BASIC COURT OF PRISHTINE/PRISTINA
PKR. Nr. 1046/13
3 February 2014

Basic Court of Prishtina/Pristina composed of EULEX Presiding Trial Judge, Malcolm Simmons, in the criminal case against:

Name	**N.**
Surname	**V.**
Father's name	
Date of Birth	
Place of Birth	
Gender	
Address	
Nationality	
Citizenship	
Whereabouts	

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (3) and (7) CCK 2003 (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 (2) (2.1), (2.4) and (2.5), Law on the Prevention of Money Laundering and Terrorist Financing 2010 (Article 308 CCRK 2013);
3. **Aggravated Theft** in violation of Articles 252 (1) and 253 (2.1) CCK 2003 (Article 327 CCRK 2013);
4. **Fraud** in violation of Article 261 (1) and (2) CCK 2003 (Article 335 CCRK 2013);
5. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1), (3) and (4) of the Law on Tax Administration and Procedures;
6. **Misappropriation** in violation of Article 257 (1), (3) and (6) CCK 2003 (Article 330 CCRK 2013);
7. **Breach of Trust** in violation of Article 269 CCK 2003 (Article 342 CCRK 2013);
8. **Falsifying documents** in violation of Article 332 (1) CCK 2003 (Article 398 (1) CCRK 2013);
9. **Special cases of falsifying documents** in violation of Article 333 (3) and (5) CCK 2003 (Article 399 (1) (1.3) and (1.5) CCRK 2013).

In co-perpetration under Article 23 CCK 2003 (Article 31 CCK 2013)

Name	**F**
Surname	**B**
Father's name	
Date of Birth	
Place of Birth	
Gender	
Address	
Nationality	
Citizenship	
Whereabouts	

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (3) and (7) CCK 2003 punishable by a fine of up to 500,000 EUR and by imprisonment of seven to twenty years (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 Law on the Prevention of Money Laundering and Terrorist Financing 2010 (Article 308 CCRK 2013);
3. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
4. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1) and (2.5), (3) and (4) of the Law on Tax Administration and Procedures;

In co-perpetration under Article 23 CCK 2003 (Article 31 CCK 2013

Name	**B**
Surname	**B**
Father's name	
Date of Birth	
Place of Birth	
Gender	
Address	
Nationality	
Citizenship	
Whereabouts	

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (2), (4) and (7) CCK 2003 (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 Law on the Prevention of Money Laundering and Terrorist Financing 2010, punishable by a fine or imprisonment of up to ten years (Article 308 CCRK 2013);
3. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);

Name **E**
Surname **D**
Father's name
Date of Birth
Place of Birth
Gender
Address
Nationality
Citizenship
Whereabouts

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (2), (4) and (7) CCK 2003 (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 Law on the Prevention of Money Laundering and Terrorist Financing 2010 (Article 308 CCRK 2013);
3. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
4. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1) and (2.5), (3) and (4) of the Law on Tax Administration and Procedures;

Name **I**
Surname **F**
Father's name
Date of Birth
Place of Birth
Gender
Address
Nationality
Citizenship

Whereabouts

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (2), (4) and (7) CCK 2003 (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 Law on the Prevention of Money Laundering and Terrorist Financing 2010 (Article 308 CCRK 2013);
3. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
4. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1), (3) and (4) of the Law on Tax Administration and Procedures;

Name **N**
Surname **Th**
Father's name
Date of Birth
Place of Birth
Gender
Address
Nationality
Citizenship
Personal ID number:
Whereabouts:

Charged in the following counts:

1. **Organised Crime** in violation of Article 274 (1), (2), (4) and (7) CCK 2003 (Article 283 CCRK 2013);
2. **Money Laundering** in violation of Article 32 Law on the Prevention of Money Laundering and Terrorist Financing 2010 (Article 308 CCRK 2013);
3. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
4. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.5), (3) and (4) of the Law on Tax Administration and Procedures;

Name **J**
Surname **B**
Father's name
Date of Birth
Place of Birth
Gender
Address
Nationality
Citizenship
Whereabouts

Charged in the following counts:

1. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
2. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1), (3) and (4) of the Law on Tax Administration and Procedures;

Name **S**
Surname **Sh**
Father's name
Date of Birth
Place of Birth
Gender
Address
Nationality
Citizenship
Whereabouts

Charged in the following counts:

1. **Receiving Stolen Goods** under Article 272 (1) and (2) CCK (Article 345 CCRK);
2. **Tax Evasion**, contrary to Article 63 (1) and (2) (2.1) and (2.5), and (4) of the Law on Tax Administration and Procedures;

Name **H**
Surname **Sh**
Father's name
Date of Birth
Place of Birth

Gender
Address
Nationality
Citizenship
Whereabouts

Charged in the following count:

1. **Tax Evasion**, contrary to Article 63 (1) and (4) of the Law on Tax Administration and Procedures;

AFTER conducting the initial hearing on 21 November 2013;

ACTING upon the applications of the defence counsels to dismiss the indictment, the presiding trial judge, pursuant to Articles 249 and 250(3) of CPCK, renders the following:

R U L I N G

ON APPLICATIONS TO DISMISS THE INDICTMENT AND OBJECTIONS TO EVIDENCE

I. **The application of the defence counsels for the defendant N.V., to dismiss the indictment is partially granted. Counts 3,6,7,8 and 9 of the indictment in relation to N.V., are hereby dismissed and the proceedings in relation to these counts are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.**

II. **The application of the defence counsel for the defendant F.B., to dismiss the indictment is partially granted. Count 3 of the indictment in relation to F.B., is hereby dismissed and the proceedings in relation to this count are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.**

III. The application of the defence counsel for the defendant B.B., to dismiss the indictment is partially granted. Count 3 of the indictment in relation to B.B., is hereby dismissed and the proceedings in relation to this count are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.

IV. The application of the defence counsel for the defendant E.D., to dismiss the indictment is partially granted. Count 3 of the indictment in relation to E.D., is hereby dismissed and the proceedings in relation to this count are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.

V. The application of the defence counsel for the defendant I.F., to dismiss the indictment is partially granted. Count 3 of the indictment in relation to I.F., is hereby dismissed and the proceedings in relation to this count are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.

VI. The application of the defence counsel for the defendant N.Th., to dismiss the indictment is partially granted. Count 3 of the indictment in relation to N.Th., is hereby dismissed and the proceedings in relation to this count are terminated. The application of the defence counsel in relation to the remaining counts of the indictment is hereby rejected as ungrounded.

VII. The applications of the defence counsels for the defendants J.B., S.Sh., and H.Sh., to dismiss the indictment are hereby rejected as ungrounded.

VIII. The application of the defence counsel for the defendant J.B., to declare evidence as inadmissible is hereby rejected as ungrounded.

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R E A S O N I N G :

I. Procedural background:

1. On 7 November 2013 the EULEX Prosecutor from Basic Prosecution in Prishtina/ Pristina filed the indictment PP 898-4/2012 charging the defendants as above.

2. On 21 November 2013 an initial hearing was conducted. Subsequently, all the Defence Counsels in accordance with the date set by the Presiding Trial Judge filed requests to dismiss the Indictment. Only one defendant filed a request to object the evidence.

II. Objections to the indictment:

A) Defendant N.V.

3. The indictment charges the defendant N.V., of nine (9) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Aggravated Theft;
Count4: Fraud;
Count5: Tax Evasion;
Count6: Misappropriation;
Count7: Breach of Trust;
Count8: Falsifying Documents; and
Count9: Special Cases of Falsifying Documents.

4. In order to properly analyse the criminal offences for which the defendant is charged, the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count4: Fraud

The allegation of the prosecutor

5. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Fraud. The pertinent language of the indictment reads:

> "In November 2011 and on 6 December 2011, in Pristina, defendant N.V., obtained several written authorizations from O., via email which she represented to O., were required for the purpose of transporting and delivering machinery and electronic passports through customs to MIA. In particular, defendant N.V., deceived O., that the written authorization dated 6 December 2011, required the words "all financial duties of O., in Kosovo shall be processed by our official representative" and her NLB bank account number which she falsely insisted was necessary to handle all customs issues and for spare parts for the machinery. She then deceived the representatives of MIA that this particular written authorization gave her the authority to receive all invoice money for O., as their local representative, which was totally false. She further, without the permission of O.,, fraudulently altered approximately 10 O., invoices totalling **3,410,343.91 EUROS** by adding her company, C.E., and her company bank account number in the lower portion of the invoices. Between November 2011 and September 2012 she intentionally concealed from O., that she made these alterations and deceived O., into believing that the MIA was failing to pay the invoices. By committing these fraudulent acts she obtained a material benefit of **1,420,255.13 EUROS."**

Objection of the defence

6. The defence claims that since the factual description of criminal offences in counts from 1 to 9 is almost identical then these criminal offences should be joined.

Finding of the court

7. The court notes that it is not disputed that the amount of €1,420,255.13 was paid by the Ministry of Internal Affairs (hereinafter "MIA") to the bank account of C.E., wholly owned and managed by the defendant N.V.,. Subsequently, this amount of money was transferred to different bank accounts belonging to certain legal and natural persons. The end result is that the company O., did not receive the money it was entitled according to the contract with MIA.

8. In this case it is disputed whether the funds were transferred initially to the bank account of C.E., and subsequently to various bank accounts with or without the consent of O.,. The stance of the prosecutor is that this money was transferred from MIA to the bank account of C.E., and subsequently to various bank accounts without the consent of the owner of the money, namely O., from Austria. Conversely, the defendant N.V., claims that she had been properly authorized by O., initially to receive this amount of money in the bank account of C.E., and later she was instructed to transfer the amount of €1,420,255.13 to various bank accounts. The court notes that there is an authorization issued by O., to C.E., and N.V. The defendant relies on this authorization to justify the payment of the money from MIA to O. However, it is unclear why the defendant did not transfer the money to O. There is no indication or proof in the case file to show that the transfer of the disputed amount from C.E., to other bank accounts was done with the consent of O. The representatives of O., stated before the prosecutor that the defendant N.V., initially denied the money from MIA had been credited to the bank account of her company. Thereafter, the defendant stated these monies were paid to MIA officials as a bribe.

9. Therefore, the court concludes that there is enough evidence to support a well-grounded suspicion that the defendant committed the criminal offence of Fraud contrary to Article 261 (1) and (2) of the CCK 2003.

Count3: Aggravated Theft

The allegation of the prosecutor

10. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Aggravated Theft. The pertinent language of the indictment reads:

> "From 13 December 2011 to November 2012, in Pristina, defendant N.V., did knowingly and unlawfully take **1,420,255.13 EUROS** that the MIA had intended to pay to O., for electronic passports and machinery received by the MIA. She then, in co-perpetration with F.B., and with the participation of others in an organised criminal group, did appropriate this money for herself and others by transferring **669,000 EUROS** to several so called "companies" without the knowledge, permission or consent of either O., or MIA. She further transferred an additional **342,825 EUROS** to individual persons and businesses to satisfy her and defendant F.B.,'s personal debts and expenses, including an apartment for **77,000 EUROS** for defendant N.V.,, **39,000 EUROS** to F.B.'s company "F." and **20,000 EUROS** to B.B.,'s company F.O. She further withdrew **470,953.87 EUROS** in cash and spent **27,876.92 EUROS** on POS expenses for her own personal use."

Objection of the defence

11. The defence counsels for the defendant N.V., in their submission dated 17 December 2013 states that there is no sufficient evidence to support a well-grounded suspicion that this criminal offence was committed by the defendant.

> "In fact, on 30.06.2010 a contract was concluded between F., P., and O., but later by the request of MIA that the O., has to have own representative in Kosova/o and then by approval of O.,, N.V., has registered a company C.E. for impelemtation of the Contract as a local representative. The question of N.V., being responsible for payments of MIA for O., is also established by the fact

that in the Authorization is stipulated "all financial obligations of O., in Kosova/o will be reviewed by the our official representative (bank account no.1701001012075322, NLB Prishtinë/a)". 3,400,000.00 Euro were paid on the bank account stated above and more than three times funds were transferred to O., by the Company C.E. and no one ever complained or made remarks. This fact is more than one indication that N.V., has every performed action legally and in conformity to authorizations. Use of the stamp of O., on the invoices and on the behalf of CE did not diverge from powers given by authorizations because she was in charge of the stamp and authorized to use it in relation to the implementation of Contract on passports. Thus, by changing the invoices she did not steal, did not deceive or falsify etc., because with the amount of 1,420,255.13 Euro not transferred to O.,, there were paid following invoices: Customs, VAT, some payments to certain Companies depending on contracted liabilities or even loans as well as payments for her job performed as O., representative in relation to the Contract between O., and MIA, amount that pertained to her and that was approved in total of 800,000 Euro."

12. Further, the defence states that:

"According to factual descriptions, also theft, as offence, does not stand as well as aggravated theft because in this case there are no actions of the accused which would establish criminal offence of theft or aggravated theft, specifically in such situations when is being dealt with the criminal offence of aggravated theft there is a number of elements that describe this criminal offence and besides, as force is required for that etc."

Finding of the court

13. The court notes that the prosecutor is alleging almost identical facts in Counts 3 and 4 and in the same time charges the defendant with two different criminal offences –

Aggravated Theft and Fraud. In the present case, charging the defendant with the criminal offence of Fraud and Aggravated Theft for the same alleged facts is superfluous. While the criminal offence of Aggravated Theft is committed when one takes "*movable property of another person with the intent to **unlawfully appropriate** it for himself*", the criminal offence of Fraud is committed when one appropriates material benefit by deceiving a person by means of false representation or by concealing facts. Fraud has the intention of hiding the facts, while theft does not. Thieves know they can't hide the act so they don't make much effort to hide it, while the fraudster makes an extra effort to hide the act. Both criminal offences are designed to protect the property from illegal appropriation. The criminal offence of Fraud is more specific because the illegal appropriation is done through the means of deception. Thus, the provision on criminal offence of Fraud is *lex specialis* vis-à-vis the provision on criminal offence of Aggravated Theft and the principle of *lex specialis derogat legi generalis* applies.

14. Therefore, the court decided to dismiss Count 3 of the indictment in relation to the defendant N.V.

Count 2: Money Laundering

The allegation of the prosecutor

15. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Aggravated Theft. The pertinent language of the indictment reads:

> *From 13 December 2011 to 30 August 2012, in Pristina, the defendant N.V., in co-perpetration with defendant F.B., and others transferred approximately **669,000 EUROS** of stolen money to several "companies", which N.V., had failed to transfer to O. These "company" transfers were for the specific purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of this stolen money. Defendant N.V., at no time had*

*permission or authority from O., to receive the money from MIA. She also knowingly, in co-perpetration with F.B., transferred **342,825 EUROS** of this stolen money to persons and businesses to satisfy her and defendant F.B.,'s personal debts and expenses, including an apartment for **77,000 EUROS** for defendant N.V., (which is the subject of an attachment order) and **39,000 EUROS** to F.B.,'s company "F." and **20,000 EUROS** to B.B.,'s company F.O. These unlawful and illegal transfers further promoted the underlying aggravated theft and other crimes committed by defendant N.V., and others.*

Objection of the defence

16. The defence counsels for the defendant N.V., in their submission dated 17 December 2013 state that:

> "Money laundry, according to the indictment, is interconnected with the criminal offence under 1 and we consider the allegation of the Prosecutor in regards to this criminal offence will not be proven"

Finding of the court

17. The court notes that the amount of 669,000 Euros alleged to have been stolen from O., was transferred to many different accounts of different companies. N.V., states that she received instructions from the officials of O., to transfer this amount of money to these companies. Nevertheless, the persons who received the money as well as representatives of O., refute these allegations. Thus, the court concludes that there is a well-grounded suspicion that the transfer of the money from the bank account of C.E., was done for the purpose of concealing or disguising the nature of this allegedly stolen money.
18. Therefore, the court concludes that there is a well-grounded suspicion that N.V., committed the criminal offence of Money Laundering contrary to Article 32 paragraph (2) subsections (2.1) (2.4) and (2.5) of the Law on the Prevention of Money Laundering and Terrorist Financing 2010.

Count5: Tax Evasion

The allegation of the prosecutor

19. The prosecution alleges that the following actions were committed by the defendant N.V.,, thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

> *From 13 December 2011 to November 2012, in Pristina, N.V., unlawfully and illegally seized and failed to transfer approximately **1,420,255.13 EUROS** of illegal income that belonged to O., and then withdrew from this sum **470,953.87 EUROS** in cash and spent **27,876.92 EUROS** on POS expenses. She also, in co-perpetration with defendant F.B., unlawfully and illegally transferred approximately **342,825 EUROS** to satisfy her and F.B.,'s personal debts and expenses, including an apartment for **77,000 EUROS** (which is subject to an attachment order) for defendant N.V. **39,000 EUROS** for F.B.,'s company "F." and **20,000 EUROS** for B.B.,'s company F.O. She further, in co-perpetration with F.B., and others, illegally and unlawfully transferred **669,000 EUROS** of this stolen money to several so called "companies" in order to conceal the money. She intentionally omitted and failed to report any of this **1,420,255.13 EUROS** of illegal income to the Kosovo Tax Administration (TAK) nor pay any taxes on such stolen money. An investigation carried out by TAK indicates N.V.,'s company CE, owes **422,951.19 EUROS** for Tax Evasion for 2011-2012 and furthermore a report compiled by TAK states that based on her NLB bank statement, she failed to declare **1,613,545.23 EUROS** as turnover for 2011-2012.*

Objection of the defence

20. The defence claims that there is no enough evidence to support a well-grounded suspicion that the defendant committed this criminal offence.

Finding of the court

21. The court if of the opinion that there is a well-grounded suspicion that the defendant intentionally failed to report to tax authorities the amount of **1,613,545.23 EUROS** as turnover for 2011-2012. This sum exceeds the sum which the prosecution avers was misappropriated by the defendant. This is supported by the report prepared by TAK. The intent of the defendant may be inferred from the circumstances of the case since she is well-educated and has been in business for some time.

22. Therefore, the court concludes that there is a well-grounded suspicion that the defendant acted contrary to contrary to Article 63(2), (2)(2.1), (3) and (4) of the Law on Tax Administration and Procedures (2010) and in violation of Article 44(1) of the TAP.

Count6: Misappropriation

The allegation of the prosecutor

23. The prosecution alleges that the following actions were committed by the defendant N.V.,, thus committing the criminal offence of Misappropriation. The pertinent language of the indictment reads:

> *"From 13 December 2011 to November 2012, she unlawfully and illegally seized and failed to transfer approximately **1,420,255.13 EUROS** to O., which she unlawfully received from MIA and which had been entrusted to her by MIA to pay O.,. She further received this money with the intent to obtain an unlawful material benefit for herself, F.B., and others. Out of this sum, she withdrew in cash **470,953.87 EUROS** and spent **27,876.92 EUROS** on POS expenses and she further, in co-perpetration with F.B., and other participants in an organised criminal group, transferred **669,000 EUROS** to several so called "companies" to conceal the money. She further, in co-perpetration with defendant F.B.,, transferred approximately **342,825 EUROS** to satisfy their personal debts and expenses, including the purchasing of an apartment for*

77,000 EUROS *for N.V.,,* ***39,000 EUROS*** *for F.B.,'s company "F." and* ***20,000 EUROS*** *for B.B.,'s company F.O.,."*

Objection of the defence

24. The defence did not specifically provide any analysis on which basis they seek the dismissal of the indictment in this relation except stating the there is no well-grounded suspicion to support the indictment in general.

Finding of the court

25. In this count the prosecutor is alleging that MIA entrusted the money to the defendant N.V., so that the latter pays to O.,. This allegation is not supported by any evidence in the case file. There is no evidence in the case file which suggest that MIA assigned any responsibility to the defendant to make the payment to O.,. This allegation is even in contradiction with Count 4 of the indictment which states that the defendant deceived both O., and MIA meaning that O., thought the authorization covered only the issues related to customs, whereas MIA though that the authorization covered also the payment of outstanding debts. Thus, according to the facts alleged by the prosecutor MIA was deceived into thinking that the payment of the outstanding debt was entrusted to C.E., – the company of the defendant, whereas on the other hand this "entrustment" was not genuine because the authorization did not authorize C.E., and N.V., to receive the money. At no time did MIA have any discretion to entrust the money belonging to O., to the company of the defendant N.V.,.

26. Therefore, the court concludes that there is no well-grounded suspicion that this criminal offence took place and as a consequence decided to dismiss this count of the indictment.

Count 7: Breach of Trust

The allegation of the prosecutor

27. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Breach of Trust. The pertinent language of the indictment reads:

> *From September 2011 to November 2012, defendant N.V., unlawfully and illegally, as the local representative of O., for the implementation of the contract for electronic passports and machinery, dated 17 June 2011, failed to transfer **1,420,255.13 EUROS** to O., that MIA had entrusted to her based on false representations she gave to MIA. She further committed a breach of trust and misuse of authority with O., by misusing written authorisations given to her by O., under false pretences in order to convince MIA to transfer 1,420,255.13 EUROS into her NLB bank account. She then failed to give O., the 1,420,255.13 EUROS which O., never gave her permission or authority to possess. These actions caused substantial damage to both O., and MIA.*

Objection of the defence

28. The defence claims that since the factual description of criminal offences in counts from 1 to 9 is almost identical then these criminal offences should be joined.

Finding of the court

29. The prosecutor is alleging that the defendant "failed to transfer **1,420,255.13 EUROS** to O., **that MIA had entrusted to her**". There is no evidence in the case file to support a well-grounded suspicion that at any time MIA assigned any responsibility to the defendant N.V.,. The only person who had the discretion to assign any responsibilities to the defendant N.V., was the company O.,. However, the prosecutor alleges that in fact O., did not entrust the payment of invoices to the defendant but the latter

fraudulently deceived O., and MIA in order to obtain material benefit for her and the others.

30. Therefore, the court finds that there is no well-grounded suspicion that the defendant committed the criminal offence of Breach of Trust, thus decided to dismiss this count of the indictment in relation to the defendant N.V.,.

Count 8: Falsifying Documents

The allegation of the prosecutor

31. The prosecution alleges that the following actions were committed by the defendant N.V.,, thus committing the criminal offence of Falsifying Documents. The pertinent language of the indictment reads:

> *"From September 2011 to November 2012, N.V., unlawfully and illegally altered at least 10 invoices from O., without the authority, permission, knowledge or consent of O.,, by adding her company name, C.E., its bank account number, VAT and other words, while utilising the genuine stamp of O., thereby creating false documents that resulted in the defendant receiving over 3,000,000 EUROS that belonged to O.,. Out of that amount, she failed to transfer approximately 1,420,255.13 EUROS to O"*

Finding of the court

32. In the present case concurrence of criminal offences exists. The criminal offence of Fraud consumes the criminal offence of Falsifying Documents. The alleged falsified invoices are part of false representation which is an element of the criminal offence of fraud. Thus, charging the defendant with Fraud and Falsification of documents in the

same time in the present case would be superfluous. The criminal offence of Fraud consumes the falsification of documents.

33. Therefore, the court decides to dismiss this count of the indictment in relation to the defendant N.V.

Count 9: Special Cases of Falsifying Documents

The allegation of the prosecutor

34. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Special Cases of Falsifying Documents. The pertinent language of the indictment reads:

> *"From September 2011 to November 2012, N.V., unlawfully and illegally issued altered O., invoices by using the O., genuine stamp without O., authorization and submitted them to MIA. This resulted in her receiving, through her company, C.E., over 3,000,000 EUROS, without the authority, permission, knowledge or consent of O.,. She subsequently failed to transfer 1,420,255.13 EUROS of this money to O., as previously explained."*

Finding of the court

35. In the present case concurrence of criminal offences exists. The criminal offence of Fraud consumes the criminal offence of Special Cases of Falsifying Documents. The alleged falsified invoices are part of false representation which is an element of the criminal offence of fraud. Thus, charging the defendant with Fraud and Special Cases of Falsifying of Documents in the same time in the present case would be superfluous. The

criminal offence of Fraud consumes the count relating to the alleged falsification of documents (Special Cases of Falsifying Documents).

36. Therefore, the court decides to dismiss this count of the indictment in relation to the defendant N.V.,.

Count 1: Organized Crime

The allegation of the prosecutor

37. The prosecution alleges that the following actions were committed by the defendant N.V.,, thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

> *"From 13 December 2011 to November 2012, in Pristina, defendant N.V., did knowingly fail to transfer approximately **1,420,255.13 EUROS** that she unlawfully received on her NLB bank account from the Ministry of Internal Affairs (MIA) which should have been sent to the company O.,. The money she unlawfully received was intended as payment for O., invoices for electronic passports and machinery sent to the MIA. She further withdrew approximately **470,953.87 EUROS** of this stolen money in ATM and cash withdrawals, spent **27,876.92 EUROS** on POS expenses and unlawfully transferred, with the assistance of co-perpetrator F.B., and other participants in the criminal group, approximately **669,000 EUROS** of this stolen money to several so called "companies." She additionally, in co-perpetration with defendant F.B., unlawfully transferred approximately **342,825 EUROS** of this stolen money to satisfy her and F.B.,'s personal debts and expenses, including the purchase of an apartment for **77,000 EUROS** for defendant N.V., (which is the subject of an attachment order) and **39,000 EUROS** to defendant F.B., company "F." and **20,000 EUROS** to B.B.,'s company F.O. These unlawful and illegal transfers made by defendant N.V.,, in co-perpetration with F.B., and with the participation of others, were for the specific purpose of concealing the nature,*

source, location, movement or ownership of the stolen money and provided her with a huge, illegal and unlawful economic benefit at the expense of injured parties O., MIA and the people of Kosovo."

Objection of the defence

38. The defence states that "there is no organized crime if its organizational structure does not have support in some state or party structure". There is no further analysis of this statement except that the submission analyses the facts of the case in relation to the allegations of the prosecutor.

Finding of the court

39. This court finds that there is a well-grounded suspicion that the defendant N.V., in cooperation with F.B., did knowingly and unlawfully arrange through contact with different company representatives, namely B.B., E.D., I.F., and N.Th., for the transfer of **669,000 EUROS** of the above described stolen money to these companies to conceal and disguise the nature, source, location, disposition, movement or ownership of this allegedly stolen money. This finding is supported by the statements of the defendants and bank statement of the company of the defendant N.V.

40. There is a well-grounded suspicion that the aforementioned defendants established an organized criminal group, which was structured and composed of more than three persons, which existed between December 2011 and November 2012, for the purpose of committing the criminal offence of Money Laundering, namely laundering the proceeds from the alleged illegally appropriated money as described in Count 4 of this indictment in relation to this defendant.

41. The defendants gave different accounts of events on the reason as to why these money where transferred from C.E., to different bank accounts. This is an indication that the intention of the group was to launder the proceeds from the alleged crime.

42. Therefore, the court concludes that there is a well-grounded suspicion that the criminal offence of Organized Crime, contrary to Article 274, paragraphs (1), (3) and (7) of the Criminal Code of Kosovo (CCK) 2003 was committed by this defendant.

B) <u>Defendant F.B.,</u>

43. The indictment charges the defendant F.B., in four (4) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Receiving Stolen Goods; and
Count4: Tax Evasion

44. In order to properly analyse the criminal offences for which the defendant is charged the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count 2: Money Laundering

The allegation of the prosecutor

45. The prosecution alleges that the following actions were committed by the defendant F.B.,, thus committing the criminal offence of Money Laundering. The pertinent language of the indictment reads:

> *From 13 December 2011 to August 2012, defendant F.B.,, in co-perpetration with defendant N.V., and others, transferred approximately **669,000 EUROS** of the stolen money defendant N.V., seized from the MIA and O., to several*

"companies" in order to conceal or disguise the nature, source, location, disposition, movement or ownership of the stolen money. Defendant F.B.,, in co-perpetration with defendant N.V., acquired, possessed, used and transferred an additional approximate ***342,825 EUROS*** *of this stolen money to individuals and businesses to satisfy their personal debts and expenses, including N.V., purchasing an apartment for* ***77,000 EUROS*** *(which is subject to an attachment order), transferred* ***39,000 EUROS*** *to F.B.,'s company, F. and* ***20,000 EUROS*** *to B.B.,'s company F.O. F.B.,'s coordinated efforts to make all these transfers of large sums of money further assisted defendant N.V., to evade the legal consequences of her criminal actions and these numerous transfers clearly promoted the underlying criminal activity.*

Objection of the defence

46. The defence counsel in his statement, in relation to this count of the indictment, alleges that the count is described in general terms, without concrete statements as to who was the coordinator, their number and why the accused F.B., should be treated as the main coordinator. In other words, the defence claims that there is no well-grounded suspicion that the defendant committed this criminal offence.

Finding of the court

47. The court has established that there is a well-grounded suspicion that the defendant N.V., committed the criminal offence of Fraud. The analysis of the court in this regard is presented under paragraph 8 of this decision and it will not be repeated here.

48. Further, there is well-grounded suspicion that the defendant F.B., was a coordinator between the defendant N.V., and the recipients of the money, namely B.B.,, E.D., N.Th., and I.F., and that the reason for these multiple transfers was to disguise and hide the nature of the proceeds from the alleged crime. This finding of the court is based on the banks transactions and statements of the defendants. The money belonging to O., which were allegedly obtained by means of fraud by the defendant N.V., and were

subsequently transferred into the bank account of other defendants. Most of these defendants aver that they received these monies from F.B. However, N.V., stated to O., representatives that this money was paid as a bribe to MIA officials.

49. Therefore, the is a well-grounded suspicion that the defendant committed the criminal offences of Money Laundering contrary to Article 32, Law on the Prevention of Money Laundering and Terrorist Financing 2010

Count 3: Receiving Stolen Goods

The allegation of the prosecutor

50. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *Defendant F.B., received **30,000 EUROS** of the stolen money from defendant N.V.,'s CE bank account on 14 March 2012 and **4,000 EUROS** on 17 April 2012. On 22 December 2011 and 30 January 2012, he also received an additional total of **5,000 EUROS** from the stolen money in N.V.,'s account to allegedly pay rent for their offices. He further, in co-perpetration with defendant N.V.,, arranged for the transfer of 669,000 EUROS of the above described stolen money to several "companies" and arranged for the transfer of an additional 342,825 EUROS to private individuals and businesses to satisfy his and N.V.,'s personal debts and expenses, including the purchase of an apartment costing 77,000 EUROS for defendant N.V., and 20,000 EUROS to his brother's company F.O.The fact that F.B., assisted defendant N.V., with the distribution of the stolen money clearly demonstrates that defendant F.B., knew the money was stolen and accepted it for his own personal benefit.*

Objection of the defence

51. The defence argues that there is no well-grounded suspicion that this criminal offence was committed.

Finding of the court

52. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed by the defendant the court concludes that there is a concurrence of criminal offences. Specifically, the criminal offence of Money Laundering consumes the criminal offence of Receiving Stolen Goods. In this instance the defendant, if found guilty, may be convicted of the criminal offence of Money Laundering which is a complex criminal offence and receiving proceeds from a crime (in this case the illegally appropriated money) is only a component of the criminal offence of Money Laundering which consumes the criminal offence of Receiving Stolen Goods.

53. Therefore, the court decided to dismiss the indictment in relation to this count of the indictment.

Count 4: Tax Evasion

The allegation of the prosecutor

54. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *"Defendant F.B., received 30,000 EUROS of the stolen money from defendant N.V.,'s CE bank account on 14 March 2012 and 4,000 EUROS on 17 April 2012. He also received an additional total of 5,000 EUROS from the stolen money in N.V.,'s account to allegedly pay rent for their offices. He further, in co-perpetration with defendant N.V., arranged for the transfer of 669,000 EUROS to several "Companies" and arranged for the transfer of an additional 342,825*

EUROS to private individuals and businesses to satisfy his and N.V.,'s personal debts and expenses, including the purchase of an apartment costing 77,000 EUROS for defendant N.V., and 20,000 EUROS to his brother's company F.O. Defendant F.B., intentionally omitted and failed to report any of this illegal income to the Tax Administration Authority (TAK) nor pay any taxes on such stolen money. An investigation carried out by TAK stated that F., NTP is liable for ***35,168.46 Euros*** *for Tax Evasion in 2010-2012 and F. SHPK, whose owners are F.B., and N.V., is liable for* ***11,875.84 EUROS*** *for Tax Evasion in 2012."*

Objection of the defence

55. The defence claims that there is not enough evidence to support a well-grounded suspicion that this criminal offence was committed.

Finding of the court

56. The court concludes that there is a well-grounded suspicion that the defendant F.B., intentionally failed to report any of his illegal income to the tax authorities. This finding is based on the report of TAX for the years 2010-2012 which results that the amount of 11,875.84 EUROS in unpaid for 2012.

Count 1: Organized Crime

The allegation of the prosecutor

57. The prosecution alleges that the following actions were committed by the defendant N.V., thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

"From 13 December 2011 to November 2012, F.B., in co-perpetration with defendant N.V., and with the participation of others, did knowingly and unlawfully arrange through contact with so called "company" representatives, for the transfer of ***669,000 EUROS*** *of the above described stolen money to these so called "companies" to conceal and disguise the nature, source,*

*location, disposition, movement or ownership of this stolen money. Defendant F.B., personally knew these "company" owners or authorized agents and made the arrangements for this stolen money to be transferred to the "company" accounts. Defendant F.B., also, in co-perpetration with defendant N.V.,, arranged for approximately **342,825 EUROS** of this stolen money to be transferred to individuals and businesses to satisfy their own personal debts and expenses, including an apartment for **77,000 EUROS** for defendant N.V., **39,000 EUROS** to F.B.,'s company "F." and **20,000 EUROS** to B.B.,'s company F.O. These numerous and large transfers of money coordinated by defendants F.B.,, N.V., and others were for the specific purpose of "laundering," concealing, hiding, or disguising the nature, source, location or ownership of this stolen money and provided him, N.V., and others with a huge illegal and unlawful economic benefit totalling 1,420,255.13 EUROS at the expense of the injured parties O.,, MIA and the people of Kosovo."*

Objection of the defence

58. The defence claims that the indictment in relation to this count is unclear and doesn't present an acceptable explanation as to how the defendant organized, established etc., the criminal group. It is averred the defendant could not have laundered the money as claimed in the indictment since the money in the amount of 669,000 euro was not his, he had no legal grounds to have it at his disposal and even less so to transfer it to other companies as is stated in the enacting clause under count 1 of the indictment.

Finding of the court

59. This court finds that there is a well-grounded suspicion that the defendant N.V., in cooperation with F.B., did knowingly and unlawfully arrange through contact with different company representatives, namely B.B., E.D., I.F., and N.Th., for the transfer of

669,000 EUROS of the above described stolen money to these companies to conceal and disguise the nature, source, location, disposition, movement or ownership of this allegedly stolen money. This finding is supported by the statements of the defendants and bank statement of the company of the defendant N.V.

60. There is a well-grounded suspicion that the aforementioned defendants established an organized criminal group, which was structured and composed of more than three persons, which existed between December 2011 and November 2012, for the purpose of committing the criminal offence of Money Laundering, namely laundering the proceeds from the alleged illegally appropriated money as described in Count 4 of this indictment in relation to this defendant.

61. Therefore, the court concludes that there is a well-grounded suspicion that the criminal offence of Organized Crime, contrary to Article 274, paragraphs (1), (3) and (7) of the Criminal Code of Kosovo (CCK) 2003was committed by this defendant.

C) Defendant B.B.,

62. The indictment charges the defendant B.B., of three (3) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Receiving Stolen Goods.

63. In order to properly analyse the criminal offences for which the defendant is charged the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count 2: Money Laundering

The allegation of the prosecutor

64. The prosecution alleges that the following actions were committed by the defendant B.B., thus committing the criminal offence of Money Laundering. The pertinent language of the indictment reads:

> *Defendant B.B., as owner of F.O., and younger brother of defendant F.B., (who was listed as an authorized person for F.O.,), received **20,000 EUROS** of the stolen money from defendant N.V.,'s CE bank account on 14 December 2011. Defendant N.V., said this was a loan but 13,000 EUROS remains unpaid. There was never any written agreement, terms of repayment or collateral discussed or established. F.O., has nothing to do with electronic passports, O., or MIA. This transfer was made to B.B.,'s company the day after defendant N.V., received 738,240 EUROS and 64,596 EUROS from the MIA. The stolen money was transferred through the F.O., account to hide, conceal or disguise the illegal and unlawful transfer of this stolen money to defendant B.B. Defendant B.B., also assisted defendants N.V., and F.B., to evade the legal consequences of their actions by receiving this 20,000 EUROS into his F.O., bank account. And this transfer was clearly done to promote the underlying criminal activity of these same defendants.*

Objection of the defence

65. The defence claims that "In order for the criminal offence of Money Laundering to exist, the fundamental premise is that money coming in possession, either directly or through the bank accounts, its origin has to be from the commission of any offence. My client had no knowledge of the contract made between the MIA and the economic operator represented by the suspect N.V., nor did he know about the financial transactions of this economic operator."

Finding of the court

66. The court at this stage concludes that there is a well-grounded suspicion that part of the proceeds deriving from the criminal offence of Fraud allegedly committed by the defendant N.V., were transferred into the bank account of F.O. The court at this point concludes that there is a well-grounded suspicion that the defendant knew, or had cause to know that this money were proceeds from a criminal offence. He was the brother of F.B., and the communication with the latter gives clear indications that the defendant B.B., had knowledge that the money was the proceeds of crime.

67. Therefore, the court concludes that there is a well-grounded suspicion that the defendant B.B., committed the criminal offence of Money Laundering contrary to Article 32 of the Law on the Prevention of Money Laundering and Terrorist Financing 2010.

Count 3: Receiving Stolen Goods

The allegation of the prosecutor

68. The prosecution alleges that the following actions were committed by the defendant B.B.,, thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *Defendant B.B., as owner of F.O., and younger brother of defendant F.B., (who was listed as an authorized person for F.O.,), received **20,000 EUROS** of the stolen money from defendant N.V.'s CE bank account on 14 December 2011. Defendant N.V., said this was a loan but 13,000 EUROS remains unpaid. There was never any written agreement, terms of repayment or collateral discussed or established. F.O., has nothing to do with electronic passports, O., or MIA. This transfer was made to B.B.,'s company the day after defendant N.V.,*

received 738,240 EUROS and 64,596 EUROS from the MIA. The stolen money was transferred through the F.O., account to hide, conceal or disguise the illegal and unlawful transfer of this stolen money to defendant B.B., Defendant B.B., also assisted defendants N.V., and F.B., to evade the legal consequences of their actions by receiving this 20,000 EUROS into his F.O., bank account. And this transfer was clearly done to promote the underlying criminal activity of these same defendants.

Finding of the court

69. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed by the defendant the court concludes that there is a concurrence of criminal offences. Specifically, the criminal offence of Money Laundering consumes the criminal offence of Receiving Stolen Goods. In this instance the defendant, if found guilty, may be convicted of the criminal offence of Money Laundering which is a complex criminal offence and receiving proceeds from a crime (in this case stolen money) is only a component of the criminal offence of Money Laundering which consumes the criminal offence of Receiving Stolen Goods.

70. Therefore, the court decided to dismiss the indictment in relation to this count of the indictment.

Count 1: Organized Crime

The allegation of the prosecutor

71. The prosecution alleges that the following actions were committed by the defendant B.B.,, thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

*Defendant B.B., as owner of F.O., and the younger brother of defendant F.B., (who was listed as an authorized person for F.O.,), received **20,000 EUROS** of*

the stolen money from defendant N.V.,'s CE bank account on 14 December 2011. Defendant N.V., said this was a loan, but 13,000 EUROS remains unpaid. There was never any written agreement, terms of repayment or collateral discussed or established. F.O., has nothing to do with electronic passports, O., or MIA. This transfer was made to B.B., the day after defendant N.V., illegally and unlawfully received 738,240 EUROS and 64,596 EUROS from the MIA. The 20,000 EUROS of stolen money was transferred to the F.O., account to hide, conceal or disguise some of the 1,420,255.13 EUROS defendant N.V., stole from the MIA and O.,. It also clearly provided an unlawful and illegal economic benefit for B.B.,'s company F.O. On 27 June 2011, defendant B.B., received a transfer of ***35,000 EUROS*** *from F.B., and on 5 May 2012, B.B., transferred 6,000 EUROS into F.B.,'s Raiffeisen bank account. On 11 November 2012, the night of the arrest of defendants N.V.,, F.B., and B.B.,, B.B., was found in possession of 2,000 EUROS in cash with a vehicle. Forensic examination of B.B.,'s phone reveals a text message from his brother, F.B., "Did you get a job done?", "all of it?" to which B.B., replied "except offices." This clearly suggests B.B., was assisting his brother F.B., in destroying evidence of their crimes prior to their arrest and it was part of a plan to escape authorities. B.B., has never reported any of the 20,000 EUROS he received to the Tax Administration Authorities.*

Objection of the defence

72. The defence claims that "it is not known what kind of organization it is, hierarchy in this organization, the scope of this organization and the commitment of certain offences. All these elements are required in order to qualify the actions of a suspect as actions that from the existence of a criminal offence of Organized Crime in this case.

Finding of the court

73. The court find that there is a well-grounded suspicion that the defendant received the amount of 20,000.00 Euros from the defendant N.V., knowing that such money was the

proceeds of crime, for the purpose hiding, concealing or disguising the true nature of the said money. The court concludes that there is a well-grounded suspicion that the defendant B.B., was part of the organized criminal group established by the defendant N.V., and F.B., for the purpose of laundering the proceeds of the criminal offence of Fraud.

D) Defendant E.D.,

74. The indictment charges the defendant E.D., of four (4) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Receiving Stolen Goods; and
Count4: Tax Evasion

75. In order to properly analyse the criminal offences for which the defendant is charged the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count 2: Money Laundering

The allegation of the prosecutor

76. The prosecution alleges that the following actions were committed by the defendant E.D., thus committing the criminal offence of Money Laundering. The pertinent language of the indictment reads:

> *From December 2011 to February 2012, in Pristina, defendant E.D., in co-perpetration with defendants N.V., and F.B., and others, received a total of* ***400,000 EUROS*** *of stolen money into his "company" accounts P. and Q., from defendant N.V.,'s bank account as a result of his close relationship with defendant F.B., and with the plan of "laundering" or hiding the money. There*

were no written agreements, terms of repayment or collateral established concerning the transfer of the 400,000 EUROS to P. and Q. Defendant E.D., then allegedly used this stolen money for a restaurant project located at the Municipal Stadium in Pristina and to stock the Q. show room with ceramic tiles. By accepting and then withdrawing 400,000 EUROS of this stolen money defendant E.D., assisted N.V., F.B., and others to convert the stolen money for the purpose of concealing and "laundering" the true nature, source, location, disposition, movement or ownership of the money and to evade the legal or apparent legal consequences of their actions and by such actions, clearly promoted the underlying criminal activity. Some of the ceramic tiles allegedly purchased with the stolen money were used in exchange for the purchase of an apartment valued at 45, 000 EUROS in Mati 1, Pristina which is subject to an attachment order. Both P. and Q. have no money in their bank accounts and the restaurant has never been completed or opened.

Objection of the defence

77. The defence claims that the defendant through "P." company borrowed the amount of 200,000.00 Euros from F.B., in order to invest in a restaurant which is located in the premises of Prishtina Staudium. The defence states that the defendant was under no obligation to ask the lender about the origin of the money that he is interested to borrow.

78. Further, the defence claims that the defendant through the company "Q." received from the company of the defendants F.B., and N.V., the amount of 200,000.00 Euros as down payment for tiles. According to the defence this may not be qualified as money laundering because this is a contractual relationship between the parties.

Finding of the court

79. The court notes that it is not disputed that the defendant received the amount of 400,000.00 Euros. The defendant received the amount of 200,000.00 Euros in the bank account of the company called "P." and the same amount of money in the bank account

of the company called "Q.". It is also not disputed that there is no written agreement(s) on which these payments were based.

80. The defendant claims that the other defendant F.B., loaned him the amount of 200,000.00 Euros. There is no written agreement in this regard. In addition F.B., denies that he has to do anything with this transfer and so does the defendant N.V.

81. In these circumstances the court is satisfied that there is a well-grounded suspicion that the transfers were made for the purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of the property, as well as to assist the defendant in commission of the criminal offence of Fraud as well as promoted this criminal offence.
82. Therefore, the court concludes that there is a well-grounded suspicion that the defendant committed the criminal offence of Money Laundering contrary to Article 32 of the Law on the Prevention of Money Laundering and Terrorist Financing 2010, paragraphs 2(1), 2(2), 2(4) and 2(5) of this article.

Count 3: Receiving Stolen Goods

Allegation of the prosecutor

83. The prosecution alleges that the following actions were committed by the defendant E.D., thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *From December 2011 to February 2012, in Pristina, defendant E.D., received* ***400,000 EUROS*** *of stolen money into his P. and Q. accounts from defendant N.V.,'s bank account as a result of his close friendship with F.B.,. There were no written agreements, terms of repayment or collateral established. Defendant E.D., then allegedly used this stolen money for a restaurant project located at the Municipal Stadium in Pristina and to stock the Q. show room with ceramic tiles. Some of these ceramic tiles were used in exchange for the purchase of*

an apartment valued at 45,000 EUROS in the Mati 1 area, Pristina. Both P. and Q. have no money in their bank accounts and the restaurant has never been completed or opened.

Finding of the court

84. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed by the defendant the court concludes that there is a concurrence of criminal offences. Specifically, the criminal offence of Money Laundering consumes the criminal offence of Receiving Stolen Goods. In this instance the defendant, if found guilty, may be convicted of the criminal offence of Money Laundering which is a complex criminal offence and receiving proceeds from a crime (in this case stolen money) is only a component of the criminal offence of Money Laundering which consumes the criminal offence of Receiving Stolen Goods.

85. Therefore, the court decided to dismiss the indictment in relation to this count of the indictment.

Count 4: Tax Evasion

Allegation of the prosecutor

86. The prosecution alleges that the following actions were committed by the defendant E.D., thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

From December 2011 to February 2012, defendant E.D.,'s companies P. and Q. received a total of 400,000 EUROS of the stolen money that N.V., never transferred to O.,. Defendant E.D., intentionally omitted and failed to ever report any of this illegal income to the Tax Administration Authority nor did he pay any taxes regarding such stolen money to TAK. An investigation carried out by TAK indicates Q. and its owners, J.B., and E.D., had undeclared turnover of 129,310.34 EUROS and owe ***20,689.65 EUROS*** *for Tax Evasion in 2012. The*

*TAK investigation also indicates that P. had an undeclared turnover of 200,000 EUROS and owed **44,831.54 Euros** for Tax Evasion in 2012.*

Objection of the defence

87. The defence claims that the reason why the defendant did not report the income to tax authorities was because the company Q. did not deliver the goods, namely the ceramic tiles and that's why the invoices were not issued, thus the income was not reported.

88. In relation to the failure to report income for the company P. the defence claims that the income was a borrowing thus the company was not obliged to report it to tax authorities.

89. Further, the defence claims that the Law No.04/L-209 on Amnesty applies in the present case in the whole territory of Kosovo, thus this criminal offence is pardoned.

Finding of the court

90. The court notes that it is not disputed that the defendant received a total amount of 400,000 Euros from the company of the defendant N.V., – 200,000 Euros were received in the bank account of the company Q. and another 200,000 Euro were received in the bank account of the company P.

91. The court already established that there is a well-grounded suspicion that these money were transferred by the defendant N.V., to these companies for the purpose to launder the proceeds from the crime.

92. Therefore, having in mind that this is an illegal income and that the same is subject to taxes, the court concludes that the defendant committed the criminal offence of Tax Evasion contrary to Article 63 (1), (2) (2.1), (3) and (4) of the Law on Tax Administration and Procedures 2010 (TAP).

93. The court disagrees with the argument of the defence that the criminal offence of Tax Evasion is pardoned by the Law No.04/L-209 on Amnesty. The pertinent language of this law is the following:

1.2. Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date 6 July 2003, Official Gazette of Kosovo no. 2003/25) and the UNMIK Regulation nr. 2004/19 on amending the Provisional Criminal Code of Kosovo, as follows:

1.2.8. Call for resistance (Article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense. **The perpetrators of the following criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance**, are also granted amnesty from criminal prosecution and execution of punishment:

…

1.2.8.3. Tax evasion (Article 249); [emphasis added]

As may be noted from the language of the law the criminal offence of Tax Evasion is pardoned only if it was committed for the purpose of committing the criminal offence of 'Call for Resistance'. In the present case neither the prosecutor nor the defense claimed that the criminal offence of Tax Evasion was allegedly committed for the purpose of committing the criminal offence of Call for Resistance. Therefore, the court rejects this argument of the defense as ungrounded.

Count 1: Organized Crime

Allegation of the prosecutor

94. The prosecution alleges that the following actions were committed by the defendant E.D., thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

Defendant E.D., has known defendant F.B., for 13-14 years and considers him a good friend. Defendant E.D., registered a company named P. at the end of 2008 for the purpose of security but made very little money, so he decided to

invest in a restaurant project at the Municipal Stadium in Pristina. Defendants F.B., and N.V., offered to "loan" 200,000 EUROS to defendant E.D.,'s company P. for a restaurant project, although there is no written agreement, no terms of repayment and no collateral established. Defendant E.D., never asked N.V., and F.B., where or how they came up with such a large amount of money that they were willing to transfer to E.D.'s P., bank account. Defendants F.B., and N.V., transferred ***200,000 EUROS*** *of the previously described stolen money to P. on 14 December 2011. Defendant alleges all of the money has been used in the restaurant project. All of this stolen money was withdrawn by defendant E.D., within 24 hours of receipt. None of the money has ever been paid back to defendants F.B., or N.V., nor have defendants F.B., or N.V., ever asked the money be paid back. The P. bank account has been and remains empty since E.D., withdrew the funds. The restaurant has never been completed or opened. The contents of this restaurant are subject to an attachment order.*

Defendant E.D., also established an alleged ceramic tile company named Q. in January 2012. Immediately after E.D., registered the company, he received, through Q., ***100,000 EUROS*** *of the stolen money from defendant N.V.,'s CE account on 22 February 2012 and another* ***100,000 EUROS*** *on 1 March 2012. Allegedly the money was transferred for "payment of goods, for ceramics and stuff" in which defendants N.V., and F.B., "… were pursuing a project, they were building something…", although E.D., has never received an order for ceramic tiles or anything else and there is no written agreement, terms of repayment or any collateral established. Again, E.D., never questioned defendants N.V., or F.B., about how and where they obtained such large sums of money. Defendants N.V., and F.B., have never asked for the money back. Defendant E.D., admitted transferring 135,000 EUROS of the Q. money into the P. account for the purpose of financing the restaurant project. He later transferred 60,000 EUROS back into the Q. account. Defendant J.B., who is co-owner of Q., admitted in his defendant interview that 100,000 EUROS of the stolen money received from N.V.,'s CE bank account was used to purchase ceramic tiles for their showroom and then used in exchange for the purchase*

of an apartment in Mati 1, Prishtina, worth about 45,000 EUROS which is the subject of an attachment order. There is no money in the Q. account or the P. account. These transfers were clearly part of an organized plan, in participation with defendants N.V.,, F.B., and others to "launder," hide, conceal or disguise the nature, source, location, or ownership of the stolen money. It further provided defendant E.D., and his so called companies P. and Q. with a huge, unlawful and illegal economic benefit at the expense of the injured parties O.,, MIA and the citizens of Kosovo.

Objection of the defence

95. The defence states that the reason why his client asked for funds from F.B., was due to the fact that he was aware that F.B., was a businessman and that he could borrow from him financial funds for "P." Company without any problem. The reason as to why there was no agreement in writing, this cannot be incriminated with the elements of a criminal offence, because the said company received the money through a legal bank account, and which transfer of money was registered in the bank transaction as a borrowing, and in this point we cannot conclude that there was no agreement in writing, because in the bank there are registered the money received by my client.

96. Further, the defence states that the amount of 200,000.00 Euro has been invested in the restaurant and regarding this all evidence, such as the invoices of materials purchased, the projects and other expenses, have been submitted to the Prosecutor of the case, but this can also be verified by going to the site inspection where it can be verified through a direct view of the object where it is clearly seen that the investment was done in the said restaurant.

97. In sum the defence claims that the defendant is not involved in the organized criminal group and there is no evidence to support a well-grounded suspicion that the defendant committed the criminal offence of Organized Crime.

Finding of the court

98. The court has established that there is a well-grounded suspicion that the defendant committed the criminal offence of Money Laundering. In the same time the court established that the defendants N.V.,, F.B., and B.B., committed the criminal offence of Organized Crime. The court notes that the defendant received the sum of 400,000.00 Euros in relation to which there exists no written agreement. In addition, there is a well-grounded suspicion that the money which was received derived from the commission of a criminal offence. The defendant has known F.B., for a long period of time. In addition the money which was transferred to him was promptly withdrawn from the bank account.

99. All these circumstances lead to the conclusion that there is a well-grounded suspicion that the defendant committed the criminal offence of Organized Crime.

E) Defendant I.F.,

100. The indictment charges the defendant I.F., of four (4) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Receiving Stolen Goods; and
Count4: Tax Evasion

101. In order to properly analyse the criminal offences for which the defendant is charged the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count 2: Money Laundering

Allegation of the prosecutor

102. The prosecution alleges that the following actions were committed by the defendant I.F., thus committing the criminal offence of Money Laundering. The pertinent language of the indictment reads:

> *Defendant I.F.,'s company R.I.,, received a total of **200,000 EUROS** on 19 and 27 December 2011 from defendant N.V.,'s bank account after meeting several times with defendant F.B., and then later, with defendant N.V.,. This was allegedly for a hospital project for about 1.5 million Euros. The 200,000 EUROS was stolen money defendant N.V., failed to transfer to O.,. Defendant I.F., withdrew most of the money shortly after receipt of the stolen money and left his company R.I., several months later. There was never any written agreement, terms of repayment or collateral discussed for this hospital project and I.F., never asked defendants F.B., or N.V., where and how they obtained such a large sum of money to give to I.F. In spite of many requests by EULEX, defendant I.F., has never shown any proof he did anything with the money except to steal it. The R.I., bank account has remained empty since defendant I.F., withdrew most of this stolen money well over one year ago. I.F., received this stolen money to "launder," hide, conceal or disguise the nature, source, location, or ownership of it. I.F., further assisted defendants N.V., and F.B., to evade the legal consequences of their actions by accepting this laundered, stolen money and he further promoted the underlying criminal activity of defendants N.V., and F.B., by accepting and stealing this 200,000 EUROS.*

Objection of the defence

103. The defence counsel claims that the criminal offences of Money Laundering have been included in the Law on Amnesty No.04/L-209.

Finding of the court

104. The court finds that the argument of the defence is ungrounded. The Law No.04/L-209 on Amnesty does not pardon the criminal offence of Money Laundering.

105. Further, the court notes that it is not disputed that the defendant received the amount of 200,000.00 Euros into the bank account of his company. There is a well-grounded suspicion that this money is the proceeds of the criminal offence of fraud. There was no written agreement between the defendant I.F., and N.V., or F.B., for this money. The defendant N.V., claims that she does not know the defendant. This action of the defendant served and helped the defendant N.V., in her attempt to present this as a payment for bribe to MIA officials before the representatives of O. The statement of this defendant is in complete contradiction with the statements of F.B., and N.V. Therefore, the court is of the opinion that there is a well-grounded suspicion that N.V., and F.B., in cooperation with the defendant I.F., committed the criminal offence of Money Laundering.

106. Therefore, the court concludes that there is a well-grounded suspicion that the defendant committed the criminal offence of Money Laundering, contrary to Article 32 of the Law on the Prevention of Money Laundering and Terrorist Financing 2010, paragraphs 2(1), 2(2), 2(4) and 2(5).

Count 3: Receiving Stolen Goods

Allegation of the prosecutor

107. The prosecution alleges that the following actions were committed by the defendant I.F., thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

*Defendant I.F.,'s company R.I., received a total of **200,000 EUROS** on 19 and 27 December 2011 from defendant N.V.,'s bank account after meeting several times with defendant F.B., and then later, with defendant N.V. This was allegedly for a hospital project for about 1.5 million Euros. The 200,000 EUROS was stolen money defendant N.V., failed to transfer to O. Defendant I.F., withdrew most of the money shortly after receipt of the funds and left his company R.I., several months later. There was never any written agreement, terms of repayment or collateral established for this alleged hospital project and in spite of many requests by EULEX, defendant I.F., has never shown any written verification of anything purchased, planned or constructed. Neither defendants N.V., nor F.B., have ever asked for the money back and defendant I.F., never asked them where or how they obtained such a large sum. The R.I., bank account has remained empty since defendant I.F., withdrew most of the stolen money.*

Finding of the court

108. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed by the defendant the court concludes that there is a concurrence of criminal offences. Specifically, the criminal offence of Money Laundering consumes the criminal offence of Receiving Stolen Goods. In this instance the defendant, if found guilty, may be convicted of the criminal offence of Money Laundering which is a complex criminal offence and receiving proceeds from a crime (in this case stolen money) is only a component of the criminal offence of Money Laundering which consumes the criminal offence of Receiving Stolen Goods.

109. Therefore, the court decided to dismiss the indictment in relation to this count of the indictment.

Count4: Tax Evasion

Allegation of the prosecutor

110.The prosecution alleges that the following actions were committed by the defendant I.F.,, thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

> *Defendant I.F., received a total of **200,000 EUROS** for his company R.I., on 19 and 27 December 2011 from stolen money defendant N.V., failed to transfer to O.,. Defendant I.F., withdrew most of the money shortly after receipt of the funds and never planned, built, designed or purchased anything with the stolen money that was allegedly for a hospital project. He left R.I., several months later and the company bank account has remained empty since he withdrew the stolen money. He intentionally omitted and failed to ever report any of this illegal income to TAK nor did he pay any taxes regarding such stolen money, which are in excess of 20,000 EUROS. An investigation carried out by TAK indicates that R.I., is liable for **81,477.22 EUROS** for Tax Evasion for the tax year 2011 and is liable for a total of **197, 125.60 EUROS** for 2007-2013. The tax owed for 2012 is **29,708.14 EUROS***

Objection of the defence

111.The defence counsel claims that the criminal offences of Money Laundering have been included in the Law on Amnesty No.04/L-209.

Finding of the court

112.The court finds that the argument of the defence that this criminal offence is included in the Law on Amnesty is ungrounded. The Law No.04/L-209 on Amnesty does not pardon the criminal offence of Tax Evasion directly. This criminal offence was pardoned only if committed in conjunction with the criminal offence of Call for Resistance.

Count 1: Organized Crime

Allegation of the prosecutor

113. The prosecution alleges that the following actions were committed by the defendant I.F., thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

> *Defendant I.F., was listed as an authorised participant in a construction company, R.I.,, owned by defendant S.Sh.,. After he met defendant F.B., several times and then later defendant N.V.,,* ***100,000 EUROS*** *of the stolen money N.V., failed to transfer to O., was transferred into the R.I., bank account on 19 December 2011 and another* ***100,000 EUROS*** *on 27 December 2011. The alleged purpose of these money transfers was a hospital project with an approximate cost of 1.5 million Euros, which is the approximate amount N.V., stole from MIA and O.,. There was never any written agreement and no terms of repayment or collateral for this so called hospital project were ever discussed. I.F., never asked defendant F.B., or N.V., where or how they obtained such a large sum of money to give to I.F. And neither defendants N.V., or F.B., have ever asked for a return of this money. Despite numerous requests by EULEX, defendant I.F., has never shown he did anything with the money except steal it. Defendant I.F., withdrew most of the money shortly after the transfers and the R.I., bank account has been empty ever since. Defendant I.F., left the company R.I., several months after receipt of the 200,000 EUROS. Defendant I.F., accepted these transfers totalling 200,000 EUROS as part of an organized criminal group to "launder," hide, conceal, or disguise the nature, source, location, or ownership of this stolen money. He further received a huge, unlawful and illegal economic benefit for his so called company R.I., at the expense of injured parties O., MIA and the people of Kosovo.*

Objection of the defence

114. The defence implicitly claims that there is no well-grounded suspicion that this criminal offence was committed.

Finding of the court

115. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed the court finds that there is a well-grounded suspicion that the criminal offence of Organized Crime was committed as well. The actions of this defendant contributed substantially to hiding and disguising the nature of the money which were proceeds from the crime. The knowledge of the defendant is inferred from the fact that there was no written contract despite the fact that a very large sum of money was received by him allegedly for the construction of a hospital. At this point the evidence presented by the prosecutor suffices for the court to establish a well-grounded suspicion that the defendant committed the criminal offence as charged in the indictment.

116. Therefore, the court concludes that there is a well-grounded suspicion that the defendant committed the criminal offence of Organized Crime, contrary to Article 274, paragraphs (1), (2), (4) and (7) of the CCK 2003 (Article 283 CCK 2013)

F) Defendant N.Th.,

117. The indictment charges the defendant N.Th., of four (4) counts:

Count1: Organized Crime;
Count2: Money Laundering;
Count3: Receiving Stolen Goods; and
Count4: Tax Evasion

118. In order to properly analyse the criminal offences for which the defendant is charged the Count on Organized Crime needs to be analysed in the end. The allegations of the prosecutor for the underlying criminal offenses need to be assessed first.

Count 2: Money Laundering

Allegation of the prosecutor

119. The prosecution alleges that the following actions were committed by the defendant N.Th., thus committing the criminal offence of Money Laundering. The pertinent language of the indictment reads:

> *Defendant N.Th.,'s son A.Th., founded a company called C.B., on 28 February 2012. However N.Th., admitted that he manages and runs the company. The next day, on 1 March 2012, defendant N.V., transferred **20,000 EUROS** into the C.B., bank account. Defendant N.Th., has known defendant F.B., for many years, since before the war in 1999. Defendant N.Th.'s wife has known defendant N.V., since they were children. C.B., also received another bank transfer in the amount of **49,000 EUROS** from defendant N.V.,'s account on 30 August 2012. Both of these transfers came from stolen money that defendant N.V., failed to transfer to O.,. A.Th., the son of defendant N.Th., is the registered owner of C.B.,, although he is only about 19 or 20 years old. A.Th., explained that defendant F.B., owed his father, N.Th., money and that the two bank transfers of the stolen money were to satisfy F.B.,'s debt. A.Th., admitted that without the 20,000 EUROS transfer to C.B., the company would not have started. N.Th., told A.Th., this money was to satisfy N.Th.,'s debt with defendant F.B. The stolen money went through A.Th.,'s company, C.B., as part of defendants N.V., F.B., and N.Th.,'s organized plan to launder this stolen money and to hide, conceal or disguise the nature, source, location or ownership of it. N.Th., assisted defendants N.V., and F.B., to evade the legal consequences of their actions by receiving this 69,000 EUROS and consequently he promoted their underlying criminal activity. He further*

received a large, illegal and unlawful economic benefit for C.B., and of course, himself. The latest inquiry reveals virtually no money in the C.B., Bank account.

Objection of the defence

120. The defence claims that the charges against this defendant as described in the enacting clause of the indictment do not constitute criminal offence.

Finding of the court

121. The court notes that the defence is no disputing the facts alleged by the prosecutor but is alleging that those facts do not constitute a criminal offence. The court does not agree with this conclusion. The prosecutor clearly alleges that the defendant N.Th., assisted defendants N.V.,, and F.B., to evade the legal consequences of their actions by receiving the sum of 69,000 EUROS and consequently he promoted their underlying criminal activity. The prosecution is further alleges that the defendant received a large, illegal and unlawful economic benefit for C.B., and of course, himself. The latest inquiry reveals virtually no money in the Bank account of C.B.

122. The facts alleged by the prosecutor constitute the criminal offence of Money Laundering, contrary to Article 32 of the Law on the Prevention of Money Laundering and Terrorist Financing 2010, paragraphs 2.1, 2.2, 2.4 and 2.5.

Count 3: Receiving Stolen Goods

Allegation of the prosecutor

123. The prosecution alleges that the following actions were committed by the defendant N.Th.,, thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

*Defendant N.Th., received **20,000 EUROS** on 1 March 2012 and **49,000 EUROS** on 30 August 2012 in stolen money from defendant N.V.,'s CE account without the permission, knowledge or consent of O., or the MIA. Defendant F.B., paid off a personal debt he had with defendant N.Th., via these transfers from defendant N.V.,'s account and he concealed the purpose of these transfers by going through N.Th.'s C.B., account.*

Objection of the defence

124. The defence made a general allegation on all counts of the indictment: the charges against the defendant do no constitute criminal offence.

Finding of the court

125. Having established that there is a well-grounded suspicion that the criminal offence of Money Laundering was committed by the defendant the court concludes that there is a concurrence of criminal offences. Specifically, the criminal offence of Money Laundering consumes the criminal offence of Receiving Stolen Goods. In this instance the defendant, if found guilty, may be convicted of the criminal offence of Money Laundering which is a complex criminal offence and receiving proceeds from a crime (in this case stolen money) is only a component of the criminal offence of Money Laundering which consumes the criminal offence of Receiving Stolen Goods.

126. Therefore, the court decided to dismiss the indictment in relation to this count of the indictment.

Count 4: Tax Evasion

Allegation of the prosecutor

127. The prosecution alleges that the following actions were committed by the defendant N.Th., thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

*Defendant N.Th., received a total of **69,000 EUROS** of stolen money that defendant N.V., failed to transfer to O., and this stolen money was used to satisfy a personal debt F.B., had with defendant N.Th. The money was transferred into N.Th.,'s son's company C.B.,, to hide the fact that the money was being used by F.B., to pay off his personal debt to N.Th. A.Th., withdrew the money and gave it to his father, defendant N.Th. N.Th., admitted that in practice he is the manager of the company C.B., and that he runs the company. N.Th., never reported any of the 69,000 EUROS to TAK nor did he pay any taxes regarding such stolen money. An investigation carried out by TAK indicates that C.B., failed to declare the 49,000 EUROS it received in stolen money from CE. The amount owed for Tax Evasion in 2012 is **10,983.00 EUROS.** The transfer of 20,000 Euros was declared but according to TAK it is a suspicious transaction.*

Furthermore, interception of F.B.,'s phone revealed a conversation which took place on 24 July 2013 in which F.B., contacted N.Th.,'s phone and S.Sh., answered. F.B., asked "can you issue a receipt as if you worked at my place?" S.Sh., answered: We'll look into it". F.B., says "come to my office I'm here together with TAK inspectors checking documents". Later in the same evening N.Th., calls F.B., and they discuss the issuance of receipts for a car wash. From these conversations it is clear that defendants F.B., N.Th., and S.Sh., are working together and attempting to avoid payment of tax

Objection of the defence

128. The defence made a general allegation on all counts of the indictment: the charges against the defendant do no constitute criminal offence.

Finding of the court

129. The court that the prosecutor is alleging that the defendant N.Th., did not report the sum of 69,000 EUROS to TAK nor did he pay any taxes relating to this sum. The fact as

alleged by the prosecutor constitute a criminal offence in violation of Article 63 (1), (2) (2.5), (3) and (4) of the Law on Tax Administration and Procedures 2010.

Count 1: Organized Crime

Allegation of the prosecutor

130. The prosecution alleges that the following actions were committed by the defendant N.Th., thus committing the criminal offence of Organized Crime. The pertinent language of the indictment reads:

> *Defendant N.Th.,'s son A.Th., founded a company called C.B., on 28 February 2012. However N.Th., admitted that he manages and runs the company. The next day, on 1 March 2012, defendant N.V., transferred **20,000 EUROS** into the C.B., bank account. Defendant N.Th., has known defendant F.B., for many years, since before the war in 1999. Defendant N.Th.'s wife has known defendant N.V., since they were children. C.B., also received another bank transfer in the amount of **49,000 EUROS** from defendant N.V.,'s account on 30 August 2012. Both of these transfers came from stolen money that defendant N.V., failed to transfer to O.,. A.Th.,, the son of defendant N.Th.,, is the registered owner of C.B., although he is only about 19 or 20 years old. A.Th., explained that defendant F.B., owed his father, N.Th., money and that the two bank transfers of the stolen money were to satisfy F.B.,'s debt. A.Th., admitted that without the 20,000 EUROS transfer to C.B., the company would not have started. N.Th., told A.Th., this money was to satisfy N.Th.,'s debt with defendant F.B.,. The stolen money went through A.Th.,'s company, C.B., as part of defendants N.V., F.B., and N.Th.,'s organized plan to launder this stolen money and to hide, conceal or disguise the nature, source, location or ownership of it. N.Th., assisted defendants N.V., and F.B., to evade the legal consequences of their actions by receiving this 69,000 EUROS and consequently he promoted their underlying criminal activity. He further*

received a large, illegal and unlawful economic benefit for C.B., and of course, himself. The latest inquiry reveals virtually no money in the C.B., Bank account.

Objection of the defence

131. The defence made a general allegation on all counts of the indictment: the charges against the defendant do no constitute criminal offence.

Finding of the court

132. The court notes that the prosecutor is alleging that N.Th., assisted defendants N.V., and F.B., to evade the legal consequences of their actions by receiving this 69,000 EUROS and consequently he promoted their underlying criminal activity. He further received a large, illegal and unlawful economic benefit for C.B., and of course, himself. The latest inquiry reveals virtually no money in the C.B., Bank account. Having established that there is a well-grounded suspicion that the defendants N.V., and F.B., established a criminal group, the court concludes that the there is a well-grounded suspicion that the defendant N.Th., knowingly was part of that group.

133. The alleged facts by the prosecutor do constitute the criminal offence of Organized Crime. This is because the group was structured and consisted of three or more persons and the aim was to commit the serious offence of Money Laundering.

G) Defendant J.B.,

134. The indictment charges the defendant J.B., of two (2) counts:

Count1: Receiving Stolen Goods; and

Count2: Tax Evasion

Count 1: Receiving Stolen Goods

Allegation of the prosecutor

135. The prosecution alleges that the following actions were committed by the defendant J.B., thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *Defendant J.B., formed the company Q., in January 2012 with co-owner, defendant E.D. Immediately thereafter, Q. received a **100,000 EUROS** transfer from N.V.,'s NLB account on 22 February 2012, and another **100,000 EUROS** on 1 March 2012. Defendants J.B., and E.D., claim this money was solely for the purchase of ceramic tiles, but absolutely nothing was ever done regarding this project, other than transferring 135,000 EUROS of the stolen money into the P. account for the restaurant project, and using the rest of the money to stock their showroom with tiles that had nothing to do with the so called project. There was never any written agreement, terms of repayment or collateral established regarding this alleged ceramic tile project. Neither defendants J.B., nor E.D., ever inquired where or how defendants N.V., and F.B., obtained such a large sum of money. Defendants N.V., and F.B., have never asked for the money back. Defendant J.B., was aware of the 135,000 EUROS transfer and made purchases with the remaining stolen money for their showroom. He also made several withdrawals totalling about **24,000 EUROS** of this stolen money for personal use. Tiles purchased from the showroom were used to purchase an apartment with a value of about 45,000 EUROS, which is the subject of an attachment order. The Q. bank account is empty and defendant J.B., admitted they never did any major work in Q..*

Objection of the defence

136. The defence claims that there is no evidence to show that the defendant J.B., used the money received in the bank account of the company.

137. The defence claims that every financial transaction was clarified by the defendant before the prosecutor and has also proved that there are no elements of any criminal offence. He claims that his partner, E.D., informed him that a down payment for tiles was made and he had no reasons to believe that something wrong was going on.

Finding of the court

138. The court finds that it is not disputed that the amount of 200,000.00 Euros was transferred from the bank account of CE Company to the bank account of the company Q. which was founded in 2012. Further, it is not disputed that the defendant is one of the owners of the company. The sum of 135,000.00 EUROS was transferred to the bank account of P., with a significant quantity of tiles purportedly purchased with the remaining money. There is no written agreement between defendants N.V., and F.B., and the defendant J.B., relating to this transfer. The defendants N.V., and F.B., deny that they had ordered any tiles.

139. Therefore, the court concludes that there is a well-grounded suspicion that the defendant J.B., committed the criminal offence of Receiving Stolen Goods contrary to Article 272 (1) and (2) CCK 2003 (Article 345 CCK 2013).

Count 2: Tax Evasion

Allegation of the prosecutor

140. The prosecution alleges that the following actions were committed by the defendant J.B., thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

Defendant, J.B., as co-owner of Q., knowingly received from defendant N.V.,'s NLB account 100,000 EUROS on 22 February 2012 and another 100,000 EUROS on 01 March 2012. This was stolen money defendant N.V., failed to transfer to O. Defendant J.B., knowingly used this money to stock the showroom with ceramic tiles and also knew these ceramic tiles were used to purchase an apartment worth 45,000 EUROS. He was further aware that his partner, defendant E.D., transferred 135,000 EUROS into E.D.,'s P. account and used most of this money for the restaurant project. Defendant J.B.,, as co-owner of Q., intentionally evaded the payment of taxes regarding the 200,000 EUROS that Q. received. He further failed to report such illegal income to TAK as required by law and he failed to pay any taxes regarding such stolen money. An investigation carried out by TAK indicates Q. and its owners, J.B., and E.D., had undeclared turnover of 129,310.34 EUROS and owe ***20,689.65 EUROS*** *for Tax Evasion in 2012.*

Objection of the defence

141. The defence claims that the criminal offence of Tax Evasion is pardoned by the Law No.04/L-209 on Amnesty.

142. Further, the defence alleges that there is no evidence to support a well-grounded suspicion that this criminal offence was conducted by the defendant.

Finding of the court

143. The court disagrees with the argument of the defence that the criminal offence of Tax Evasion is pardoned by the Law No.04/L-209 on Amnesty. The pertinent language of this law is the following:

1.2. Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date 6 July 2003, Official Gazette of Kosovo no.

2003/25) and the UNMIK Regulation nr. 2004/19 on amending the Provisional Criminal Code of Kosovo, as follows:

> 1.2.8. Call for resistance (Article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense. **The perpetrators of the following criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance**, are also granted amnesty from criminal prosecution and execution of punishment:
>
> …
>
> **1.2.8.3. Tax evasion (Article 249);** [emphasis added]

As may be noted from the language of the law the criminal offence of Tax Evasion is pardoned only if it was committed for the purpose of committing the criminal offence of 'Call for Resistance'. In the present case neither the prosecutor nor the defense claimed that the criminal offence of Tax Evasion was allegedly committed for the purpose of committing the criminal offence of Call for Resistance. Therefore, the court rejects this argument of the defense as ungrounded.

144. Further, it seems from the report of TAK that an amount of 20,689.65 EUROS is unpaid for 2012. The amount of 200,000.00 Euros was not reported to tax authorities.

145. Therefore, the court concludes that there is a well-grounded suspicion that the defendant acted contrary to Article 63 (1), (2) (2.1), (3) and (4) of the Law on Tax administration and Procedures 2010 (TAP).

H) Defendant S.Sh.,

146. The indictment charges the defendant S.Sh., of two (2) counts:

Count1: Receiving Stolen Goods; and

Count2: Tax Evasion

Count 1: Receiving Stolen Goods

Allegation of the prosecutor

147.The prosecution alleges that the following actions were committed by the defendant S.Sh.,, thus committing the criminal offence of Receiving Stolen Goods. The pertinent language of the indictment reads:

> *Defendant S.Sh., is the owner of the company R.I.,. He was aware that his company R.I., received 100,000 EUROS on 19 December 2011 and another 100,000 EUROS on 23 December 2011. He withdrew approximately* ***37,000 EUROS*** *of this stolen money and admits neither he nor defendant I.F., were entitled to this money. He admits appropriating* ***16,000 EUROS*** *of this stolen money for himself and gave the rest to defendant I.F.,. There is no money left in the R.I., bank account.*

Objection of the defence

148.The defence claims that the criminal offence was not described in accordance with the law. In addition, implicitly the defence claims that there is no well-grounded suspicion that the defendant committed this criminal offence.

149.Further, the defence claims that the criminal offences were included in the Law No.04/L-209 on Amnesty.

Finding of the court

150.The court notes that the argument of the defence regarding the description of the criminal offence is ungrounded. The prosecutor has prepared an indictment in full compliance with Article 241 of CPCK. The weight of each of the allegations shall be decided at a later stage.

151. The court notes that it is not disputed that the defendant S.Sh., is the owner of the company R.I.,. Further it is not disputed that this company received the amount of 100,000 EUROS from C.E. The court has established that there is a well-grounded suspicion that this money derives from criminal activity. The defendant withdrew personally the amount of 37,000 EUROS. S.Sh., received money that he knew or could have known was obtained by the commission of a criminal offence

152. Therefore, the court concludes that there is a well-grounded suspicion that this defendant acted contrary to Article 272 (1) and (2) CCK 2003 (Article 345 CCK 2013).

Count 2: Tax Evasion

Allegation of the prosecutor

153. The prosecution alleges that the following actions were committed by the defendant S.Sh., thus committing the criminal offence of Receiving Tax Evasion. The pertinent language of the indictment reads:

> *Defendant S.Sh.,, as owner of R.I.,, received a total of 200,000 EUROS of stolen money from defendant N.V.,'s CE bank account and he intentionally omitted and failed to ever report any of this illegal income to TAK nor did he ever pay taxes on such stolen money. An investigation carried out by TAK indicates that R.I., is liable for* ***81, 447.22 EUROS*** *for Tax Evasion for the tax year 2011 and is liable for a total of* ***197, 125.60 EUROS*** *for 2007-2013. The tax owed for 2012 is 29,708.14 EUROS.*
>
> *Furthermore, interception of F.B.,'s phone revealed a conversation which took place on 24 July 2013 in which F.B., contacted N.Th.,'s phone and S.Sh., answered. F.B., asked "can you issue a receipt as if you worked at my place?" S.Sh., answered: We'll look into it". F.B., says "come to my office I'm here together with TAK inspectors checking documents". Later in the same evening*

N.Th., calls F.B., and they discuss the issuance of receipts for a car wash. From these conversations it is clear that defendants F.B., N.Th., and S.Sh., are working together and attempting to avoid payment of tax.

Objection of the defence

154. The defence claims that the criminal offence of Tax Evasion is pardoned by the Law No.04/L-209 on Amnesty.

Finding of the court

155. The court disagrees with the argument of the defence that the criminal offence of Tax Evasion is pardoned by the Law No.04/L-209 on Amnesty. The pertinent language of this law is the following:

> 1.2. Criminal offences foreseen by Criminal Code of Kosovo (UNMIK Regulation no. 2003/25 of the date 6 July 2003, Official Gazette of Kosovo no. 2003/25) and the UNMIK Regulation nr. 2004/19 on amending the Provisional Criminal Code of Kosovo, as follows:
>
> > 1.2.8. Call for resistance (Article 319) except in cases when commission of this criminal offense has resulted in commission of another criminal offense. **The perpetrators of the following criminal offenses bellow committed with the purpose of committing the criminal offence of call for resistance**, are also granted amnesty from criminal prosecution and execution of punishment:
> >
> > …
> >
> > **1.2.8.3. Tax evasion (Article 249);** [emphasis added]

As may be noted from the language of the law the criminal offence of Tax Evasion is pardoned only if it was committed for the purpose of committing the criminal offence of Call for Resistance. In the present case neither the prosecutor nor the defense

claimed that the criminal offence of Tax Evasion was allegedly committed for the purpose of committing the criminal offence of Call for Resistance. Therefore, the court rejects this argument of the defense as ungrounded.

I) Defendant H.Sh.,

156.The indictment charges the defendant H.Sh., of one (1) count:

Count 1: Tax Evasion

Allegation of the prosecutor

157.The prosecution alleges that the following actions were committed by the defendant H.Sh., thus committing the criminal offence of Tax Evasion. The pertinent language of the indictment reads:

> *H.Sh., is the registered owner of the company P.. Defendant N.V.,, in co-perpetration with F.B., and E.D., transferred **200,000 EUROS** of the stolen money into the P. account on 14 December 2011 to invest in a so called "restaurant project." E.D., told H.Sh., about the 200,000 EUROS being transferred into his P. company account, but defendant S.Sh., intentionally omitted and failed to ever report any of this illegal income to the Tax Administration Authority nor did he or E.D., pay any taxes regarding such stolen money to TAK. An investigation carried out by TAK indicates that P. had an undeclared turnover of 200,000 EUROS for 2011 and is liable for **44,831.54 EUROS** in Tax Evasion. TAK recommends H.Sh., be charged with intentional Tax Evasion.*

Objection of the defence

158. The defence claims that there is no sufficient evidence for a well-grounded suspicion in relation to this count for the defendant H.Sh.,. The defence claims that his client was only the formal director, whereas the other defendant E.D., was the registered agent and according to the law he has full authority same as a director in the company. According to the defence the defendant H.Sh., did not manage the finances of the company and was not involved in any of the transactions of the company. Further, the defence claims that the defendant did not intent to avoid payment of taxes and that, in any event, there is no obligation to report to the tax authorities the money it is averred he borrowed.

Finding of the court

159. The court notes that it is not disputed that the defendant H.Sh., is the owner of the company P.. Further, it is not disputed that the amount of 200,000.00 Euros were transferred from CE company to the account of P. It is not disputed that this money was not reported to tax authorities. Moreover, the court has established that there is a well-grounded suspicion that the purpose of the transfer of this money to P. bank account was to launder it and was not a loan to P. In these circumstances the court considers that there is a well-grounded suspicion that P. was under an obligation to report this income to the tax authorities.

160. Therefore, the court concludes that there is a well-grounded suspicion that the defendant acted contrary to Article 63 (1) and (4) of the Law on Tax Administration and Procedures 2010 (TAP).

III. Objections to evidence:

161. Only the defence counsel for the defendant J.B., filed an application to object to evidence. The defence claims that the evidence "was not lawfully obtained by the police, state prosecutor, or other government entity".

162. The defence states that in relation to count 1 of the indictment the evidence obtained through interception between J.B., and his wife was obtained and used as evidence in contradiction with Article 8 of the European Convention on Human Rights as regards to the right to respect for private and family correspondence. Further, the defence avers this evidence is irrelevant or intrinsically unreliable and should be inadmissible.

163. The court notes that the interception of the telephone number belonging to the defendant J.B., was conducted pursuant to an order for interception duly issued by Prishtina Basic Court on 2 April 2013. The interception of phone conversation that took place on 18 April 2013 between the defendant and his wife was done in compliance of the court order.

164. Therefore, the court concludes that evidence was obtained in compliance with legal procedures and is, therefore, prima facie admissible evidence. The weight of the evidence upon which the parties rely will be assessed at the end of these proceedings when the court shall render a judgment.

III. Conclusion:

165.Considering all the arguments above the court decided as in the enacting clause.

BASIC COURT OF PRISHTINE/PRISTINA,

PKR. Nr. 1046/13, 20 January 2014

Judge Malcolm Simmons

EULEX Presiding Judge

Legal Remedy: Pursuant to Article 250(4) of CPCK, authorized parties may appeal this decision within (5) days of the receipt of the written decision. The appeal must be addressed through this court to the Court of Appeals.