONEN, who has since passed away, is evidenced, among other things, by the fact that a succession was provided immediately following his death. At the same time, the long-term and sustainable functioning of the organization is demonstrated by the fact that the events continued to manifest themselves even after the arrest of a member and the blocking of the Belgian bank account.

In addition, the elements of the file, including statements, indicate a climate of violence in and around the organization. There is talk of pressure and fear of reprisals ; according to the statements, those involved remain very vague and do not wish to « snitch ». The bank investigation and the results of the application for legal aid demonstrate the use of companies, corporate structures and puppets to commit and conceal crimes ; in addition, fraudulent means (false invoices) and tricks were used,

The results of reading the Nokia cellphone attributed to the late Mr. LINDELL and the results of the Finnish request for mutual legal assistance, the result of the searches and the statements of the late Mr. LINDELL and the second defendant show, among other things, that they were part of a larger structure, whose true purpose and scope had to be concealed, and that they were only one link in the chain, assuming a more or less fixed role but having to protect the underlying persons.

On the basis of the evidence in the file, there was sufficient evidence that the second defendant knowingly and intentionally participated in the criminal organization.

He consciously took a specific role within the organized structure and for him there was a lasting and conscious will to be part of the organization, with the aim of committing crimes. He was also aware of the practices such as intimidation, threats, trickery and the use of commercial structures as a means for committing or concealing crimes.

The facts of indictment A have been proven.

5. SENTENCING

1.

The proven facts constitute for the second defendant the expression of the same criminal intent and must, in accordance with article 65, paragraph 1 of the Criminal Code, be punished by one single penalty, the severest.

2.

With respect to the conviction, the court takes into account, among other things, the seriousness of the facts, the personal living conditions, the age and criminal record of the defendant, as well as the context in which the facts were committed.

The sanction must be aimed at making the defendant understand the seriousness of the facts and must also have a deterrent effect on other potential offenders.

3.

The acts committed by the second defendant are extremely serious and reprehensible. They reflect an anti-social attitude and a way of life based solely on deception, abuse and personal enrichment to the detriment of social order and the security of commerce, which are seriously disrupted by these offences.

The weight of the facts call for an important social signal.

Elements of the criminal record give grounds for suspicion of related crimes. The defendant has been on the wrong track for a long time. According to his statements, there is no remorse.

4.

The court is of the opinion that imprisonment as determined below is necessary and appropriate to increase the defendant's understanding and to encourage him to stop committing these acts.

In addition, an effective fine is imposed on the defendant as set out below.

5.

The Public Prosecutor's Office claims the confiscation of EUR 1,071,501.02, which is the profit of the criminal organization calculated by the perpetrators (see the following police report n° 002721/2017).

Without prejudice to article 43bis, paragraphs 3 and 4, of the Criminal Code, at the request of the Public Prosecutor, the patrimonial advantages referred to in article 43quater, §2, the property and valuable that have been substituted for it, and the income from the advantages invested in property or in the possession of a person, may be confiscated or that person may be ordered to pay an amount estimated by the court as corresponding to the value of these goods, if he is convicted of the offences described in article 324ter Crim. C. (participation in a criminal organization).

This disqualification may be pronounced against the perpetrators, co-perpetrators and accomplices of one or more of the offences listed in article 43quater Crim. C. and under the conditions provided for in §A, if the convicted person has received other pecuniary benefits during a relevant period (as defined in §3) when there are serious and concrete indications that these benefits derive from the offence for which he has any credible evidence to the contrary.

This prolonged deprivation of benefits or special confiscation of benefits on the basis of article 43quater of the Criminal Code (introduced by the law of 19 December 2002) is optional and is admissible by means of a written request from the public prosecutor (article 43bis Crim. C. and see Cass. 23 September 2008, AR 208.0280.N.).

No written request is currently available.

For the special confiscation of extended financial benefits, a special investigation is ordered by the prosecutor On the basis of article 524bis of the Code of Criminal Procedure :

The jurisdiction which finds the accused guilty of the alleged offence may, at the request of the prosecutor, decide that a special investigation into the offences referred to in paragraph 1 shall be carried out.

Articles 42,3°, 43bis and 43quater of the Criminal Code will be used to determine these benefits.

However, this special asset investigation may only be conducted if the prosecutor demonstrates, by means of serious and concrete evidence, that the convicted person has derived benefits of any significance from the crime or from identical facts within the meaning of article 43quater of the Criminal Code.

Furthermore, the court notes that the request made orally by the public prosecutor is not intended, at least not explicitly, to initiate the special procedure contained in article 524bis of the Code of Criminal Procedure. Moreover, the court notes that the police

report, on which the request is based, concerns financial advantages that either ended up in a bank account of the company or concern a calculated turnover of the companies, and that no concrete element is presented from which the financial advantage actually received or enjoyed by the second defendant could have any importance.

In the absence of sufficiently serious and concrete elements, and in view of the time that has elapsed, no special investigation on extended financial benefits is ordered.

6.

The sums of EUR 214,053.70 and EUR 39,980.00 are subject to the facts proven under D and must be confiscated in accordance with Articles 42,1° and 505, para. 6 of the Criminal Code, even if these assets are not the property of the defendant.

On the basis of the information available, it does not appear that this confiscation would affect the rights of third parties.

As these sums cannot be found in the patrimony of the convicted person, an estimate of their value is made and the confiscation is effected for the corresponding amount, as determined below.

The amounts thus confiscated do not constitute an unreasonable penalty in view of the seriousness and scale of the acts committed and their lucrative and prolonged nature.

7.

With regard to the sum of EUR 57,400.32 found in the bank account with BNP Paribas Fortis no. BE24 0016 2870 1738, the court can only establish that this account has been blocked, which is thus a purely precautionary measure, and that the sum of money is not subject to seizure. A special confiscation by equivalent, i.e. of a corresponding amount in the case that the sum of money constituting the benefit of the crimes committed cannot be found in the patrimony of the offender, is subject to a written request by the prosecutor, which is lacking. It is not possible to respond to the civil party's request to « confiscate the seized account ».

8.

The false documents listed in indictments B.1, 2 and 3 must also be confiscated pursuant to articles 42, 1° and 43 of the Criminal Code.

6. COSTS

All costs have been incurred for proven indictments.

7. IN TERMS OF CIVIL LAW

1.

The civil party is a professional association under Dutch law. Its members are specialists working in trade mark and design agencies, in the trade mark or design departments of large companies, as lawyers or education. According to its articles of association, the association supports common professional interests, focuses on quality control and provides advice and guidance for the optimal protection of trade mark and design rights in the Benelux.

2.

The association also takes steps to identify victims and inform them about the practices, and passed on the information to the investigating authorities. The BMM suffers damages, in part due to the administrative handling of the victims' complaints that it receives. From its submissions it can be derived that the association would represent its members to bring their claims for damages to court. On the other hand, the submissions indicate that the association itself would be a civil party. Clarification with additional documentation will be required on this point. In any case, the court cannot draw any conclusions from the submitted statutes as to the possibility for association to represent the members in court.

The association declares that it is not yet possible to estimate its concrete damages. It demands that civil interests be safeguarded.

As the first defendant died in the course of the proceedings before the court, the civil claim can still be initiated, even against legal successors.

3.

In the absence of a concrete estimate of the damages, it is not possible to accede to the civil party's request to already render or assign to that party the confiscated goods belonging. It is up to the civil party to prove the concrete personal damage it has suffered as a result of the crimes, or to prove that the goods or sums, eligible for confiscation by equivalent, have been substituted by the perpetrator(s) in place of goods/sums belonging to the civil party, or are the equivalent of goods belonging to the civil party.

The professional association, at least for the time being, does not prove that the sums confiscated by this judgment are its property, or the equivalent of goods or sums belonging to it.

4.

It is appropriate to maintain the civil interests and refer the treatment of this case to the future.

FOR THESE REASONS

THE COURT

Considering :

- the articles 11, 12, 14, 16, 21, 31 to 37, and 41 of the law of June 15, 1935 on the use of languages in court proceedings;
- articles 7, 25, 38, 40, 41, 50, 65, 66-67, 193, 196, 213, 214, 496, 505, 324bis, 324ter §1 of the Criminal Code;
- articles 4, 20 of the preliminary title of the Code of Criminal Procedure;

BY DEFAULT in relation to the defendant AFTER CONTRADICTION in relation to the civil party

In terms of criminal penalty:

Finds that the criminal proceedings have lapsed against the late Mr. LINDELL;

Condemns defendant TEMONEN for the proven facts of the indictments A, B, C and D:

- a sentence of **FOUR YEARS** imprisonment
- a fine of **FIVE HUNDRED (500,00) EURO**

Declares that the fine of EUR 500.00 will be increased, by application of the law on surcharges, to **THREE THOUSAND (3,000.00) EUR** (EUR x 6) and replaced, in case of non-payment within the legal time limit, by a substitute prison sentence of one month;

Declares confiscated with regard to the defendant TEMONEN Teemu Petteri, in accordance with Articles 505, paragraph 6, 42.1° and 43 of the Criminal Code, the sum of **214,053.70 EUR** being the amount corresponding to the object of the offence referred to in point D. 1;

Declares the sum of **39,980.00 EUR**, the amount corresponding to the object of the offence referred to in point D.2, forfeited to the defendant TEMONEN Teemu Petteri, in accordance with Articles 505, paragraph 6, 42.1° and 43 of the Criminal Code;

Declares the confiscation of the false documents described in indictments B.1-2-3 referred to under KI, F8, documents 1, 7 and 25 of the criminal file;

Condemns TEMONEN Teemu Petteri to pay:

- an amount of 25.00 EUR, plus legal surcharges up to **200.00 EUR** as a contribution to the Special Fund to assist victims of intentional violence and rescuers,
- reimbursement of **20 EUR** as a contribution to the budget fund for second line legal aid,
- other costs, budgeted at **13,096.53 EUR**

In terms of civil law :

Declares that the civil party claim of the BENELUX ASSOCIATION FOR TRADEMARKS AND MODELS admissible;

Retains the civil interests of this civil party;

Fixes the further treatment of the civil interests, including the costs to be pursued.

Automatically retains other civil interests.

Everything was treated in the Dutch language, in accordance with the law of June 15, 1935.

With regard to immediate arrestation:

Heard the public prosecution in its request for the immediate arrest of the convicted person:

TEMONEN Teemu Petteri

Since the condemned person does not appear, it is not inconceivable that he or she may try to avoid the execution of the sentence pronounced.

In application of article 33§2 of the law of July 20, 1990, appointed by the President ;

The court orders the immediate arrestion of:

TEMONEN Teemu Petteri

This judgment was rendered in public court on April 29, 2020 by the Dutch-speaking Court of First Instance of Brussels, composed of:

Ms. Matthys


judge

In the presence of M. van Aalst,

substitute Public Prosecutor at the Public
Prosecutor's Office of Brussels

With the help of Ms. De Roeck

clerk of the court



De Roeck



Matthys