BASIC COURT OF PRIZREN

Case number 410/13

The judgments published may not be final and may be subject to an appeal according to the applicable law.

(INTRODUCTION)

This judgment is dated 14 April 2016

JUDGMENT IN THE NAME OF THE PEOPLE

Pursuant to the Articles 359 *et seq.* of the Criminal Procedure Code of Republic of Kosovo (hereinafter C.P.C.R.K) *ex vi* Article 541, paragraph (hereinafter, par.) 1, C.P.C.R.K.. The new C.P.C.R.K., entered into force on January the 1st 2013, shall apply to this case as the indictment, dated 11 December 2013 in Pristina (SPRK PPS No: 50/2011), was filed on the same day, this as per art. 541, par. 1, C.P.C.R.K..

The initial hearing took place in different sessions, due not only to the volume of the case but also to the number of issues, and its complexity, to be addressed; such sessions were held on 30 December 2013, 29 January 2014 and 23 April 2014.

The translation of the indictment to Turkish was also ordered on the 30th December 2013.

Considering also the need of translation of some pieces of evidence in different languages (Croatian, English into Albanian and Turkish, for instance), on the session on 29 January 2014 every participant agreed to have the next session only after 31st of March 2014, in order to allow the required translations.

On the session held on 23 April 2014 it was confirmed the translated indictment had been delivered and also it was considered that the evidence had been disclosed and translated and that other remaining reports would be delivered soon and it was also considered that the evidence was disclosed.

Also on 23 April 2014, following the agreement of the participants, only the enacting clause of the indictment was read and after assuring they had understood the indictment and the counts the court took their pleas.

All the defendants pleaded not guilty to all charges, except the defendant A.M. who stated that would be ready to enter a plea agreement with the Prosecution but only in relation to the charge of smuggling of migrants (count number 2); such an agreement was never achieved.

On the very same session of the initial hearing again it was discussed that the evidence disclosed could be in digital format, not printed, and a term of 20 days was set (pursuant to article 245 paragraph 6 C.P.C.K.) to file any objections to the evidence listed in the indictment pursuant to article 249 C.P.C.K, to file any requests to dismiss the indictment as legally prohibited or that there was no evidence in the indictment according to articles 250 and 253 C.P.C.K..

It has been decided as well, considering the vast type of subjects that could be discussed during the second hearing, as appropriate to schedule one, regardless a term, of 30 days, had been given to the defence counsels to submit their materials, file objections and request to dismiss the indictment.

The second hearing, pursuant to Article 254 C.P.C.K., took place on 30 May 2014. At the second hearing, no-one offered other material to their defence that might be admissible pursuant to Article 256 C.P.C.K.

When the second hearing was held, the objections to evidence and the requests to dismiss the indictment had already been decided by the ruling dated 27 May 2014, ruling that was confirmed by the Court of Appeals. After the said ruling was final it was possible to proceed to the main trial, having begun on 10 September 2014.

The Basic Court of Prizren in this case has a trial panel comprised of Judges Jorge Martins Ribeiro (EULEX, as Presiding Judge) and Jennifer Seel (EULEX), together with the Kosovo Judge Artan Sejrani, with Labinot Jetishi assigned as legal adviser.

A few sessions had to be cancelled between September 2015 and November 2015 as new arrangements had to be made, due to the fact the Kosovo Judge Artan Sejrani was appointed as of the session held on 20 November 2015 to replace the previous national judge, Zejnullah A.G. – who was a panel member until he was appointed as a prosecutor.

Pursuant to Article 311, par. 1, Criminal Code of the Republic of Kosovo (hereinafter C.C.R.K.), after hearing the parties, it was agreed by everyone to consider as read, administered or examined, the evidence that had already been produced along the previous sessions.

As ascertained before, this court is the competent to adjudicate the case, pursuant to articles 1, 2, par. 1.2, 9 par. 2.1, 15 par. 1.20 and 15, par. 2 of the Law on Courts (L. 03/L-199 in

force at the time the proceedings began) and per articles 3, pars. 1 and 7 (this last one in relation to the majority of EULEX Judges) of Law on the Jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo (L. 03/L-053 as it was in force at the time) *ex vi* art. 442 C.C.R.K.

This criminal case is against the defendants **A.Ç.**, nickname holder of the [Turkish passport no. with series no.], **M.B.**, holder of the Kosovo [passport no. with personal identification number], **A.M.**, holder of the I.D. (issued by Republic of Serbia) [ID-no.], **M.A.**, holder of the identification as per his [Turkish driving licence number and date], **A.B.**, holder of [F.Y.R.O.M. passport number], **I.P.**, holder of [ID-no.], **A.G.**, holder of [ID-no.] and **T.Y.**, holder of [ID-no.][1].

Initially this case was also against S.S. The proceedings with regards the defendant S.S. (count 7 of the indictment) were severed in the first session of the initial hearing, on 30th December 2013. This court had received an official memorandum from the regional police directorate – Pristina, police station north – Pristina, informing the defendant S.S. had not reported to the Police Station North and by acting so did not respected the ruling of this court and on the 27 December 2013 the court, pursuant to Article 307, paragraph 1, and Article 175 of the C.P.C.K. issued an order ordering the arrest of S.S. As on the 30 December 2013 the defendant did not appear in court and as per the police report it was confirmed that the whereabouts of such defendant still could not be determined and, following the provisions of Article 36 C.P.C.K., the severance of the procedures in relation to him was decided, also because considering the complexity of the case the court deemed that it would not be proper to apply the provision set in Article 285, paragraph 4, C.P.C.K., meaning to suspend the session in relation to him.

The defendants were accused by an indictment (SPRK PPS No: 50/2011, HEP No. 108/2011), dated 11/12/2012, filed with the court by the EULEX Prosecutor Martin Hackett, pursuant to Articles 240, par. 1, 241 and 242 of the C.P.C.R.K. and Law 04/L-123.

Each of the accused is still[2] charged for the following criminal offences[3]:

1 - A.Ç:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

[1] A more detailed identification of the defendants will be inserted in the proper occasion.

[2] Despite the fact that in the closing statements the Prosecution admitted not to have produced evidence on count 9, on money laundering, no charge was withdrawn (as might have, pursuant to Article 363, par.1. 1.1., C.C.K., which would lead to a rejection of the charge in accordance with Article 363, par. 1.1 , C.P.C.K., not to an acquittal, following Article 364, par. 1.3, C.P.C.K.).

[3] Here without specific references to the different counts.

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

2 - M.B.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

3 - A.M.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

4 - M.A.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.) and

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.).

5- A.B.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

6 - I.P.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.) and

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.).

7 - A.G.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 C.C.R.K.) and

- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

8 - T.Y.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 C.C.R.K.) and

- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

The initial hearing took place on 30 December 2013, 29 January 2014 and 23 April 2014 and the second hearing was held on 30 May 2014, whereas the main trial sessions, open to the public, were held on 10 September 2014, 11 September 2014, 24 September 2014, 25 September 2014, 15 October 2014, 31 October 2014, 3 November 2014, 10 November 2014, 24 November 2014, 2 December 2014, 3 December 2014, 9 December 2014, 10 December 2014, 16 December 2014, 22 January 2015, 28 January 2015, 9 February 2015, 10 February 2015, 16 March 2015, 19 March 2015, 15 April 2015, 20 April 2015, 28 April 2015, 6 May 2015, 8 May 2015, 12 May 2015, 13 May 2015, 18 May 2015, 20 May 2015, 16 June 2015, 17 June 2015, 14 July 2015, 15 July 2015, 1 September 2015, 22 September 2015, 23 September 2015, 20 November 2015, 23 November 2015, 30 November 2015, 1 December 2015, 17 December 2015, 18 December 2015, 5 January 2016, 14 January 2016, 16 and 18 February, 9, 15, 16, 21

March 2016, 7 and 12 April 2016 in the presence of the Prosecution[4], the said defendants and their defence counsels[5].

The panel deliberated and voted on the 12th April 2016.

The deliberation and voting was made in accordance with the provisions set in article 365 and articles 470 to article 473 of the Criminal Procedure Code of the Republic of Kosovo (C.P.C.R.K.).

The judgment was announced (is being) orally on the 14 April 2016, in accordance with the provisions set in article 366 C.P.C.R.K., in the presence, namely, of the EULEX prosecutor, the defendants and their defence counsels, pursuant to the afore mentioned provisions, read together with article 470 *et seq.* C.P.C.R.K.

(ENACTING CLAUSE)

On the 14 April 2016, the Basic Court of Prizren in the trial panel composed of Judge Jorge Martins Ribeiro (EULEX), as Presiding Judge, Judge Jennifer Seel (EULEX) and Judge Artan Sejrani, as panel members, in the criminal case P.no. 410/13, prosecuted by the SPRK Prosecutors Mr. Rómulo Mateus and Ms. Tiffany-Corrine Moise (EULEX)[6], pronounces in public the following:

[4] The Prosecution was represented initially by Mr. Martin Hackett and Ms. Diane Wilson, later by Mr. Robert Kucharski (on 23 April 2014), assisted by the legal officer Ms. Claire Morris, and after (as of 30 May 2014) by Mr. Rómulo Mateus and Ms. Tiffany-Corinne Moise (Mr. Danilo Ceccarelli was the prosecutor for the session held on 1 December 2015, Mr. Paul Flynn on 21 March 2016 and Mr. Tomas Meskauskas on 12 April 2016), both assisted by Ms. Laura Gheorghe as legal officer.

[5] The defence counsels initially appointed to the defendants were (on the first session of the initial hearing, held on 30 January 2013): O.R. for A.Ç., O.Z. for M.B., E.G. for A.M. [as of 10 February 2015 was permanently replaced by Ms. N.H., upon the defendant's decision (p. 3 of the minutes)], H.C. for M.A., R.H. for I.P. [upon request by the defence counsel R.H., based on the stressful atmosphere in the court room, in the session held on 19 March 2015 (p. 8 of the minutes) he was replaced by V.O.], A.K. for A.B., G.D. for T.Y., R.K. for S.S. and B.N. (replaced by A.A.) for A.G. In numerous sessions, during the initial hearing, the second hearing and the main trial, many times both in the morning and in the afternoon, the defence counsels joined authorisations to be replaced by other barristers. In every replacement there was the consent of the respective defendant.

[6] And others, as already mentioned.

IN THE NAME OF THE PEOPLE

The accused are:

1 – A.Ç., nickname "Sa.", son of [parents's names], male, single, personal identification number [Turkish passport no. with series number], Turkish nationality and citizenship, born on [date] in [city], [province], Republic of Turkey, previously resident in [city], Republic of Turkey, with address in Kosovo on [address].

He is in detention on remand since 3 February 2013.

2 – M.B., son of [parents's names], male, married, holder of [Kosovo passport no. and personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in [city], previously resident in [city], [address].

He is in detention on remand since 13 December 2012.

3 – A.M., son of [parents' names], male, single, [personal identification number no.], Kosovo Turkish nationality and Kosovo citizenship, born on [date] in [city], Kosovo, previously resident in [city], [address].

He is in detention on remand since 13 December 2012.

4 – M.A., son of [parents' names], male, single, personal identification number [Turkish driving licence no. and date], Turkish nationality and citizenship, born on [date] in [city], , Republic of Turkey, previously resident in [city], Turkey, and then in [address].

He was in detention on remand since 24 January 2013 until 12 April 2016. Now he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

5 – A.B., son of [parents' names], male, married, personal identification number [F.Y.R.O.M. passport no and identification card number], Macedonian Albanian nationality and F.Y.R.O.M. citizenship; he was born on [date] in Skopje F.Y.R.O.M., and he was previously resident in [address], F.Y.R.O.M.

He is in detention on remand since 13 December 2012.

6 – I.P., son of [parents' names], male, married, [personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in [city], resident in [city].

He was in detention on remand since 13 December 2012 until 12 of June 2014. Since 11 June 2014 he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

7 – A.G., son of [parents' names], male, married, [personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in Pristina, resident in [city].

The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding.

8 – T.Y., son of [parents's names], male, married, [personal identification number] (T.Y. has become a citizen of the Republic of Kosovo [no. and date], MIA – Prishtina; [Kosovo passport no.], Turkish nationality and Kosovo and Turkey citizenship, born on [date] in [city], Turkey, resident in [city], [address].

The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding.

The defendants were accused by an indictment (SPRK PPS No: 50/2011, HEP No. 108/2011), dated 11/12/2012, filed with the court by the EULEX Prosecutor Martin Hackett, pursuant to Articles 240, par. 1, 241 and 242 of the C.P.C.R.K. and Law 04/L-123.

Each of the accused is charged[7] for the following criminal offences[8]:

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- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and
- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

2 - M.B.:

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- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while

[7] As said, the Prosecution has not withdrawn any charge.
[8] Again, at this moment, without references to the counts.

applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

3 - A.M.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

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- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

8 - T.Y.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 C.C.R.K.) and

- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

After the initial hearing took place on 30 December 2013, 29 January 2014 and 23 April 2014 and the second hearing was held on 30 May 2014, whereas the main trial sessions, open to the public, were held on 10 September 2014, 11 September 2014, 24 September 2014, 25 September 2014, 15 October 2014, 31 October 2014, 3 November 2014, 10 November 2014, 24 November 2014, 2 December 2014, 3 December 2014, 9 December 2014, 10 December 2014, 16 December 2014, 22 January 2015, 28 January 2015, 9 February 2015, 10 February 2015, 16 March 2015, 19 March 2015, 15 April 2015, 20 April 2015, 28 April 2015, 6 May 2015, 8 May 2015, 12 May 2015, 13 May 2015, 18 May 2015, 20 May 2015, 16 June 2015, 17 June 2015, 14 July 2015, 15 July 2015, 1 September 2015, 22 September 2015, 23 September 2015, 20 November 2015, 23 November 2015, 30 November 2015, 1 December 2015, 17 December 2015, 18 December 2015, 5 January 2016, 14 January 2016, 16 and 18 February, 9, 15, 16, 21 March 2016, 7 and 12 April 2016 in the presence of the Prosecution, the said defendants[9] and their defence counsels, and after the panel's deliberation and voting on the 12th April 2016.

And pursuant to articles 359 to 366 and 370 of the Criminal Procedure Code of the Republic of Kosovo, on this 14 April 2016, in open court and in the presence of the defendants, defence counsels and the SPRK Prosecutor, renders the following

[9] Except when absent from the courtroom, in accordance with the law, while co-defendants were stating the case, but always represented by the respective defence counsel (and brief on what had been said during their absence).

VERDICT

Count 1: "A.Ç., M.B., A.M., A.B., I.P. and M.A. for organised crime, in violation of Article 274 paragraphs 1, 2 and 3 of the P.C.C.K., punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years (Corresponding to Article 283 paragraphs 1 and 2 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code)"

In relation to count 1, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç., M.B., A.M., A.B., I.P. and M.A. not guilty** of the criminal offence of organised crime, in violation of Article 274 paragraphs 1, 2 and 3 of the P.C.C.K., punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years (Corresponding to Article 283 paragraphs 1 and 2 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that the defendants (and now quoting the indictment): "between 1 October 2010 and 3 February 2013, A.Ç.; between 6 April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; between 5 October 2012 and 13 December 2013, I.P.; and between 21 June 2012 and 24 January 2013, M.A.; on the territory of Kosovo and other countries committed the offence of Organised Crime by: (1) organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K., C.K., E.K., L.K., O.A., B.F., F.A., A.Ç., M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. ("[Nickname]"), N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar.", person nicknamed "D." and other unidentified perpetrators; (2) committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. "[nickname]", N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators; and/or (3) actively participating in the criminal or other activities of the said organised criminal group knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit".

Count 2: "A.G. and T.Y. for participating in organised crime, in violation of Article 274 paragraphs 1 and 2 of the P.C.C.K., punishable by imprisonment of at least seven years (corresponding to Articles 283 paragraph 1 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code)[10]"

In relation to count 2, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.G. and T.Y. not guilty** of the criminal offence of participation in organised crime, in violation of Article 274 paragraphs 1 and 2 of the P.C.C.K., punishable by imprisonment of at least seven years (corresponding to Articles 283 paragraph 1 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established beyond reasonable doubt that the defendants (and now quoting the indictment): "between 17 August 2012 and 13 December 2012, A.G.; and between 7 November 2012 and 13 December 2012, T.Y.; on the territory of Kosovo, committed the offence of Participating in Organised Crime by: (1) committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators; and/or (2) actively participating in the criminal or other activities of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., , O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "A." person nicknamed "D." and other unidentified perpetrators knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit".

[10] The references to S.S. will be omitted.

Count 3: "A.Ç and A.B. for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo (P.C.C.K.)"

In relation to count 3, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç** and **A.B. not guilty** of the criminal offence of smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that (and quoting from the indictment): "between 25 June 2011 and 14 December 2011, A.Ç. and A.B. on the territory of Kosovo, Serbia, Former Yugoslav Republic of Macedonia, Montenegro, Croatia, Slovenia, Italy, Austria, Germany and/or other States, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter or remain in Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry, and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) -H.D., F.Y., A.S.Z. (from 25/6/2011 to 06/07/2011).

(2) -S.Ar. and T.T. (from 19/10/2011 to 23/10/2011).

(3) -M.S., R.S. and A.Sa. (from 01/10/2011 to 07/10/2011.

(4)- Z.A. and O.Y. (from 01/10/2011 to 17/11/2011).

(5)- Smuggling 4 unidentified Turkish illegal migrants from Turkey through Montenegro and Serbia to Germany (from 17/11/2011 to 20/11/2011).

(6)-Y.D., B.H.O. (from 20/11/2011 to 28/11/2011) and H.D. and M.So. (from 20/11/2011 to 28/11/2011).

(7) -"Il." [and a family consisting of a mother and 5 children and a Turkish migrant named F.U. (from 28/11/2011 to 06/12/2011)].

(8) - M.Bu., A.K., B.B., "S." or "Se.", F.T., "M.", "Sel.", E.U., M.E., Family of 3, M.Ar., E.A., M.Y., A.U., R.T., S.D. and other unidentified person (from 18 August 2011 to 3 December 2011)".

Count 4: "A.Ç for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo (P.C.C.K.)"

In relation to count 4, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendant **A.Ç not guilty** of the criminal offence of smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), because it has not been proven beyond reasonable doubt that the said accused has committed the acts with which he has been charged, namely, it has not been established that (and quoting from the indictment): "between 5 October 2011 and 9 October 2011, A.Ç on the territory of Kosovo, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) The three allegedly travelling between 5 October 2011 and 9 October 2011: A.E., M.Er. and A.Er.".

Count 5: "A.Ç., M.B., A.M., A.B., I.P. and M.A. for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), in particular by organising and directing others to commit the offence, punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years with the aggravating circumstance of acting as a member of a group or in a manner that is likely to endanger the lives or safety of the migrants or that entails inhuman or degrading treatment, including exploitation, of such migrants (corresponding to Article 170 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code)"

In relation to count 5, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç., M.B., A.M., A.B., I.P. and M.A. guilty** of smuggling of migrants, in the exact terms that will be mentioned below, committed in co-perpetration:

-A.Ç according to Articles 3, 31, 81 and 170, paragraphs 1, 5, 6 and 8, C.C.R.K, engaged in smuggling of migrants, organizing and directing others and as a member of a group, in co-perpetration and in continuation;

- M.B., A.M., M.A. and A.B. according to Articles 23, 71 and 138, paragraphs 1, 6 and 7, P.C.C.K, engaged in concurrent criminal offences of smuggling of migrants as members of a group and in co-perpetration;

- I.P. according to Articles 3, 31 and 170, paragraphs 1 and 8, C.C.R.K, engaged in smuggling of migrants (being acquitted of the aggravating circumstances as the facts that are their constituent have not been established beyond reasonable doubt) and in co-perpetration.

It is so decided because[11] it has been proven that the said accused have committed acts with which they have been charged, namely, it has been established beyond reasonable doubt the smuggling of migrants.

In this count we will address each paragraph of the count separately, name of each smuggled migrant, followed by the name of the defendants involved in each case[12]:

(1)- In the period between 23 June and 27 June 2012 smuggling the following Turkish migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Oc.: A.Ç,
T.O.: A.Ç and
M.K.: A.Ç

(2)- In the period of July 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Y.: A.Ç,
F.K.: A.Ç and
M.Sol.: A.Ç.

(3)- In the period of August 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

O.Yl.: A.Ç,

I.K.[13]: A.Ç / A.G.,

M.S.B.: A.Ç and

M.Ha.: A.Ç.

[11] The facts in the enacting clause are only an overview to allow the understanding of the decision.

[12] At this point only the names will be mentioned, the role of each defendant in every particular established fact of smuggling migrants will be explained in the reasoning.

[13] For systematic reasons this individual will be mentioned again in count 6, in relation to the defendant A.G.

(4)- In the period of September 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Go.: A.Ç,

R.K.G.: A.Ç,

T.Ya.: A.Ç,

D.E.: A.Ç,

S.E.: A.Ç,

E.E.: A.Ç,

H.Ce.: A.Ç,

K.C.: A.Ç,

B.C.: A.Ç,

L.D.: A.Ç,

S.K.: A.Ç,

H.K.: A.Ç,

A.Ak.: A.Ç,

G.K.: A.Ç,

M.P.: A.Ç,

E.P.: A.Ç,

M.S.D.: A.Ç,

F.U.: A.Ç / A.M.,

H.E.: A.Ç / A.M.,

U.K.: A.Ç,

I.T.: A.Ç,

E.Si.: A.Ç / A.M.,

V.Oz.: A.Ç / A.M.,

S.C.: A.Ç / A.M.,

A.Akd.: A.Ç,

C.D.: A.Ç,

D.B.: A.Ç,

S.Al.: A.Ç and

M.Ka.: A.Ç.

(5)- In the period of October 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Yl.: A.Ç,

C.C.: A.Ç,

E.B.: A.Ç,

N.S.: A.Ç,

V.A.: A.Ç / A.M.,

H.Yu.: A.Ç,

D.K.: A.Ç,

A.D.: A.Ç,

L.B.: A.Ç,

I.Pol.: A.Ç,

S.Sa.: A.Ç,

S.Ba.: A.Ç,

A.Bi.: A.Ç / M.B.,

I.D.: A.Ç / A.M./ A.B.,

A.O.: A.Ç / A.M.,

A.H.Y.: A.Ç,

T.E.: A.Ç,

H.S.: A.Ç,

H.A.: A.Ç,

A.Ar.: A.Ç / A.M.,

F.G.: A.Ç,

A.Di.: A.Ç / I.P.,

H.M.K.: A.Ç / I.P.,

O.G.: A.Ç,

O.K.: A.Ç / I.P. and

A.Uz.: A.Ç.

(6)- In the period of November 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

B.G.: A.Ç / M.B. / M.A.,

H.T.: A.Ç / A.M. / M.B.,

M.P.: A.Ç / A.M. / M.B.,

R.B.[14]: A.Ç / T.Y. / M.B. / A.B.,

E.Ba.[15]: A.Ç / T.Y.,

Akr.A.: A.Ç / M.B.,

S.Az.: A.Ç / M.B.,

N.A.: A.Ç / M.B.,

Y.A.: A.Ç / M.B.,

D.A.: A.Ç / M.B.,

C.Ko.: A.Ç,

N.C.: A.Ç,

[14] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

[15] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

M.M.B.:[16] A.Ç / M.A. / A.B./ M.B.[17],

A.Gi.: A.Ç.

Accordingly: the defendant A.Ç engaged in smuggling of migrants acting as member of a group and organising and directing the activities of others and he was involved in several moments in the smuggling of 79 migrants; the defendant M.B. engaged in smuggling of migrants acting as member of a group and he was involved in 6 moments in the smuggling of 11 migrants; the defendant A.M. engaged in smuggling of migrants acting as member of a group and he was involved in 7 moments in the smuggling of 11 migrants; the defendant A.B. engaged in smuggling of migrants acting as member of a group and he was involved in 3 moments in the smuggling of 3 migrants; the defendant M.A. engaged in smuggling of migrants acting as member of a group and he was involved in 2 moments in the smuggling of 2[18] migrants and the defendant I.P. engaged in the smuggling of migrants and he was involved in 1 moment in the smuggling of 3 migrants[19].

The defendants acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the illegality of the entrances for being based on false statements to the border officials, or in some cases with the awareness and active co-operation of the latter, all aiming at enabling the smuggled individuals a onward trip to other countries, namely of the European Union.

At the time the defendants behaved in the way described above, they were able to understand and control their acts, which they desired, knowing that their acts were forbidden and punishable by law.

In this count 5 it was not established whether apart the above mentioned migrants, also the following individuals were smuggled: in paragraph (3) A.Se. and S.Baj. and, in paragraph (5) G.Ba.. Also, it was not established the contents of the paragraph (7): “Between 21 June and 2 December 2012, attempting to smuggle and or enable 59 other person who are not nationals or permanent residents, no not otherwise legally permitted to enter or remain in other States, namely, persons of Turkish or Syrian origin, from Turkey through Serbia, Kosovo, F.R.Y. of

[16] There are data with regards another individual (the female spouse of M.M.B.) A.Bu., for instance on the BMS report and references in sms and intercepts. However, this individual is not mentioned on the indictment.

[17] M.B. with regards to the first attempt by the said couple on 13/11/2012, when they landed at Pristina International Airport, at 7.49 h. pm. (see page 275 of BMS report).

[18] As A.Bu. is not mentioned on the indictment, otherwise would be A.Ç. 80, M.B. 12, A.B. 4, M.A. 3.

[19] Despite not mentioned in this count, the defendant A.G. was involved in the smuggling of 1 migrant and the defendant T.Y. was involved in the smuggling of 2 migrants (in 2 different moments).

Macedonia, Montenegro, Croatia and/or Bosnia and Herzegovina to Slovenia, Italy, Hungary, Germany and /or Austria".

Count 6: "A.G., smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3, C.C.R.K.)"

In relation to count 6, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendant **A.G. guilty** of engaging in smuggling of migrants, committed in co-perpetration with A.Ç, contrary to Articles 170, paragraphs 1 and 8, C.C.R.K. read together with Article 3, par. 2, and Article 31 C.C.R.K., because in the period between 17 August and 22 August 2012 the defendant A.G. engaged in the smuggling of migrants by providing a guarantee letter whose contents was false for not corresponding to the truth (which might lead to the criminal offence of legalization of false content – pursuant to Article 334, of the P.C.C.K. or Article 403 C.C.R.K.), issued on 17/8/2012 and signed by him upon request and assistance of A.Ç, letter to I.K. who travelled and landed in Kosovo with the intent of using it as transit country to other countries as final destination, being that the defendant went to the airport on 22/8/2012 in order to pick up him, as he had guaranteed for him on 17/8/2012. I.K. indeed arrived in Kosovo at Pristina Airport on 22/08/2012, at. 6.43 pm.

The defendant A.G. (engaged in the smuggling of migrants) was involved in one moment in the smuggling of 1 migrant.

The defendant acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the document would or at least could be used to enter Kosovo, entrance therefore based on deceit and false statements to the border officials, namely based on the guarantee letter signed by him, all aiming at enabling the smuggled individual a onward trip to other countries, namely of the European Union.

At the time the defendant behaved in the way described above, he was able to understand and control his acts, which he desired, and if not knowing that his acts were forbidden and punishable by law at least he was aware that a prohibited consequence could occur as a result of his acts and he acceded to its occurrence.

Count 7: Subject to the severance of proceedings.

Count 8: "T.Y., smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 of the C.C.R.K.)"

In relation to count 8, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendant **T.Y. guilty** of engaging in smuggling of migrants, committed in continuation and in co-perpetration with A.Ç, contrary to Articles 170, paragraphs 1 and 8, C.C.R.K. read together with Article 3, par. 2, Article 31 and Article 81 C.C.R.K., because in the period between 7 November 2012 and 7[20] December 2012 the defendant T.Y. engaged in smuggling the following migrants by taking part in the preparation and arrangements of their trips, who did travel and entered in Kosovo, in different days, as transit country to other countries as final destination: R.B. and E.Ba..

The defendant T.Y. (engaged in the smuggling of migrants) was involved in two moments in the smuggling of 2 migrants.

The defendant acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of two persons into the Republic of Kosovo, where such persons are not a Republic of Kosovo Nationals, or persons who are Nationals of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the illegality of the entrances for being based on deceit and false statements to the border officials, all aiming at enabling the smuggled individuals a onward trip to other countries, namely of the European Union.

At the time the defendant behaved in the way described above, he was able to understand and control his acts, which he desired, knowing that his acts were forbidden and punishable by law.

In this count 8 it is not established: whether apart from procuring and engaging, namely by contacting the passengers and providing information related to the travel arrangements, the defendant did also produce the guarantee letters.

Count 9: "A.Ç., M.B., A.M. and A.B. for money laundering, in violation of Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3.09.2010"

In relation to count 9, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç, M.B., A.M. and A.B. not guilty** of the criminal offence of money laundering, in violation of Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3.09.2010, promulgated on 18.10.2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5 February 2004, because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that (and quoting from the indictment): "between 1 October 2010 and 3 February 2013, A.Ç.; because between 6

[20] Not 4.

April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; on the territory of Kosovo and other States committed the offence of Money Laundering by, knowingly or having cause to know that certain property, namely cash or other monetary means, is the proceeds of criminal activity, and which property is in fact proceeds of crime (smuggling of migrants by members of the criminal group)".

For the above the Court imposes the following

Sentencing:

A.Ç (Count 5): for the criminal offence of smuggling of migrants in the aggravated form, of acting not only as a member of a group but also organising and directing others in the activity of smuggling migrants, in co-perpetration and in continuation, in accordance with Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 62, 71, 72, 73 and 81 C.C.R.K., is convicted to 7 years and 3 months of imprisonment and to pay a fine of 1000 Euros.

M.B. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 6 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years and 3 months of imprisonment.

A.M. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 7 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years of imprisonment.

A.B. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 3 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 4 years of imprisonment.

M.A. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 2 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 3 years and 6 months of imprisonment.

I.P. (Count 5): For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 73 and C.C.R.K., is convicted to 2 years and 3 months of imprisonment and to pay a fine of 400 Euros.

A.G. (Count 6): For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 21, par. 3, 31, 41, 45, 46, 73 and 75 C.C.R.K., is convicted to 1 year of imprisonment and to pay a fine of 200 Euros.

T.Y. (Count 8): For the 2 criminal offences of engaging in the smuggling of migrants, in co-perpetration and in continuation, in the said form, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 73, and 81 C.C.R.K., is convicted to the punishment of 2 years of imprisonment and to pay a fine of 400 Euros.

Credit of the period of time spent in detention on remand

Pursuant to Article 73, par. 1, P.C.C.K. or Article 83, par. 1, C.C.R.K., the period of time spent in detention on remand will be credited in the execution of the punishments of imprisonment.

Period to pay the fines

Pursuant to Article 365, par. 2, C.P.C.K. and Article 46, par. 2, C.C.R.K., the defendant A.G. has to pay the fine in the period of 1 month and the defendant T.Y. in the period of 3 months. In the event the fines have to be substituted, the manner will be in accordance with the rules set in Article 46, pars. 3 to 5, C.C.R.K.

Suspension of the imprisonment sanctions imposed to the defendants A.G. and T.Y.:

The court decides, pursuant to Articles 3, 50, 51, pars. 1, 2, 4, and 52, pars. 2 (this one read together with 170. par. 1), 3 to 5, C.C.R.K., to suspend the execution of the punishment of imprisonment of A.G. if he does not commit another criminal offence for the verification period of 2 years and of T.Y. if he does not commit another criminal offence for the verification period of 3 years. The punishments of fine are not suspended.

Pursuant to Articles 52, par. 3, and 59 C.C.R.K, the suspension also includes the obligation of refraining from changing residence without informing the probation service.

The court not applying Article 82 C.C.R.K.

The court decided not to apply such norm at this moment because, among others factors, there are no sufficient data regarding the stage of the execution of the punishment of imprisonment imposed to the defendant I.P. in the proceedings of the Basic Court of Gjilan number, PKR. no. 56/2013 and Court of Appeals (PAKR 259/14), dated 22 May 2015, by which

he was sentenced for "attempted smuggling of migrants", in accordance with article 170, paragraph 1, article 28, paragraph 3 and article 76, paragraph 1, sub paragraph 4, of C.C.R.K, with 1 (one) year and 6 (six) months imprisonment and a fine in the amount of 200 € (two hundred Euros).

Accessory punishment(s):

In relation to an accessory punishment to the defendants, the court decides to apply to two defendants who are foreign citizens with no direct family ties to Kosovo (A.Ç and A.B.) the accessory punishment of "expulsion from the territory of the Republic of Kosovo" foreseen in Article 62, par. 2.9, read together with Articles 3, 71, par. 1, C.C.R.K, for the period of 7 years to A.Ç and for the period of 4 years to A.B., commencing from the day this decision becomes final (Article 71, par. 4, C.C.R.K.).

In the case of the two other foreign citizens, the defendants M.A. and T.Y. (with dual citizenship, including Kosovar), the court will not and cannot, respectively, apply such accessory punishment.

Confiscation of objects: The objects listed in the indictment proposed to be subject to forfeiture are declared forfeited[21] if not yet subject to identical decision in any other proceedings[22] as they were used in the commission of acts constituent of criminal offences, pursuant to Article 60 P.C.C.K (currently Article 69 C.C.R.K.):

From **A.Ç.**:

1 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217 with SIM card, IPKO, No. 109011355198;

2 - Mobile telephone, Nokia, model 6230i, IMEI No. 353233/01421796/2 with SIM card MTS, [Tel. No.];

3 - SIM card, IPKO No. 109011298946;

4 - SIM card, VALA, No. 8937701010020489791;

5 - SIM card, IPKO No. 109011301108;

[21] For the reason the proceedings were severed in relation to S.S., the objects referred to him will not be mentioned here.

[22] As, for example, in the case of the defendant M.B. in this case only the phone [with phone number] was used but the remaining are seized following an order issued in other criminal proceedings. Indeed, only [phone number] will be mentioned along the reasoning that will follow the established facts, and the court mentions this because not only along the trial but also in his closing speech (on 16/03/2016), the defendant M.B. insisted that the phone with [phone number] had already been seized in other proceedings, on 25/09/2011.

6 - SIM card, djuice, [Tel. No.];

7 - Mobile telephone, Nokia, model 2310, IMEI No. 354819/01/015797/7;

8 - SIM card, VIP, No. 8938105209070703180;

9 - SIM card, IPKO, No. 108010741091;

10 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217, IMEI: 358051012922556;

11 - SIM card, IPKO, No. 109011867774, [with phone number];

12 - SIM card, IPKO, 109011389055;

13 - SIM card, Mobi, [Tel. No.];

14 - SIM card, Mobi, [Tel. No.];

From **M.B.**:

1 - Desktop computer, HP COMPAQ, HP DC7600, MT, CEL 3066/512/40, series no. 1059262;

2 - Mobile telephone, Vodafone, GSM 900/1800 Mhz, IMEI No. 868955000980611, with SIM card [with phone number];

3 - SIM card, IPKO, No. 109011727207 [with phone number];

4 - Mobile telephone, NOKIA, model 2310, type RM-189, IMEI No. 358960/01/546112/5 with SIM card [Tel. No.] series number 0553626;

5 - SIM card, Z-mobile, No. 101005288898 [with phone number];

From **A.M.**:

1 - Mobile telephone, SAMSUNG, model GT-E1170, IMEI No. 358688/03/348592/3, with SIM card, IPKO, No. 109011732744 [with phone number];

2 - SIM card, VALA, No. 8937701010013414525;

3 - Mobile telephone, NOKIA, model 1650, type RM 305, IMEI No. 359565/01/710615/3;

4 - Mobile telephone, SIEMENS C35i, No. 449191546517141;

5 - Mobile telephone, SAMSUNG, model GT-E1080W, IMEI No. 359779/04/506133/6;

6 - DELL laptop, LBL P/N W1495 A00;

7 - Mobile telephone, NOKIA, model N73-1, type RM-133, IMEI No. 359568019767451;

8 - Mobile telephone, NOKIA, model 6230i, type RM-72, IMEI No. 357097/00/936104/4;

9 - San Disk Micro Chip, Micro SD;

From **M.A.**:

1 - SIM card, IPKO, No. 108010802656;

2 - Samsung mobile phone, model SGH-C130, IMEi: 359345/00/290793/5;

From **A.B.**:

1 - NOKIA telephone 1112, series no. IMEI 358067/01/197640/1;

2 - IPKO SIM card, with series no. 109011863241;

3 - SAMSUNG telephone SGH D900I, with IMEI no. 354890/01/275088/7;

4 - T-Mobile SIM card, no. 893890109022551969732.GI;

From **I.P.**:

1 - Mobile telephone, NOKIA, model 101, type RM-769, with two SIM cards and IMEI No. 359739/04/689510/8 and IMEI No. 359739/04/689511/8;

2 - SIM card, VALA, No. 8937701010020426413;

3 - SIM card, IPKO, No. 109011276344;

From **A.G.**:

1 - Mobile telephone, NOKIA, model 6300, IMEI No. 353933/01/340506/8;

2 - Mobile telephone, Samsung, model SGH-E900, IMEI No. 356030/01/325515/0;

3 - Mobile telephone, Samsung, model GT- C 3010, IMEI No. 353373/03/898337/9;

4 - Mobile telephone, Samsung, model GT-E 1170, IMEI No. 355049/04/406513/2;

5 - Mobile telephone, Samsung, model SGH-C 260, IMEI No. 358210/01/064416/2;

6 - Mobile telephone, Samsung, model C 3050, IMEI No. 358553/03/840340/4;

7 - SIM card, VALA, No. 8937701010016818185;

From **T.Y.**:

1 - Mobile telephone, NOKIA, model 6303ci, type RM-638, IMEI No. 352682/04/167543/9;

2 - SIM card, VALA, No. 8937701010016959260 [with phone number], pin code:0000;

3 - SIM card, VALA, No. 8937701010007220789;

4 - Desktop computer COMPAQ, 8110FR4Z1957.

Property claim:

There is no property claim.

The costs of the proceedings:

In accordance with Article 450 C.P.C.K., the costs of the proceedings shall be paid by the defendants. Pursuant to Article 450, par. 2.6, the scheduled amounts are 200 Euros to each of the defendants, in the total amount of 1600 Euros.

In accordance with Article 450, paragraphs 5 to 7, C.P.C.K., costs with interpretation into languages of the defendants and remuneration and necessary expenses with the defence counsels appointed, are not being included.

The court, *ex officio*, sees no need of announcement of this judgment (enacting clause) in the press or radio or television, Article 365, par. 1.1.6, C.P.C.K, to protect the values of Justice and Public Interest.

Legal remedy: Pursuant to Articles 374, par. 1.1, and 380, par. 1, an appeal against this judgment may be filed within 15 days of the day its copy has been served to the parties. The appeal should be addressed to the Court of Appeals through the Basic Court of Prizren.

(STATEMENT OF GROUNDS)

REASONING

A) Trial Panel and competence:

No objection was raised by the parties regarding the composition of the trial panel. Upon the change of one panel member all parties have agreed to consider "as read and administered" all the evidence that had been produced so far, pursuant to Article 311, par. 1, Criminal Code of the Republic of Kosovo, C.C.R.K.

This court is the competent to adjudicate the case, pursuant to Articles 1, 2 subparagraph 1.2, 9 subpar. 2.1, 15 par. 1.20 and 15, par. 2, of the Law on Courts - L. 03/L-199 in force at the time the proceedings began [the Basic Court shall be the court of first instance in the Republic of Kosovo, in this case (par. 2) the Basic Court of Prizren is the one with territorial jurisdiction and in accordance with Article 11, par. 1, of the same law, the Basic Court is competent to adjudicate in the first instance all cases, except otherwise foreseen by Law] - and per articles 3, paragraphs 1 and 7 (this last one in relation to the majority of EULEX Judges) of the Law on the Jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo (L. 03/L-053 as in force at the time), *ex vi* Article 442 C.C.K.

B) The procedural background:

B.1- On 10 May 2011 S.P.R.K. received an International Legal Assistance (ILA) request from the district public prosecutor in Ljubljana, Republic of Slovenia with reference TPP-S-1 27/2010 – DŠ dated 21st April 2011, regarding a suspect to be identified as O.A.

B.2- Along with the said O.A. there are other individuals related to the underlying investigation and on 11July 2011 the prosecutor issued a ruling of initiation against O.A., on 14 December 2011 another ruling was issued by the prosecutor expanding the investigation to include B.F., on 20 January 2012 a third ruling on expansion of the investigation was issued by the prosecutor to cover F.A., on 20 January 2012 A.Ma. (who was later re-identified as A.By.) was subject to an identical ruling (and on 21 March 2012 the prosecutor issued a ruling on expansion of the investigation with regards to "A.By."), on 17 August 2012 the prosecutor issued a ruling on expansion of the investigation against A.Ç, on 3 December 2012 M.B. was subject of another identical ruling, on 5 December 2012 another ruling on expanding the investigation was issued by the prosecutor with regards to M.A., A.M., A.G., I.P., T.Y., S.S., B.Be., M.Bo. and E.Y. and on 14 December 2012 the prosecutor issued a ruling on expansion of the investigation with regards to A.B.. The said rulings concerned investigation of the criminal offences of smuggling of migrants, organised crime and money laundering as per the applicable legislation [smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.); organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1

and 2, C.C.R.K.) and money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences].

B.3- Part of the investigation is still ongoing and other individuals rather than the defendants in this case were already tried, others are being tried or retried.

B.4- This criminal case (initially SPRK PPS No: 50/2011, HEP No. 108/2011) was indicted on 11/12/2012, indictment filed with the court pursuant to Articles 240, par. 1, 241 and 242 of the C.P.C.R.K. and Law 04/L-123.

B.5- These proceedings are now against the defendants **A.Ç.**, [nickname] holder of [Turkish passport no.], **M.B.**, holder of [Kosovo passport no.] with [personal identification number], **A.M.**, holder of [I.D. number], **M.A.**, holder of the identification as per [Turkish driving licence], **A.B.**, holder of [F.Y.R.O.M. passport number], **I.P.**, holder of [I.D. number], **A.G.**, holder of [I.D. number] and **T.Y.**, holder of [I.D. number]. Initially this case was also against S.S. The proceedings with regards the defendant S.S. were severed in the first session of the initial hearing, on 30th December 2013 given that his whereabouts became unknown.

B.6- The initial hearing took place on 30 December 2013, 29 January 2014 and 23 April 2014 and the second hearing was held on 30 May 2014.

B.7- The main trial sessions, open to the public, were held on 10 September 2014, 11 September 2014, 24 September 2014, 25 September 2014, 15 October 2014, 31 October 2014, 3 November 2014, 10 November 2014, 24 November 2014, 2 December 2014, 3 December 2014, 10 December 2014, 16 December 2014, 22 January 2015, 28 January 2015, 9 February 2015, 10 February 2015, 16 March 2015, 19 March 2015, 15 April 2015, 20 April 2015, 28 April 2015, 6 May 2015, 8 May 2015, 12 May 2015, 13 May 2015, 18 May 2015, 20 May 2015, 16 June 2015, 17 June 2015, 14 July 2015, 15 July 2015, 7 September 2015, 22 September 2015, 23 September 2015, 20 November 2015, 23 November 2015, 30 November 2015, 1 December 2015, 17 December 2015, 18 December 2015, 5 January 2016, 14 January 2016, 16 and 18 February, 9, 15, 16, 21 March 2016, 7 and 12 April 2016 in the presence of the Prosecution, the said defendants and their defence counsels, and after the panel deliberation and voting on the 12th April 2016.

B.8- A few sessions had to be cancelled between September 2015 and November 2015 as new arrangements had to be made, due to the fact the Kosovar Judge Artan Sejrani was appointed as of the session held on 20 November 2015 to replace the previous national judge, Zejnullah Gashi – who was panel member until he was appointed prosecutor – and on the session held on the said date (as entered in the minutes), pursuant to Article 311, par. 1, Criminal Code of the Republic of Kosovo, after hearing the parties, it was agreed by everyone to consider as

read, administered or examined, the evidence that had already been produced along the previous sessions. Also the sessions scheduled for 23 and 25 February 2016 had to be cancelled as a panel member could not be present.

B.9- As per request by the defence counsels, all sessions were audio-video recorded.

B.10- All sessions were held with translation from English into Albanian (and vice-versa) and from Albanian into Turkish (and vice-versa), as kept in the minutes.

B.11- All sessions were held in the presence of the Prosecution, all the defendants[23] and their defence counsels. The Prosecution was represented initially by Mr. Martin Hackett and Ms. Diane Wilson, later by Mr. Robert Kucharski (on 23 April 2014), assisted by the legal officer Ms. Claire Morris, and after (as of 30 May 2014) by Mr. Romulo Mateus and Ms. Tiffany-Corinne Moise (Mr. Danilo Ceccarelli was the prosecutor for the session held on 1 December 2015, Mr. Paul Flynn on 21 March 2016 and Mr. Tomas Meskauskas on 12 April 2016). The defence counsels initially appointed to the defendants were (on the first session of the initial hearing, held on 30 January 2013): O.R. for A.Ç, O.Z. for M.B., E.G. for A.M. [as of 10 February 2015 was permanently replaced by Ms. N.H., upon the defendant's decision (p. 3 of the minutes)], H.C. for M.A., R.H. for I.P. [upon request by the defence counsel R.H., based on the stressful atmosphere in the court room, in the session held on 19 March 2015 (p. 8 of the minutes) he was replaced by V.O.], A.K. for A.B., G.D. for T.Y. and B.N. (replaced by A.A.) for A.G. In numerous sessions, during the initial hearing, the second hearing and the main trial, many times both in the morning and in the afternoon, the defence counsels joined authorisations to be replaced by other barristers. In every replacement there was the consent of the respective defendant.

B.12- There is no property claim.

B.13- The current citizenship of the defendants is as follows: **A.Ç.** is Turkish [Turkish passport no.], **M.B. is** Kosovar, **A.M.** is Kosovar, **M.A.** is Turkish [Turkish driving licence number], **A.B.** is Macedonian, citizen of F.Y.R.O.M. [F.Y.R.O.M. passport no. and id. card. no.] **I.P.** is Kosovar, **A.G.** is Kosovar and **T.Y.** is Turkish and Kosovar, [personal identification number] (T.Y. has become a citizen of the Republic of Kosovo, [no. and date], MIA – Pristina; [Kosovo passport no.].

B.14- The updated information on the eventual criminal records of the defendants was requested from the Basic Courts in Kosovo and from the Ministry of Justice in F.Y.R.O.M. (via I.L.A. through the Ministry of Justice of Kosovo).

[23] As said before, except when absent from the courtroom in accordance with the law while co-defendants were stating the case, but always represented by the respective defence counsel (and briefed on what had been said while absent from the courtroom).

B.15- The situation of the defendants in relation to the measures to ensure their presence in the proceedings is as follows:

A.Ç.: He is in detention on remand since 3 February 2013.

M.B.: He is in detention on remand since 13 December 2012.

A.M.: He is in detention on remand since 13 December 2012.

M.A.: He was in detention on remand since 24 January 2013 until 12 April 2016.

Now he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

A.B.: He is in detention on remand since 13 December 2012.

I.P.: He was in detention on remand since 13 December 2012 until 12 of June 2014.

Since 11 June 2014 he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

A.G.: The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding, since 13 December 2012.

and

T.Y.: The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding, since 13 December 2012.

B.16- The panel deliberated and voted on the 12th April 2016.

C) Statement of grounds pursuant to Articles 364, 365 and 370 C.P.C.K.:

C 1) - Facts proven which are relevant for the decision:

Count 5 (and now using the exact wording mentioned on the indictment):

"A.Ç., M.B., A.M., A.B., I.P. and M.A.

Smuggling of Migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo (CCK), in particular by organising and directing others to commit the offence, punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years with the aggravating circumstance of acting as a member of a group or in a manner that is likely to endanger the lives or safety of the migrants or that entails inhuman or degrading treatment, including exploitation, of such migrants (corresponding to Article 170 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code), sentencing to be in accordance with Article 3 thereof), because: between 23 June 2012 and 2 December 2012, A.Ç., M.B., A.M., A.B., I.P.

and M.A., on the territory of Kosovo, Serbia, Former Yugoslav Republic of Macedonia, Montenegro, Croatia, Slovenia, Italy, Austria, Germany and/or other States, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter or remain in Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry, and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants":

This count will be addressed paragraph by paragraph of the count, (smuggled) individual by individual, defendant(s) directly involved (the name of the <u>defendants of this case</u> will be indicated between brackets after each migrant's name[24]):

C.1.1

(1)- In the period between 23 June and 27 June 2012 smuggling the following Turkish migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Oc.: A.Ç,
T.O.: A.Ç and
M.K.: A.Ç.

(2)- In the period of July 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Y.: A.Ç,
F.K.: A.Ç and
M.Sol.: A.Ç.

(3)- In the period of August 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

O.Yl.: A.Ç,

I.K.[25]: A.Ç / A.G.,

[24] At this point only the names will be mentioned, the role of each defendant in every particular established fact of smuggling migrants will be explained in the reasoning.

M.S.B.: A.Ç and

M.Ha.: A.Ç.

(4)- In the period of September 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Go.: A.Ç,

R.K.G.: A.Ç,

T.Ya.: A.Ç,

D.E.: A.Ç,

S.E.: A.Ç,

E.E.: A.Ç,

H.Ce.: A.Ç,

K.C.: A.Ç,

B.C.: A.Ç,

L.D.: A.Ç,

S.K.: A.Ç,

H.K.: A.Ç,

A.Ak.: A.Ç,

G.K.: A.Ç,

M.P.: A.Ç,

E.P.: A.Ç,

M.S.D.: A.Ç,

F.U.: A.Ç / A.M.,

H.E.: A.Ç / A.M.,

[25] For systematic reasons this individual will be mentioned again in count 6, in relation to the defendant A.G.

U.K.: A.Ç,

I.T.: A.Ç,

E.Si.: A.Ç / A.M.,

V.Oz.: A.Ç / A.M.,

S.C.: A.Ç / A.M.,

A.Akd.: A.Ç,

C.D.: A.Ç,

D.B.: A.Ç,

S.Al.: A.Ç and

M.Ka.: A.Ç.

(5)- In the period of October 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Yl.: A.Ç,

C.C.: A.Ç,

E.B.: A.Ç,

N.S.: A.Ç,

V.A.: A.Ç / A.M.,

H.Yu.: A.Ç,

D.K.: A.Ç,

A.D.: A.Ç,

L.B.: A.Ç,

I.Pol.: A.Ç,

S.Sa.: A.Ç,

S.Ba.: A.Ç,

A.Bi.: A.Ç / M.B.,

I.D.: A.Ç / A.M. / A.B.,

A.O.: A.Ç / A.M.,

A.H.Y.: A.Ç,

T.E.: A.Ç,

H.S.: A.Ç,

H.A.: A.Ç,

A.Ar.: A.Ç / A.M.,

F.G.: A.Ç,

A.Di.: A.Ç / I.P.,

H.M.K.: A.Ç / I.P.,

O.G.: A.Ç,

O.K.: A.Ç / I.P. and

A.Uz.: (A.Ç).

(6)- In the period of November 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

B.G.: A.Ç / M.B. and M.A.

H.T.: A.Ç / A.M. / M.B.,

M.P.: A.Ç / A.M. / M.B.,

R.B.[26]: A.Ç / T.Y. / M.B. / A.B.,

E.Ba.[27]: A.Ç / T.Y.,

Akr.A.: A.Ç / M.B.,

S.Az.: A.Ç / M.B.,

N.A.: A.Ç / M.B.,

[26] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

[27] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

Y.A.: A.Ç / M.B.,

D.A.: A.Ç / M.B.,

C.Ko.: A.Ç,

N.C.: A.Ç,

M.M.B.:[28] A.Ç / M.A. / A.B./ M.B.[29],

A.Gi.: A.Ç.

Count 6

In the period between 17 August and 22 August 2012 the defendant A.G. engaged in the smuggling of migrants by providing a guarantee letter, whose contents did not correspond to the truth, to I.K., who travelled and arrived in Kosovo with the intent of using it as transit country to other countries as final destination:

C.1.2 – The defendant issued on 17/8/2012, and signed by him upon request and assistance of A.Ç, a guarantee letter, whose contents did not correspond to the truth, to I.K., being that the defendant went to the airport on 22/8/2012 in order to pick up him, as he had guaranteed for him on 17/8/2012. I.K. indeed arrived in Kosovo landing at Pristina Airport on 22/08/2012, at. 6.43 pm.

Count 8

In the period between 7 November 2012 and 7[30] December 2012 the defendant T.Y. engaged in smuggling the following migrants by taking part in the preparation and arrangements of their trips, migrants who did travel and entered in Kosovo, in different days, as transit country to other countries as final destination:

C.1.3 – R.B.[31]: A.Ç / T.Y. / M.B. / A.B. and

- E.Ba.[32]: A.Ç / T.Y.,

[28] There are data with regards another individual (the female spouse) A.Bu., for instance on the BMS report and references in sms and intercepts. However, this individual is not mentioned on the indictment.

[29] Only for the first attempt of entrance of the couple on 13/11/2012, by plane at Pristina International Airport, at 7.49 h. pm. (see page 275 of BMS report).

[30] Not 4.

[31] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

[32] For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

C.1.4 – A.Ç was also tampering passports when needed, in some cases erasing stamps of refusal of entry at a given border in order not to create any doubts or suspicions to border officials in subsequent border controls.

C.1.5 – The individuals mentioned as (smuggled) migrants in all counts were individuals that were coming to Kosovo using it as a transit country, despite not declaring it to the border officials or declaring even the opposite to the authorities, as the aim was to reach third countries, namely European Union Countries, and not stay for the declared purpose, visiting or working in Kosovo, for a lesser or longer period of time.

C.1.6.1 – In some cases the border officials were deceited, to what guarantee or invitation letters whose contents was false for not corresponding to true facts were used to give more credibility to the lie told to the border officer, to the purpose of entry in Kosovo being declared; in other cases, someone would be waiting at the airport with a story agreed in advance with the migrant to be told to the official if asked to corroborate anything.

C.1.6.2 – In other cases the officials, both in Kosovo and in other countries, namely in F.Y.R.O.M. and in Serbia, were corrupt and knew the illegality underlying the border crossings by some individuals who were being smuggled and allowed the illegal crossings in accordance with the agreements they had made with the smugglers: price, amount of bribe per smuggled migrant – whose names they were, sometimes, provided with in advance. At least the defendants A.Ç, M.B., A.M., M.A. and A.B. were, in some particular events of smuggling migrants, not only aware of this situation but also counting on it as part of the execution of the smuggling.

C.1.7 – In accordance with the stated above: the defendant A.Ç engaged in smuggling of migrants acting as member of a group and organising and directing the activities of others and he was involved in several moments in the smuggling of 79 migrants[33]; the defendant M.B. engaged in smuggling of migrants acting as member of a group and he was involved in 6[34] moments in the smuggling of 11 migrants; the defendant A.M. engaged in smuggling of migrants acting as member of a group and he was involved in 7 moments in the smuggling of 11 migrants; the defendant A.B. engaged in smuggling of migrants acting as member of a group and he was involved in 3 moments in the smuggling of 3 migrants; the defendant M.A. engaged in

[33] The number of moments (or events, or criminal resolutions – that may be different from the number of individuals smuggled, if in one event there is more than one individual smuggled) in relation to those defendants that is relevant for the concurrency of criminal offences was established taking into consideration the dates of the operations (namely assessed from the dates of arrival in Kosovo), itinerary followed to leave Kosovo and whether the arrangements had been made for one or for more than one individual at the time.

[34] Based on the *criteria* just explained and on the dates explained in the reasoning of the established facts that will follow, the events related to M.B. were on 22/10/2012 (1 migrant), 29/11/2012 (1 migrant), 8/11/2012 (2 migrants), 11/11/2012 (1 migrant), 16/11/2012 (5 migrants) and 24/11/2012 (1 migrant); in relation to A.M. were on 25/9/2012 (2 migrants), 25/9/2012 (3 migrants), 17/10/2012 (1 migrant), 23/10/2012 (1 migrant), 23/10/2012 (1 migrant), 27/10/2012 (1 migrant) and on 8/11/2012 (2 migrants); in relation to M.A. were on 24/11/2012 (1 migrant) and on 29/11/2012 (1 migrants) and in relation to A.B. were on 24/10/2012 (1 migrant), 13/11/2012 (1 migrant) and on 25/11/2012 (1 migrant).

smuggling of migrants acting as member of a group and he was involved in 2 moments in the smuggling of 2[35] migrants and the defendant I.P. engaged in the smuggling of migrants and he was involved in 1 moment in the smuggling of 3 migrants[36].

C.1.8 – Upon the actions described above the defendants had the intention of obtaining a financial or other material benefit from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the illegality of the entrances for being based on false statements to the border officials or / and in some cases with the awareness and active co-operation of the latter, all aiming at enabling the smuggled individuals a onward trip to other countries, namely of the European Union.

C.1.9 – All the other co-defendants in this case knew the defendant A.Ç, the defendant A.Ç and others as M.B., A.M. and A.B. knew defendants of connected cases (as, for example, N.N. and O.A.) and some of the defendants of this case had contacts between themselves and cooperated in different events of smuggling migrants. Indeed, if A.Ç knew all the co-defendants, it is true that the defendants M.B., A.M., M.A. and A.B. were either acting alone or in co-operation with other individuals (including police officers or border officers), but sometimes were acting together, in different events, being that it is possible to establish that the said defendants knew about the engagement in smuggling of migrants and were in contact with at least 2 more defendants, out of themselves, even if at different moments in time with regards to distinct events of smuggling of migrants.

C.1.10 – In the events of smuggling described above the defendant A.Ç had a pivotal role in determining whose co-operation he would need for a particular act at a particular occasion and accordingly would contact, for the envisaged purpose, one or more of the co-defendants, who most of the times would engage by taking part in the said particular events of smuggling or not, if already engaged in something else or by any other reason. Apart from contacting the co-defendants of this case, and organising or directing the respective engagement, he would also contact individuals who are defendants in related proceedings, as N.N., O.A. and O.K., for example.

C.10.1 – The defendants A.Ç, M.B., A.M., M.A. and A.B. engaged in different ways and tasks in the particular events of smuggling, as for example the defendant A.Ç was taking care of reservations, guarantee letters, tampering passports when needed, but also going to pick up migrants and sometimes escorting them to the next departure, the defendant M.B. was sometimes organising the trips of his migrants (in which he also engaged family members, namely having his mother going to the airport to welcome a migrant), but at the same time also going to pick up

[35] As A.Bu. is not mentioned on the indictment, otherwise would be A.Ç. 80, M.B. 12, A.B. 4, M.A. 3.

[36] Despite not mentioned in this count, the defendant A.G. was involved in the smuggling of 1 migrant and the defendant T.Y. was involved in the smuggling of 2 migrants (in 2 different moments).

others, the defendant A.M. was taking part in issuing guarantee letters but also going to pick up migrants, the defendant M.A. was passing information to A.Ç on corrupt officers who would be on duty but also going to the airport to pick up migrants and A.B. either passing information also on corrupt police officers but also planning onward journeys, namely in direct contact with corrupt police officers to provide the name of the migrants to be allowed to pass the border.

C.1.11 – At the time of the facts, and with regards the defendants' professional activities and monthly working related incomes, it can be established only the following: the defendant A.M. worked for a company [company name] and had the average income of 400/500 Euros, the defendant M.A. was working in the reconstruction of a mosque in [municipality] having the declared average income between 200/1500 Euros, the defendant I.P. worked as taxi driver declaring an average income of 250/300 Euros, T.Y. worked at the restaurant [company name] with the salary o f 800 Euros and the defendant A.G. worked as taxi driver, not declaring an average income.

C.1.12 – Besides not being possible to establish any professional activity in relation to the defendants A.Ç, M.B. and A.B., it is also known to the court that:

C.1.12.1 - The defendants A.Ç, M.B., A.M., M.A., A.B., A.G. and T.Y. had not imported any goods to Kosovo[37];

C.1.12.2 - The defendants A.Ç (who did not even have a fiscal number), M.B., A.M., M.A., A.B. and T.Y. had no registered business in Kosovo, as only the defendants I.P. and A.G. were registered as taxi drivers[38].

C.1.13 – In relation to bank accounts and financial transactions[39]:

C.1.13.1 - The defendants A.Ç, A.B. and M.A. had no bank accounts, had not carried any financial transaction (neither in their own name, nor by authorisation) in any of the following financial institutions operating in Kosovo: RBKO – Raiffeisen Bank, PCB, ProCredit Bank, BpB Banka per Biznes, NLB Prishtina, BE – Banka Ekonomike, TEB – Turkish Economic Bank, BKT – Banka Kombetare Tregtare and DMTH LLC Money Gram.

C.1.13.2 - The defendant M.B. had one account in TEB – Turkish Economic Bank [no.], A.M. had one account in RBKO – Raiffeisen Bank [no.], I.P. had one account in RBKO – Raiffeisen Bank [no.] and he had one account as well in ProCredit Bank [no.], A.G. had a private

[37] As per the information by the Kosovo Customs / Ministry of Finance, dated 28/02/2013, only the defendant I.P. had imported one vehicle, a Ford Fiesta (- see report by Kosovo Customs / Ministry of Finance, dated 28/02/2013 on 15 police binders, binder 11, tab 10, pp. 134/135).

[38] As per the information by the Kosovo Ministry of Trade and Industry, dated 20/02/2013, only the defendants I.P. and A.G. had registered activities [Company name and business number] and [Company name and business number] - see report by the Kosovo Ministry of Trade and Industry, dated 20/02/2013 on 15 police binders, binder 11, tab 11, pp. 141/142).

[39] As per the Summary Report of Financial Investigation Ref. No. 2011-DHKO-027/2013, dated 11/04/2013, to be found on 15 police binders, binder 10, pp. 1 up to 59).

account in RBKO – Raiffeisen Bank [no.] and another business account [no.], he also had another in BE Banka Ekonomike ([no.] without transactions since [date]), another in TEB – Turkish Economic Bank [no.] and T.Y. had one account in ProCredit Bank [no.] and other in TEB – Turkish Economic Bank [no.].

C.1.13.3 - The following defendants had financial transactions via Financial Union Prishtina (Western Union): A.Ç, M.B., A.M., A.B., A.G. and T.Y.

C.1.14 – At the time the defendants behaved in the way described above they were able to understand and control their acts, which they desired, knowing that their acts were forbidden and punishable by law. In relation to the defendant A.G., and if not knowing that his acts were forbidden and punishable by law, at least he was aware that a prohibited consequence could occur as a result of his acts and he acceded to its occurrence. This defendant, however, later on declared to the co-defendant A.Ç that wanted nothing else with him, meaning not to do any task or job for him.

C.1.15 – Apart from what was said in relation to the defendant A.G., the other defendants always rejected the charges, claimed to be victims of these proceedings, never admitted any facts or any unlawfulness in their actions and showed no kind of regret at all.

C.1.15.1 – The objects listed in the indictment as to be confiscated were used in the commission of the acts established above.

Other established facts:

C.1.16 – **Personal conditions of the defendants**[40]

C.1.16.1 - A.Ç: Declared to have had a co-partner in Turkey and another in Bosnia and Herzegovina; has got 3 children (30 and 28 years old, living in Turkey, and another 15 years old, living in Bosnia and Herzegovina). Declared to be salesman and to have had an income between 2000 and 2500 Euros; possesses 8 years of education (secondary school) and average financial status. A.Ç's permanence in Kosovo at the moment of his detention was not any longer in accordance with the applicable law on foreigners as he remained in the country after the initial 90 days.

C.1.16.2 - M.B.: The defendant is married to [wife's name] and has two children, [childrens' names and dates of birth]. Declared to have completed the primary school (9 years) and speaks both Albanian and Turkish. He declared he has never had a profession, to be unemployed thus living on welfare allowances and poor financial status.

[40] The reference to "declared" facts is because the proper documental evidence has never been joined to the case file (for instance certificate of marriage for the marital status, birth certificates for the children, etc.).

C.1.16.3 - A.M.: Declared to be single and have no children. He declared to have worked in windows and doors manufacturing between 2011 and 2012 in [village], to possess elementary school (8 years of studies) and declared poor financial status. He speaks both Turkish and Albanian.

C.1.16.4 - M.A.: Declared to co-habit with a partner (citizen of Kosovo) since [year] and he has 1 child [child's name and date of birth]. Declared to work in constructions, to possess primary school (5 years) and have a poor financial status. He lives in Kosovo since 2008 and has no more relatives living in Kosovo. He speaks Turkish.

C.1.16.5 - A.B.: He is married with [wife's name] since [date] and has 3 children: [childrens' names and dates of birth]. Declared to have worked in construction, to possess elementary school and be poor. Speaks Macedonian (and Serbo-Croatian), Turkish and also basic English and German.

C.1.16.6 - I.P.: He is married with [wife's name] since [date] and has 9 children: [children's names], born respectively on [dates], being that the last 3 are children - under 18. He is no longer a taxi driver but a farmer of his own land, declared to have attended the secondary school (12 years) and possess average financial status (in his version he has an average income of 200 or 300 Euros as a farmer). He speaks Albanian, Serbo-Croatian fluently and some English and German.

C.1.16.7 - A.G.: He is married with [wife's name] and has 3 children: [childrens' names and dates of birth]. He is a taxi driver, has attended the elementary school and declared poor financial status

and

C.1.16.8 - T.Y.: He is married and has 1 child, [child's name and date of birth]. Declared to have worked in a kebab restaurant and currently works in the restaurant [name of restaurant] with a salary of 800 Euros (as per the contracted dated March 2011), has attended the elementary school and possesses average financial status. His mother tong is Turkish, although he has been living in Kosovo for many years.

More established facts:

C.1.17 – Criminal records

There have been additional requests to F.Y.R.O.M. (I.L.A. request to the Ministry of Justice in F.Y.R.O.M.), regarding the defendant A.B., through the Ministry of Justice, including on 9 November 2015. The answer, dated 12/2/2016, was received from F.Y.R.O.M. authorities on 3/3/2016. Due to a few ambiguities concerning the contents further information were

requested but have never been provided and therefore it is not possible to establish the criminal record of the defendant A.B.[41].

In relation to Kosovo, the answers were provided by the Basic Courts in November 2015:

The Basic Court in Pristina provided information related to a previous conviction of the defendant T.Y. (but in his statement he claimed not to have any prior conviction).

The Basic Court in Gjilan provided information related to a previous conviction of the defendant I.P.

The Basic Court in Peja provided information related to a previous conviction of the defendant I.P.

The Basic Court in Mitrovica provided information related to a previous case concerning the defendant M.B.[42]

The Basic Courts in Prizren[43], Ferizaj and Gjakova, provided the information that none of the defendants had been previously convicted in those courts.

C.1.17.1 - A.Ç: The defendant A.Ç declared never having been convicted in any court. In Kosovo he has no prior convictions.

C.1.17.2 - M.B.: The defendant M.B. declared never having been convicted in any court[44]. In Kosovo he has no prior convictions.

C.1.17.3 - A.M.: The defendant A.M. declared never having been convicted in any court. In Kosovo he has no prior convictions.

[41] The English version of the information provided read as follows: "-Through Judgment K nr. 17/91 dated 20/02/1991 issued by the Municipal Court of Kicevo/Kercova due to the criminal offense in violation of Article 239 p. 3 in conjunction with Article 243, as read with p.4 under CC of Macedonia, fine: 5000. - Through Judgment K nr. 873 /83 (not 17/91 as in the first English translation) dated 15/07/1983 issued by Municipal Court II G.S. Shkup-Skopje due to criminal offense in violation of Article 239 p.3, in conjunction with Article 243, as read with p.4 under CC of Macedonia, fine: 13000".

[42] Case number 21/07 B.C. Mitrovica, related to the criminal offence of money counterfeit: from all the information obtained it is not possible to establish that the case came to an end with a final conviction. On 17/12/2015 the B.C. Mitrovica farther explained (upon request) that at the time the defendant was a minor and "this case is located with the premise of the Basic Prosecution of Mitrovica – northern part of the city and in addition, after ceding the case, it may be requested from the said Prosecution in regard to the stage and whether a decision has been issued in regard to this case" – later on, on 24 March 2016, this court got the information the case was still ongoing.

[43] The case number PKR 466/14 for the criminal offence pursuant Article 138, par. 1, C.C.R.K., against the defendant M.B., is pending in the Department for Serious Crimes in Prizren and is not finished yet.

[44] According to the information regarding M.B. provided by the Basic Court in Pristina ("M.G.P." from [city]), PKR. No. 466/14, criminal proceedings have been conducted against the herein person due to criminal offence under article 138/1 of CCRK, and the case is under ongoing proceedings allocated to Judge Faik Hoxha", this case is not being considered as criminal record due to the presumption of innocence, as already explained before.

C.1.17.4 - **M.A.**: The defendant M.A. declared never having been convicted in any court. In Kosovo he has no prior convictions.

C.1.17.5 - **A.B.**: The defendant A.B. declared never having been convicted in any court apart from one conviction to a fine due to a traffic accident many years ago. In Kosovo he has no prior convictions

and

C.1.17.6 - **I.P.**: The defendant I.P.:

- In the Basic Court of Gjilan in the case number, PKR. no. 56/2013, he was sentenced for "attempted smuggling of migrants", in accordance with article 170, paragraph 1, article 28, paragraph 3 and article 76, paragraph 1, sub paragraph 4, of C.C.R.K., with 1 (one) year and 6 (six) months imprisonment and a fine in the amount of 200 € (two hundred Euros); the final Judgment by the Court of Appeals (PAKR 259/14) is dated 22 May 2015.

- According to B. C Peja, P.nr. 10/2005, for the criminal offence under Article 328/2 (unauthorised Ownership, Control, Possession or Use of Weapons) he was sentenced to a fine of 100 euro; this decision is final from l5/02/2005.

In P.nr. 119/2009, for the criminal offence under Article 328/2 (unauthorised Ownership, Control, Possession or Use of Weapons), he was sentenced to a fine of 225 euro; the decision is final from 27/03/2009[45].

C.1.17.7 - **A.G.**: The defendant A.G. declared never having been convicted in any court

and

C.1.17.8 - **T.Y.**: The defendant claimed to have no prior convictions. However, T.Y. in the criminal proceedings P. no. 1345/11 (B. C. Pristina), for the criminal offence of light bodily injury from Article 153, par. 4.4, C.C.K. read together with Article 24 of C.C.R.K., was convicted to pay a fine, in the amount of 200€, by a final judgment dated 08/01/2013. By a ruling dated 19/05/2015 due to the absolute bar the proceedings were terminated; the said ruling became final on 11/06/2015[46].

C.1.18 – The situation of the defendants in relation to the measures to ensure their presence in the proceedings is as follows:

[45] Part of the information on I.P. provided by the Basic Court in Peja ("DKR.P.nr. 17/2014 for the criminal offence under the Article 180/1 where the case is still under procedure (pending)") is not being considered as criminal record due to the presumption of innocence.

[46] In accordance with the answer received from the B.C. Pristina on 17/12/2015 to the clarification requested on 01/11/2015. In regards to the other defendants there are no records from any of the basic courts in Kosovo certifying previous convictions of the defendants. It was not possible to determine whether he was convicted before or after the facts in this case took place.

C.1.18.1 - **A.Ç.**: He is in detention on remand since 3 February 2013.

C.1.18.2 - **M.B.**: He is in detention on remand since 13 December 2012.

C.1.18.3 - **A.M.**: He is in detention on remand since 13 December 2012.

C.1.18.4 - **M.A.**: He was in detention on remand since 24 January 2013 until 12 April 2016. Now he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

C.1.18.5 - **A.B.**: He is in detention on remand since 13 December 2012.

C.1.18.6 - **I.P.**: He was in detention on remand since 13 December 2012 until 12 of June 2014.

Since 11 June 2014 he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

C.1.18.7 - **A.G.**: The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding, since 13 December 2012.

and

C.1.18.8 - **T.Y.**: The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding, since 13 December 2012.

C.1.19 – The current citizenship of the defendants is as follows: **A.Ç.** is Turkish [Turkish passport no. with series number], **M.B. is** Kosovar, **A.M.** is Kosovar, **M.A.** is Turkish [Turkish driving licence number no. and date], **A.B.** is Macedonian, citizen of F.Y.R.O.M. [passport no. and identification card no.] **I.P.** is Kosovar, **A.G.** is Kosovar and **T.Y.** is Turkish and Kosovar, [personal ID-no.] (T.Y. has become a citizen of the Republic of Kosovo, [no. and date], MIA – Pristina; [Kosovo passport no.).

C.2 Facts not established[47]

Count 1(using the exact wording mentioned on the indictment):

C.2.1 –It has not been proven beyond reasonable doubt that the defendants[48] **A.Ç., M.B., A.M., A.B., I.P. and M.A.** have committed the acts with which they have been charged, namely,

[47] In relation to counts 1 and 2 copied entirely from the indictment, this notice being made because part of the facts mentioned in such counts are also part of other counts and have been established in such contexts, as stated above.

[48] As said, without prejudice to other facts established in other counts and without prejudice to the fact that it was not even established that I.P. was acting as a member of a group.

it has not been established that they (and now quoting the indictment) "between 1 October 2010 and 3 February 2013, A.Ç.; between 6 April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; between 5 October 2012 and 13 December 2013, I.P.; and between 21 June 2012 and 24 January 2013, M.A.; on the territory of Kosovo and other countries committed the offence of Organised Crime by (1) organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K., C.K., E.K., L.K., O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators; (2) committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., , O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators; and/or (3) actively participating in the criminal or other activities of the said organised criminal group knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit".

Count 2 (using the exact wording mentioned on the indictment):

C.2.2 – It has not been proven that the defendants[49] **A.G. and T.Y.** have committed the acts with which they have been charged, namely, it has not been established that they "between 17 August 2012 and 13 December 2012, A.G.; and between 7 November 2012 and 13 December 2012, T.Y.; on the territory of Kosovo, committed the offence of Participating in Organised Crime by: (1) committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa.,

[49] Without prejudice to other facts established and pertaining other counts, namely the fact that it was not established in the first place that these two defendants were acting as members of a group and *a fortiori* as members of an organized criminal group.

I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators; and/or (2) actively participating in the criminal or other activities of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar." person nicknamed "D." and other unidentified perpetrators knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit".

Count 3 (using the exact wording mentioned on the indictment):

C.2.3 It has not been established that "A.Ç and A.B. (…) between 25 June 2011 and 14 December 2011, A.Ç. and A.B. on the territory of Kosovo, Serbia, Former Yugoslav Republic of Macedonia, Montenegro, Croatia, Slovenia, Italy, Austria, Germany and/or other States, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter or remain in Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry, and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) -H.D., F.Y., A.S.Z. (from 25/6/2011 to 06/07/2011).

(2) -S.Ar. and T.T. (from 19/10/2011 to 23/10/2011).

(3) -M.S., R.S. and A.Sa. (from 01/10/2011 to 07/10/2011.

(4)- Z.A. and O.Y. (from 01/10/2011 to 17/11/2011).

(5)- Smuggling 4 unidentified Turkish illegal migrants from Turkey through Montenegro and Serbia to Germany (from 17/11/2011 to 20/11/2011).

(6)-Y.D., B.H.O. (from 20/11/2011 to 28/11/2011) and H.D. and M.So. (from 20/11/2011 to 28/11/2011).

(7) -"Il." [and a family consisting of a mother and 5 children and a Turkish migrant named F.U. (from 28/11/2011 to 06/12/2011)].

(8) - M.Bu., A.K., B.B., "S." or "Se.", F.T., "M.", "Sel.", E.U., M.E., Family of 3, M.Ar., E.A., M.Y., A.U., R.T., S.D. and other unidentified person (from 18 August 2011 to 3 December 2011)".

Count 4 (using the exact wording mentioned on the indictment):

C.2.4 – It has not been established that "A.Ç. (…) between 5 October 2011 and 9 October 2011, A.Ç on the territory of Kosovo, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) The three allegedly travelling between 5 October 2011 and 9 October 2011: A.E., M.Er. and A.Er.".

Count 5:

C.2.5 – It has not been established the smuggling of the following migrants: in paragraph (3) A.Se. and S.Baj., in paragraph (5) G.Ba. and in paragraph (7) is was not established that (now copying from the indictment): "between 21 June and 2 December 2012, attempting to smuggle and or enable 59 other person who are not nationals or permanent residents, no not otherwise legally permitted to enter or remain in other States, namely, persons of Turkish or Syrian origin, from Turkey through Serbia, Kosovo, F.R.Y. of Macedonia, Montenegro, Croatia and/or Bosnia and Herzegovina to Slovenia, Italy, Hungary, Germany and /or Austria".

Count 8:

C.2.6 –In count 8 it is not established whether apart from procuring and engaging, namely by contacting the passengers and providing information related to the travel arrangements, whether the defendant did also produce the guarantee letters.

Count 9 (and now using the exact wording mentioned on the indictment):

C.2.7 – "A.Ç., M.B., A.M. and A.B. (…) between 6 April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; on the territory of Kosovo and other States committed the offence of Money Laundering by, knowingly or having cause to know that certain property, namely cash or

other monetary means, is the proceeds of criminal activity, and which property is in fact proceeds of crime (smuggling of migrants by members of the criminal group)".

C.3 - Reasoning of the decision on established and non-established facts:

The reasoning is not intended to be a repetition of the evidentiary material, its function is to enable the understanding of the decision concerning the establishment, or not, of the facts.

Initially we will make some general remarks on each type of evidence and then some particular references to each fact or at least set of facts will be made as well.

On the scope of the reasoning, we quote here the Article on the Right to a Fair Trial by the European Court of Human Rights (Art. 6 E.C.H.R.)[50] " 'Reasoning of judicial decisions' – According to established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (*Papon v. France*). Reasoned decisions serve the purpose of demonstrating to the parties that they have been heard, thereby contributing to a more willing acceptance of the decision on their part. In addition, they oblige judges to base their reasoning on objective arguments, and also preserve the rights of the defence. However, the extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case (*Ruiz Torija v. Spain*, § 29). **While courts are not obliged to give a detailed answer to every argument raised** (*Van de Hurk v. the Netherlands*, § 61), **it must be clear from the decision that the essential issues of the case have been addressed** (see *Boldea v. Romania*, § 30). National courts should indicate with **sufficient clarity the grounds on which they base their decision** so as to allow a litigant usefully to exercise any available right of appeal (*Hadjianastassiou v. Greece*; and *Boldea v. Romania*) [**emphasis added**]"[51].

The "truth", whatever it may be, it may not be coincident with the "juridical truth", "in other words, the judicial truth is founded on a correct establishment of the relevant facts, and the accurate establishment lies on *evidence* and *proofs*; in order to have a good judicial decision, any court has to have a good way of using the evidence to the aim of finding and proving the real facts"[52]. All established facts must be proved beyond the reasonable doubt[53], if not, the *non*

[50] Available on http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf, p.21.

[51] Also about the reasoning of the decisions see p. 21 of the Guide "Right to a Fair Trial, Article 6 of the E.C.H.R". The article is available on http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

[52] Article from the European Judicial Training Network, in http://www.ejtn.eu/Documents/Themis/Written%20paper%20Italie/Themis%20written%20paper%20Romania%202.pdf p.1.

[53] "When analysing evidence in the substantial side of Article 2 and 3, the Strasbourg Court is guided by the principle of proof "beyond any reasonable doubt". Nevertheless, a conclusion of guilt may arise from the coexistence of sufficiently strong, clear and concordant inferences or of similar not rebutted presumptions of fact, both in Article 2, and in Article 3, namely the result of indirect evidence". *Ibidem*, pp. 16 and 17.

liquet in terms of evidence and proof will benefit the defendant, *in dubio pro reo*, because a defendant is presumed innocent.

In relation to statements of persons who have been examined as a witness, and remained as such during the main trial, then the law provides the cases in which the previous statements by a witness can be considered, and this because, as a rule, all pieces of evidence must be produced during the main trial, as a consequence of Article 361 of the C.P.C.K., par. 1. "Even previous statements by witnesses may not be used as direct evidence, they can be used only to challenge (Art. 123, par. 2, C.P.C.K.), to cross-examine (par. 3). This is the rule. The exceptions are if the witness died, is ill or asserts the privilege of lack of presence within Kosovo (par. 3, in fine) or if it is a special investigative opportunity (par. 4)". An ambiguous situation might happen if during the trial the witness claims that stands by the contents of previous statements that has given… Even in such case, that should be avoided, the court still has to follow the legal criteria just mentioned and must use the main trial to ask the witness what may be relevant and any discrepancies will be freely evaluated by the trial panel.

In relation to previous statements given by the defendants all of them were given in such capacity, already at that time[54]. In any kind of statement it has to be checked whether the formal requirements were observed at the time it was being given, to ensure it can be taken into account by the court in a lawful way if the other requirements to do it are met (*e.g.* Articles 261, par. 2, read together with Article 123, par. 2, C.P.C.K.); in the case the court uses the previous statements to reason its decision the court always has to check whether at the time each statement was given the applicable procedural provisions were applied.

The formalities to be observed are the ones in force at the time the person is being examined, as set in the law in force at the time (this as a consequence of the principle *tempus regit actum* – as also stated by the CoA in the ruling dated 10/12/2013 in the case PN 577/2013, p. 14, "the lawfulness of an investigative action will always have to be determined against the procedural rules in force at the time the investigative action was carried out").

[54] As sometimes it happens that references are made to previous statements by someone who has become a defendant ("defendant's statement") despite the statement itself had been given at the time in a different capacity, e.g., as a witness. In relation to statements given in the capacity of a witness by someone who later became a defendant, they cannot be considered admissible evidence as "previous statements by a witness", because that person in not any longer a witness, and cannot be considered "previous statement by the defendant" – as at the time the person was not being examined in such capacity and, therefore, the rights provided by the law, and respected, were different. This is not contradicted by the provision contained in Art. 123, par.5, C.P.C.K.: "Statements provided by a defendant in any context, if given voluntarily and without coercion, are admissible during the main trial against that defendant, but not co-defendants. Such statements may not serve as the sole or as a decisive evidence for a conviction". In this provision it is logical to understand that the first time the word "defendant" is being used it is related not to the individual itself, rather to the capacity in which the individual stated. This last provision, where it reads "but not co-defendants" is consistent with the reasoning behind the norm set in Article 126, par. 1.1.3, C.P.C.K., "(…) may not be examined as witnesses (…) a co-defendant while joint proceedings are being conducted" – a fortiori, we would say, if the proceedings are the same (there is, however, jurisprudence of the Court of Appeals defending that could be used even in relation to co-defendants).

In this particular case there are no statements by the defendants that have been given in a different capacity, all of them were given in the capacity of defendant, the legal provisions applicable to a defendant, Article 231, par. 2, section 2, were observed, namely "before any examination the defendant, whether detained or at liberty, should be informed of (…) the right to remain silent and not to answer any question, except to give information about his or her identity"; furthermore, par. 4 read that (the defendant has) "the right to receive assistance of a defence counsel and to consult with him or her prior as well as during the examination".

In the present case, where all the formalities have been observed, it should be assessed whether the testimony is admissible against themselves as defendants and also for co-defendants as well, and this must be made in accordance with the rules of evidence contained in the (new) Criminal Procedure Code of Kosovo, pursuant to Art. 541, par. 1, C.P.C.K. In such event, Articles 261, 262 and 123 together with Articles 125 (and 151 to 155) and 132 C.P.C.K. set the rules.

One thing to take into consideration in the decision-making process is the set of evidence that has been admitted, administered, and not rejected *ab initio* or excluded by any ruling, but it is a different thing to consider, to discuss, to what extent the court will assess each piece of evidence; to what extent will the court assess its probative value, to what extent will the court consider it as an admissible form of evidence to establish, or not, a given fact. Reading Article 361, par. 1, of the C.P.C.K. we see that "the court shall base its judgment solely on the fact and evidence considered at the main trial", meaning on one hand the evidence that was produced at the main trial and, on the other hand, the evidence that has not been rejected or excluded. The second paragraph of the same Article not only clarifies the meaning of paragraph 1 but also confirms what we have been saying, by stating that "the court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established".

About evaluation of the previous statements it is also important to take into consideration Article 123, par. 5, C.P.C.K., where the legislator has chosen the words "statements by a defendant" (without stating since when…*ab initio*, from the commencement of the investigations or only at a later stage) and also has pointed out that these statements might have been provided in "any context". In relation to the second period of the paragraph, we can also say that one of the basic principles of juridical interpretation is that the legislator knew how to express; in fact, the legislator said *"(...) are admissible during the main trial against that defendant,* ***but not*** *co-defendant*", **has not said** "*(...) are admissible during the main trial against that* ***defendant and co-defendant***" [**emphasis added**]. The last sentence can be read as a criterion, a guidance to be followed by the court in assessing the evidence (considering even the principle of protection against self-incrimination) in relation to that specific defendant, "*such statements may not serve as the sole or as a decisive evidence for a conviction*".

In relation to the previous statements given by a defendant already in such capacity, then we must consider the different situations that may happen.

However, before this, it is also important to make the distinction between evidence that was admitted, administered and how it is evaluated as evidence, its probative value, as a consequence of Article 260, pars. 2 and 3, C.P.C.K..

The previous statements by a defendant, as the trial panel understands it, will dependent ultimately on whether the defendant, during the main trial, where all evidence is produced, as already said, decides to state his case or not, meaning, whether the defendant decides not to remain silent or not[55].

In any case, and in relation to co-defendants, the probative value of such statements has already been mentioned, the answer was that it cannot be considered.

In spite of the references already made to this issue, it is now time to address the defendant's statement itself, assuming of course that it was obtained in accordance with the law (as per Article 261, par. 1, C.P.C.K.).

According to this last norm, Article 261, par. 1, C.P.C.K., "*A statement by the defendant given to the police or the state prosecutor may be admissible evidence in court only when taken in accordance with the provisions of articles (...). Such statements can be used* ***to challenge the testimony of the defendant in court or as direct evidence in accordance with Article 262, paragraph 2 of the present code***" [**emphasis added**]. On the other hand, Article 262, par. 2, C.P.C.K., reads "*The court shall not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or state prosecutor*". Finally, Article 346, par. 1, C.P.C.K, states "*The accused has the right to not declare. If he or she chooses to declare (...)*".

This brings us to the cornerstone, to the probative value (for the reasoning of the established facts) of previous statements by a defendant: it will depend on whether the accused declares or not at the main trial - where all evidence is produced, Art. 361. par. 1, C.P.C.K.

If the defendant at the main trials chooses to declare, to testify, his previous statements can be used to challenge the testimony given during the main trial. If chooses not to testify, not

[55] "As for the "right to silence" it can be understood in a broad or narrow way. The broad meaning refers to the right of the accused not to be disadvantaged on the basis of his silence; in this conception, the right contains several legal corollaries among which is the right not to self-incriminate. According to the narrow conception the right of silence refers to the right of a person not to have his silence adversely taken into account by a court of law in the assessment of the charges against him or in the determination of his sentence". Article from the European Judicial Training Network in http://www.ejtn.eu/Documents/Themis/Written%20paper%20Italie/Themis%20written%20paper%20Romania%202.pdf p.9.

to state, then the previous statements cannot be used or, at least, cannot be used to the detriment of the defendant[56].

The panel notes that Article 261, par. 1, C.P.C.K., says "*to challenge the testimony of the defendant in court* ***or as direct evidence in accordance with Article 262, paragraph 2***" ("the court shall not find the accused guilty based solely, or to a decisive extent, upon statements given by the defendant to the police or state prosecutor") but this leads us to the core of the problem.

Although the legislator has emphasised that as a "direct evidence" (which is in line with Art. 123, par. 5, C.P.C.K.) it cannot be used to find the accused guilty, solely or to a decisive extent, the legislator has not explicitly said that it does not apply to the cases where the defendant decides not to testify during the main trial.

This panel is of the opinion that if the defendant does not testify in the main trial the previous statements by him or her cannot be used at all much less, for sure, cannot be used to his or her detriment.

It is important to note the following:

- Even previous statements by witnesses may not be used as direct evidence; they can be used only to challenge (Art. 123, par. 2), to cross-examine (par. 3). This is the rule. The exceptions are if the witness died, is ill or asserts the privilege of lack of presence within Kosovo (par. 3, *in fine*) or if it is a special investigative opportunity (par. 4).

Therefore, it would not be reasonable to understand that the legislator wanted to give a higher probative value (and by "higher" it is meant "with less requirements to be lawfully used") to the previous statements of a defendant (by definition, presumed innocent), than to the ones given by a witness.

With all due respect for different opinion, a different interpretation or conclusion in this regards might empty the value of deciding only at the main trial to remain silent; it is for no reason that all evidence must be produced at the main trial and during the main trial the defendants are the last ones - when it comes to produce evidence, namely to testify or not (and "not" is by remaining silent).

- One of the main principles in the criminal law is that in case of ambiguity the interpretation should be in favour of the defendant; although now we are not discussing the substantive criminal law, it is important to consider one of the dimensions of the principle of legality (Article 2, par. 3, of the C.C.K. reads "the definition of a criminal offence should be strictly construed and interpretation by analogy shall not be permitted. **In case of ambiguity, the**

[56] This understanding is not unanimous in the jurisprudence, mainly due to the fact that the norm makes reference to "or as direct evidence", as we will see – but to this one may add that in no case the ambiguity in the law can be interpreted to the detriment of the defendant.

definition of a criminal offence shall be interpreted in favour of a person against whom the criminal proceedings are ongoing") [**emphasis added**]; we see no reason to take a different stance or approach when we are discussing procedural law, a procedural norm.

Would be there any doubts, then Article 3, par. 2, C.P.C.K. would clarify them: "(…) **doubts regarding the implementation of a certain criminal law provision shall be interpreted in favour of the defendant and his or her rights under the present Code and the Constitution of the Republic of Kosovo**" [**emphasis added**]. The mentioned ambiguity of the legislator, not addressing explicitly the case when the defendant decides not to testify at the main trial[57], and having inserted it in a provision that starts by "such statements can be used to challenge the testimony of the defendant in court" led the panel to clarify its interpretation of the law, in the said way: previous statements by a defendant are not admissible in the case the defendant uses the right to remain silent during the main trial - and a defendant is presumed innocent until a conviction by a court of law becomes final[58].

In our particular case all defendants have, nevertheless, decided to state, to give testimony, which precludes the question just addressed as the said statements were lawfully used during the cross-examination of the defendants. These statements are an additional piece of evidence to be used in an overall assessment of all pieces of evidence ("the court shall base its judgment solely on the facts and evidence considered at the main trial" – Article 361, par. 1, C.P.C.K.), pieces of evidence that are put together to form the court's conviction, in line with the rule set in Article 361 C.P.C.K, (basis of judgment), par. 2: "the court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established".

[57] As it happens in other countries, for instance in Portugal [(where previous statements may be considered only if the defendant was previously warned that if he or she states during the investigative stage, it may be used against him or her including in the case of using the right to remain silent during the main trial); for example the provision set in Article 141, par.4, section b, of the Criminal Procedure Code, according to which the defendant is informed that in the case he or she states the statements can be used in the main trial even if he or she decides to remain silent at that time].

[58] "As to the presumption of innocence, as stated in Article 6 § 2 of the Convention, it is a *sacred* principle of every judicial system founded on the principle of Rule of the Law and it translates the idea that a person accused of having committed a criminal nature deed, is considered to be innocent until a verdict of guilt is delivered in court. That presumption requires, *inter alia*, that when carrying out its duties, the court should not start with the preconceived idea that the accused has committed the offence charged. **In that manner, the burden of proof is on the prosecution, and any doubt should benefit the accused** [**emphasis added**]. Article from the European Judicial Training Network, in http://www.ejtn.eu/Documents/Themis/Written%20paper%20Italie/Themis%20written%20paper%20Romania%202.pdf p.10.

Documents:

All documents relevant to the decision process were considered along the deliberation, the court will not address one by one as it is not needed, rather some references to a particular document or set of documents will be made when deemed necessary, only to that extent.

Also, some of the established facts are self-explanatory and some explain others.

The marital status and children of the defendants were established based only on documental evidence and the same happened with their criminal background; in the cases where it was not possible to have the relevant documents produced then the court made the clarification that it was the contents of what they had said[59].

At this stage we will mention some of the documents to which the court grants higher importance: the report based on the border management system (often mentioned as BMS report) where the data concerning individuals (namely the ones mentioned on the indictment as migrants) entering or leaving Kosovo was put, including references to the border point used, date and time, name, type of travel document exhibited, etc. The surveillance reports, the reports on the conducted searches and on the items seized during the house searches, the reports on analysis of interceptions (phone calls and text messages) and the record of money transactions concerning the defendants (and other individuals); without excluding other, these were the documental pieces of evidence that deserve a particular emphasis in the court's evaluation.

Particular references to excerpts of all these reports have been thoroughly made along the main trial sessions, along the examination of both the witnesses and (along the cross) examination of the defendants; if it is true that such practice on one hand may be considered as time consuming[60], it is also true that on the other hand it ensures the trial was conducted in accordance with the rules, namely that evidence is assessed during the main trial[61]. This, together with the simultaneous translation, also enables the defendants to assess the pieces of evidence on their own when they are being presented and allows them to prepare their stance in relation to it[62].

The issue of translation and interpretation deserves also a few words. The defendants do not have the right of choosing interpreters; to the extent it was possible, the court tried to please

[59] Which may be coincident or not with the reality.

[60] On the reasonable time for the proceedings to be terminated and complexity of the proceedings, see p. 32 of the Guide "Right to a Fair Trial, Article 6 of the E.C.H.R". The article is available on http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

[61] In this regards, see p. 20 of the Guide "Right to a Fair Trial, Article 6 of the E.C.H.R", on an adversarial hearing vs. lengthiness of proceedings, in the sense that the evidence must be addressed and examined during the trial. The article is available on http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

[62] And this is crucial, because as the defendant A.Ç. pointed out, there were occasions in which the translations of the minutes were ready only after the examination of a particular witness was over, claiming that the cross-examination could not have been properly prepared. However, as at that time explained to the defendants, they had had simultaneous translation and therefore that argument was not valid.

them with the Turkish interpreter they preferred, this is spite of the one being used more often is accredited in the court of Prizren as interpreter. Also the defendants, A.Ç more than twice, pointed out not understanding how the witnesses who do not speak Turkish (for example, M.J. and V.I.) could say what they said during the trial, as they could not understand the conversations intercepted… Although it is disputable this kind of argument deserves being addressed, the court again emphasises that there are transcripts of the interceptions and these transcripts were translated and often there were live interpretations of the interceptions so the investigators could act in accordance, namely to decide whether a surveillance team should be deployed. This is obvious, but, again, it was explained several times.

Also the evidence was translated to an extent that the E.C.H.R. might deem not necessary, still, the court did decide in this regards in the way deemed to be the most fair in the light of the principle of equality of arms[63].

In fact, given the way the evidence was presented along the main trial[64] we can say that all relevant pieces were addressed during the sessions, namely the intercepts (some of them *verbatim*, word by word, some others summarized), the same with the transcripts of the text messages.

In this case it is also worth noting that **all the defendants have stated their case and have confirmed the use of the phones, phone numbers, e-mail addresses that according to the prosecution were theirs**[65]; apart from that, assessing the match between different pieces of evidence clears any possible doubt, for instance, if in the report of analysis of conversations from a phone some conversations are assigned to particular defendants and following that conversation(s) they would (for instance) meet somewhere and later on the report of a surveillance activity (in some cases documented by photos) states the same individuals were spotted in the place mentioned in the earlier conversation, then it is logic to conclude beyond reasonable doubt that those individuals were the ones having the said conversation.

The same kind of logics applies to other situations / facts, when arrangements for someone's travel are being made and then a person with the same name or identification document (or even other data, as the date of birth) indeed travels, enters or leaves the borders of Kosovo.

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[63] For more jurisprudential notes in relation to translations and interpretations, see pp. 38 *et seq*. (points 232, 247, 251, 252 to 254, 256) and p. 51 *et seq.* (points 335, 339 to 341) of the said Guide, Guide "Right to a Fair Trial, Article 6 of the E.C.H.R". The article is available on:
http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

[64] As said in the reasoning of the ruling issued at the time of the initial hearing, about the "demands" of having all the evidence printed and delivered, not served in the electronic format, the law only requires that all evidence is disclosed, does not say that it has to be printed and therefore it can be in the electronic format.

[65] Exception made to one of the phone numbers mentioned as still being in use for M.B., as already explained.

As said, the defendants confirmed the use of the phone numbers and of the e-mail accounts mentioned along the indictment and all these pieces of evidence read together, in the way explained, enabled the court to decide on the facts to be established. This is being mentioned as a substantial part of the evidence in this and alike cases consists of records of intercepts and those alone may pose difficulties to substantiate a decision as one may say that having conversations about criminal facts is not a criminal offence itself, that it has to be substantiated by something else.

Finally, it is paramount to say that no-one impugned at any time (therefore also at the proper time to object evidence) neither the intercepts nor their transcripts – as the Prosecution highlighted in its closing statements and the court has never rejected any request to have a particular record played, and the court says this because the defence counsel of the defendant A.G. stated in his closing statements that evidence are the recordings, not the transcripts...

Witnesses:

The provisions set in Articles 330 C.P.C.K. mainly govern the examination of witnesses. None of the defendants proposed witnesses and the examination of the witnesses proposed by the prosecution was conducted in accordance with the applicable provisions, namely Articles 332 *et seq.* C.P.C.K..

The witnesses who were examined are[66]:

- M.J. (EULEX police office), "case manager for this case, called PINK, in 2011, when the investigation started. I was appointed for this case in 2011 May, and I remained case manager for this case until May 2013. We investigated this case in form of a joint investigation team and the case manager for Kosovo Police was K.G." – page 4 of the minutes dated 11/09/2014).

- V.C. (EULEX police officer in IPCU - international cooperation office - "team leader of Organised Crime Investigation Unit), "I was informed by each case manager about the content of each investigation. So the case manager M.J., shown to me an ILA, it is the acronym for International Legal Assistance request that was addressed to SPRK from the Slovenian authorities. This ILA arrived in Organised Crime Investigation Unit in July 2011, with this ILA the Slovenia prosecution office requested to SPRK to open a case and assist Slovenian authorities in a case that was smuggling of migrants from Kosovo to Slovenia. (…) It was a Joint Investigation Team with Kosovo Police, in particular with the department of the Organised Crime of Kosovo Police" – page 8 of the minutes dated 31 October 2014).

- V.I.[67] (Police Inspector – Currently working with EULEX – Serious Crime Investigation Office), "I was assigned on this case called PINK since the year of 2011, as an

[66] In brackets we will quote the main answer given by each witnesses in relation to how they had knowledge of the facts discussed in this trial, how they had taken part in the investigation that led to the indictment.

investigator. In the same year, I was appointed as deputy case manager and later when my colleague – M.J. – from Slovenia left, I became a case manager. My contribution in these investigations is quite heterogeneous. We were constantly keeping in touch with our counterparts, Kosovo Police officers as this was a joint operation. My assignment was to keep in touch with them on a daily basis and analyse the phone calls we had in the investigation. In this investigation among all the strategies that we had, we had covert measures as interception of phone calls. So in this phase of investigation, one of my tasks was to analyse and provide the prosecution office with 15 days reports, in conjunction with Kosovo Police officers" – page 5 of the minutes dated 24/11/2014.

- K.G. (Kosovo Police, Directorate Against Organized Crime, Pristina, "in 2010 an investigation on organized crime related to smuggling of migrants, mainly from Turkey and Syria, whereas one of the suspects of this case, named O.A., was suspected to live in Kosovo and to be engaged in criminal activity, mainly in smuggling of migrants. (…) A joint team had been formed with Kosovo police and EULEX police, and I was appointed as an investigator by the Kosovo police and M.J. was initially appointed by the EULEX police. In that letter it was written that O.A. had to be identified and his residence had to be found. We have started investigations against this person and we located him through operational police methods. (…) I am supervisor of a team comprised of 6 - 7 police investigators" – page 4 of the minutes dated 6 May 2015).

- A.R. (at the time of the investigation): "acting Team Leader in Organised Crime Investigation Unit" – page 4 of the minutes dated 16 June 2015.

- Y.J. (Police investigation officer in Organised Crime Investigation Unit in Pristina), "my role was the interception of telephone calls and observation in certain cases when the observation team was not available. (…) Took part in the surveillance (…) in some occasions (…). During the interception (…) the ones that were relevant for the case, we took the transcript. (…) We were five investigation officers dealing with this investigation and we all did the transcripts of the interceptions" – pages 3 and 4 of the minutes dated 15 July 2015.

The witness M.J. was examined on 11 September 2014, 24 September 2014, 25 September 2014, 15 October 2014 and on 10 November 2014; the witness V.C. was examined on 31 October 2014 and on 03 November 2014; the witness V.I. on 24 November 2014, 02 December 2014, 03 December 2014, 09 December 2014, 10 December 2014, 16 December

[67] The ruling accepting the motion filed by SPRK on 2/2/2014, requesting the court to have this witness examined, was issued on 19/6/2014, based on the fact that the witness had in the meantime returned to Kosovo and according to the prosecution this witness was the only one who could more thoroughly address the analysis of the metering results and analysis of the phones and computers seized during the house searches. The motion was granted based on Article 288 paragraph 2 of the CPCK, allowing the witness V.I. to give testimony in the main trial since the witness had been outside the country and unavailable until that date and would not substantially duplicate another witnesses. It was considered the fact that he is an experienced police investigator and could provide the court with the opinion evidence as to matters within his knowledge and experience. The possibility of having such testimony given at the main trial was deemed to be relevant as it would provide a helpful explanation of the voluminous documentary evidence in the case file as to the defendants' roles in the facts being discussed in the trial.

2014, 22 January 2015, 28 January 2015, 09 February 2015, 10 February 2015, 16 March 2015, 19 March 2015, 15 April 2015, 20 April 2015, 28 April 2015, 1 September 2015 and on 22 September 2015; the witness K.G. was examined on 06 May 2015, 08 May 2015, 12 May 2015, 13 May 2015, 18 May 2015 and on 20 May 2015; the witness A.R. was examined on 16 June 2015, 17 June 2015 and on 14 July 2015; finally, the witness Y.J. was examined on 15 July 2015.

As mentioned earlier, many documents and excerpts of different reports were constantly exhibited by the prosecution to the witnesses; this was done always in compliance with Articles 333, par. 3, and 336 C.P.C.K.

It is paramount to draw the attention to the fact that both the investigation and the case file are voluminous, not only due to the number of suspects, later defendants, but also to the period of time that the investigation lasted and activities carried on by the investigated – affecting many individuals and involving gathering data of different kind. In this context, constantly the witnesses were questioned about data contained in different reports: BMS (border management system), report on interception of communications by computer network (for example analysis of e-mail accounts of A.Ç and A.M.), reports on covert photographic or video surveillance (for example on A.Ç, A.M., M.B., M.A., A.G.), reports on interception of communications (all defendants and others, both phone call and text messages), reports on metering of telephone calls and on disclosure of financial data. The witnesses were also asked, among other, about their overall operations, methodology used, about the course of investigation that was followed, how the investigative actions were coordinated and about the relevance of live interception with translation – as it would enable to follow the activities in real time and deploy surveillance teams to a meeting point or airport, for instance, when deemed necessary.

If the methodology used and allowed by the court (for being foreseen in the law, no need to say) could be considered, as already said, time consuming, apart from the advantages that earlier were mentioned we point out now that this line of proceeding also allowed the explanation on how the investigation developed and how and why different pieces of evidence were created (in line with Article 336, par. 3, C.P.C.K.), as in the case of the surveillance reports following the live intercepts and reciprocal corroboration of data between the data contained in the compiled BMS report and data exchanged via text message, for instance, as names and respective dates of birth.

Now it is time for a few words in relation to facts that were not established.

The facts not established are only “not established” and “not established” means only that it was not possible to establish them, as from a juridical point of view such does not mean they did not occur. All the facts mentioned in the indictment and not considered established are not established (despite most of these will also be individually addressed).

Apart from the criteria, principles and explanations given above, the court will now provide some more reasoning with regards to each of the names mentioned in **counts 3**, **4**, **5**, **6** and **8** as being migrants smuggled by the defendants.

Counts **1**, **2** and **9** will be addressed later[68].

In each of the counts number **3**, **4**, **5**, **6** and **8** the court will provide some more details on each of the names and why the smuggling of each individual was established or not, bearing in mind everything already stated in relation to the evaluation of the different pieces of evidence.

Count 3:

It is not possible to establish beyond reasonable doubt the defendants in this case committed the smuggling of the (alleged) migrants identified (and "unidentified") in this count.

The reasoning of this count goes from page 29 to page 37 of the indictment; the said reasoning almost exclusively addresses defendants in other proceedings, namely O.A., B.F., F.A. and N.N..

There are a few references to individuals who are defendants in this case, namely to A.Ç and to A.B., for example in relation to persons who were allegedly smuggled in November 2011: B.H.O., Y.D., H.D., M.So., "Il." and F.U. (pars. 5 to 7 of count 3).

None of these individuals is mentioned on the BMS report (there is one individual with the surname "U." but this one is referred to in the period of September 2012, not 2011 – period mentioned in the count).

Also the financial report on the defendants does not provide relevant evidence for the purpose under consideration and related to the individuals mentioned above: with regards to A.B., looking at the transactions in 2011 (p. 15 of the financial report dated 11/4/2013) none enables to consider it might be related to the charge, with regards A.Ç, on p. 4 of the same report there is one deposit of 900 Euros, sent by an "U." (F.U.A.) but, apart from not knowing whether it might be the F.U. the Prosecution mentions, the date of the transaction was 4 February 2011 and the charge mentions November 2011. Also, because of the reference to the alleged invitation letters provided by A.Ç to the individuals "Il." and "F.U.", the panel says it was unable to find such documents.

In relation to other individuals mentioned in this count the panel found no evidence, as said, to enable the panel to establish the relevant facts, beyond reasonable doubt, this not to

[68] Also because if in some cases there is a clear distinction between facts and law, in others it is not that clear, as the facts are embedded by *"juridical value judgments"* themselves – which, to a significant extent, is the case of most of the "facts" relevant for counts 1, 2 (on the criminal offences of organised crime and participation in organised crime) and 9 (on the criminal offence of money laundering).

mention that with regards to many of the names there was no evidence at all that could be considered (in relation to the defendants of this case).

About the 2 conversations intercepted between A.B. and O.A. on 17/11/2012, at 16.03 and 16.10 hrs., the contents of such conversations about "payments to be made by boys" does not allow this panel to conclude beyond reasonable doubt that there is enough evidence to establish facts constituent of a criminal offence, and the same applies to the conversation of A.Ç (already using the phone ending in 818 but not identified yet at the time) when he was called by O.A. on 20/11/2012 at 14.55 h., as for this panel the sheer conversation, even if it is on giving advice on how to commit a criminal offence, a conversation about a supposed criminal activity, cannot be considered itself as constituent of a criminal offence, as it is not sufficient to consider that it falls within the concepts of assistance or co-perpetration…

Nevertheless, the panel addresses now paragraph by paragraph the names in this count:

(1) - **H.D.**, **F.Y.**, **A.S.Z.** (from 25/6/2011 to 06/07/2011): no evidence was produced at all in this trial in relation to these individuals, even the reasoning of the indictment makes references to other suspects, rather than those who are defendants in these proceedings – as stated earlier.

(2) - **S.Ar.** and **T.T.** (from 19/10/2011 to 23/10/2011): Again, no evidence was produced at all in this trial in relation to these individuals, even the reasoning of the indictment makes references to other suspects rather than those who are defendants in these proceedings.

(3) - **M.S.**, **R.S.** and **A.Sa.** (from 01/10/2011 to 07/10/2011): No evidence, as well, was produced at all in this trial in relation to these individuals, even the reasoning of the indictment makes references to other suspects rather than those who are defendants in these proceedings.

(4)- **Z.A.** and **O.Y.** (from 01/10/2011 to 17/11/2011): No evidence, as well, was produced at all in this trial in relation to these individuals, even the reasoning of the indictment makes references to other suspects rather than those who are defendants in these proceedings (despite in this case it is mentioned that A.Ç has prepared the invitation letters but this, as many other aspects, have already been addressed above).

(5)- Smuggling **4 unidentified Turkish** illegal migrants from Turkey through Montenegro and Serbia to Germany (from 17/11/2011 to 20/11/2011): no evidence was produced.

(6)- **Y.D.**, **B.H.O.** (from 20/11/2011 to 28/11/2011): In this case the only evidence produced was related to 2 sms sent from [no.] allegedly pertaining to O.A. to A.B. on [no.] on 24/11/2011 with the names and dates of birth "Y.D. [date], and B.H.O. [date]" at 18.18 h. and the panel already explained to find this not to be sufficient evidence; no more relevant evidence was produced along the main trial. The contents of the conversations in the period between

20/11/2011 and 28/11/2011 involving A.Ç do not suffice to link him or the conversations themselves to these particular migrants.

- **H.Da.** and **M.So.** (from 20/11/2011 to 28/11/2011): As in the last paragraph, only an sms with the content, "H.Da. [date of birth]" at 18.18.37 h. was sent to A.B. from the same number, [phone number] pertaining to O.A. (as confirmed on p. 3 by the witness K.G. on the minutes dated 13/05/2015), which again is not sufficient evidence. In the case of M.So. there was an identical sms sent to an unknown person. The contents of the conversations in the period between 20/11/2011 and 28/11/2011 involving A.Ç do not suffice to link him or the conversations themselves to these particular migrants, in terms already explained.

Even when in the session held on 10/12/2014 the Prosecution asked the witness V.I. whether he recalled these names, he said no (see page 12 of the said minutes) and also (on p.13), we can read the witness' answer to another question by the prosecution: "V.I.: Yes. O.A., A.Ç, F.A., B.F. are well known to PINK I investigation. As far as I remember, B.F. was arrested with A.By. on April 17 2012. F.A. was involved in this criminal activity as well. I remember he was a taxi driver".

(7) - "Il." [and a **family consisting of a mother and 5 children** and a Turkish migrant named **F.U.** (from 28/11/2011 to 06/12/2011)]: On 8th of December 2011 at 11.28.20 h. there are references to a person "Il." or "Ik." in a conversation allegedly between O.A. and A.B., but again the contents of the said conversation, as addressed above, are not sufficient to the time period mentioned in the charge (as O.A. is saying to A.B. that he, A.B., had transported him a long time ago, this despite the fact that the contents of the conversation is, in the light of an objective observer, incriminating when it comes to the assessment of the activities of these individuals, namely the mentioned "[N.N's first name]" and the said O.A.). Also on 11 December 2011 at 11.56.30 h. there was a phone conversation from an unknown person in Turkey to O.A. (on [phone number]) mentioning such persons again (F.U. and "Il."): "This is unbelievable. He gave my name to the police, they are showing my picture to everyone. They are telling them that [N.N's first name] is somewhere close to here. It is all "Il."'s and F.U.'s fault" (– see page 224, binder 4 of Pink I interceptions) but, again, it does not constitute substantial evidence concerning the defendants of these proceedings, not even with regards to A.B., as there are no more pieces of evidence enabling the court to establish facts beyond a reasonable doubt, including the conversation that took place on 4 December 2011, at 12.30.15 h., when A.B. called O.A. and despite they talk about money and tickets, the core of the conversation is A.B. saying "they are con men, did you speak to "Il."? Also [N.N's first name] called me, she has a family with 5 kids, I told her to contact you, I told them that O.A. can do it" – this to mean that this may be substantial evidence as far as other individuals are concerned, not the defendants of this case – see pages 53/54, binder 4 of Pink I interceptions. During the trial no evidence was produced on the alleged fact that A.Ç had prepared guarantee letters for the said family, although the name of such family is not mentioned, and also no evidence was produced that he or any other defendant

in these proceedings have received the amounts as mentioned in the indictment (1.700 Euros and 5.500 Euros).

(8) - **M.Bu.**, **A.K.**, **B.B.**, **"S." or "Se."**, **F.T.**, **"M."**, **"Sel."**, **E.U.**, **M.E.**, **Family of 3**, **M.Ar.**, **E.A.**, **M.Y.**, **A.U.**, **R.T.**, **S.D.** and **other unidentified person** (from 18 August 2011 to 3 December 2011): No evidence was produced in relation to these persons and concerning the said defendants, A.Ç and A.B.. Only in relation to the alleged migrant M.Y. it might give raise to doubts whether the sms sent on 25/10/2012 by A.Ç to A.M. concerned this individual, as it made reference to "M.Y." - different spelling; however, this took place on 25/10/2012 and the facts allegedly took place between 18 August 2011 to 3 December 2011, which leads us to the conclusion that it must have been another individual.

Count 4:

It is not possible to establish the defendants in this case committed the smuggling of the (alleged) migrants identified (and referred to as cases of attempt[69]) in this count.

The reasoning of this count is on page 37 of the indictment; the said reasoning almost exclusively addresses defendants in other proceedings, namely O.A. and F.A.

(1)- **A.E.**, **M.Er.** and **A.Er.** (allegedly travelling between 5 October 2011 and 9 October 2011): No evidence was produced during the main trial, apart from that, the reference to the conversations in the reasoning of this count in the indictment, when A.Ç is mentioned – phone conversation between O.A. and him, from [phone number] and [phone number], on 09/10/2011 at 19.39.34 h. – have no reference at all to a group of 3 persons, much less named [last name of M.Er.] or something alike; the court also assessed the previous conversation on the same day but at 19.33.22 h., in which A.Ç had again been called by O.A. and again no relevant information was found there. Therefore, the panel finds there is no other solution other than not establishing the facts as well.

Count 5:

In this count it is possible to establish the defendants in this case committed the smuggling of migrants as described before.

Obviously, the general considerations stated earlier have to be kept in mind, as this is a more specific, almost "one by one", and more detailed reasoning, enabling to determine the role that each of the accused has had in relation to each migrant or group of migrants.

The reasoning of this count is from page 37 up to the page 103[70] of the indictment

[69] But this classification as "attempt" is a juridical issue that will be addressed at the proper moment.

[70] Although not needed to say, when the court mentions the pages of the reasoning of each count it is not overlooking the additional reasoning under B, p.103 onwards of the indictment.

About the established facts (paragraph by paragraph, individual by individual):

(1) - In the period between 23 June and 27 June 2012 smuggling the following Turkish migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Oc., **T.O.** and **M.K.: A.Ç**

In relation to A.Ç:

M.Oc., T.O. and M.K. arrived in Kosovo on 23/06/2012 at 1.34. h. by bus at the border crossing of Kulla Pejes and exited on the same date at 4.58 h. by car through the border crossing of Hani I Elezit; one hour later he entered Kosovo again at 6.05 h. and finally left by bus through the border crossing point of Gllobocice, on 25/06/2012. This data from the BMS Report was confirmed by the witness M.J. (see minutes dated 24/09/2015) and by V.I. (see minutes dated 9/02/2015, p. 06). The involvement of A.Ç is amongst others established by the fact that he received an email from [e-mail] with the guarantee letter issued by I.S. for M.Oc., T.O. and M.K. for the period from 25/06/2012 to 30/06/2012 (see police files, binder 3, p. 222), which was also confirmed by the witness V.I. (see minutes dated 09/02/2015, p. 5). It has to be noted that the said guarantee letter matches with the date M.Oc., T.O. and M.K. exited Kosovo. In addition, several interceptions between 22/06/2012 to 23/06/2012 between, A.Ç and S.I., confirm the involvement of A.Ç in the smuggling of M.Oc., T.O. and M.K. On 23/06/2012 at 12.13 h., A.Ç on his [telephone number] sent a SMS to S.I., on [telephone number], asking whether the notary office is open (Interception Binder 1, pp.45-46); one minute later, at 12.14 h., I.S. responded "on Monday".

Later on, on 23/06/2012 at 21.24 h., A.Ç sent a sms to I.S. with the content: "M.O., [date of birth], M.K., [date of birth], and T.O., [date of birth]" (First legal Interception Report, p. 280). This interception was confirmed by the witness V.I. (see minutes dated 09/02/2015, p. 5). At 15.10 h. on 23/06/2012 A.Ç gave I.S. the following instruction by sms: "You take care of notary for 3 on Monday. The payment will be done" (Interception Binder 1, pp.73-74). On the same day, at 22.52.33 h., A.Ç received once more a sms from I.S. "They will be in the computer tomorrow at 3 o'clock. Sent the copies by bus, it's the best" (Interception Binder 1, pp.106-107). The next day on 24/06/2012 at 14.25h., A.Ç called a migrant in Pristina on [phone number] informing him that he should come to the internet café for the invitation letter, and that they would depart the day after at 3 o'clock (Binder 1, pp.110-112).

On 25/06/2012 at 12.06 h., A.Ç received a sms from S.I. in Macedonia on [phone number] (see PINK 2 Interception Binder 1, pp.180-181): "Send their passport numbers and the city's name, where they are from…tell them to send 150 Euros. The guy who works at the notary is awake now". After this message, several more text messages have been exchanged between A.Ç and S.I. regarding the three migrants. These conversations show that based on the instructions from A.Ç, S.I. made the guarantee letter in relation to M.Oc., T.O. and M.K. On 25/06/2012, at 17.12 h., A.Ç on [telephone number] received a sms from a migrant with the

following contents: “We passed Macedonian border. We are on our way to Macedonia” (Interception Binder 1, pp.329-340). This date and time approximately matches the date and time that the three migrants passed the border between Kosovo and Macedonia as shown in the BMS system, already mentioned above.

Furthermore, on the date of arrival of M.Oc., T.O. and M.K. A.Ç, on 23/06/2012, at 08.58 h., A.Ç had been called on [telephone number] by an individual referred to as “A.P.”, using [telephone number], and he informed A.Ç that “they have arrived” and that “they are at Pristina Bus Station” and asked whether he should send them to M., to what A.Ç replied that they could be send there or to Hotel Tirana. A.Ç also questioned “A.P.” whether 2 or 3 persons are concerned, to which “A.P.” replied that there were three (Interception Binder 1, pp.37-39).

On the same day, at 12.40 h., A.Ç was called by O.K. using [telephone number], (Interception Binder 1, pp.53-55). A.Ç informed O.K. that he would visit “them” in a bit and that the notary is open on Monday to arrange invitations, as in case they would not let them pass and they would be stamped with a “return”; O.K. responded that A.Ç should “clean up their notebooks” and asked whether they should be able to arrive there. A.Ç responded that it is good these days and they are able to pass. During the same day, on 23/06/2012 at 13.49 h., A.Ç using [telephone number] called the migrants using [telephone number] with the question whether the three of them are in the first room (Interception Binder 1, pp.56-58). After some time, at 14.20 h., when A.Ç was with the migrants, he called the said “A.P.” using [telephone number]. About the same occasion, O.K. informed the migrants to “Give A.Ç 50 Euros instead of 30 Euros…the three of you together give him 50 Euros” (Interception Binder 1, pp.59-61). The text messages and telephone calls between A.Ç and O.K. continued during the trip of the migrants; for example, on 25/06/2012 at 21.48.27 h. when A.Ç was called on [telephone number] by “A.P.” using [telephone number] and informing A.Ç that the migrants had not entered yet and that they were at the border control (see Interception Binder 1, pp.477-478).

Based on an interception dated 27/06/2012 at 16.04 h., between A.Ç using the same number [telephone number] and “A.P.” using [telephone number], it can be established that the migrants were caught in Hungary and either might be sentenced or returned (Interception Binder 2, pp.85-88). The email correspondence by A.Ç on 31/07/2012 confirms that the migrants were returned and that a second trip was organised. A.Ç also organised the hotel reservation for M.Oc., T.O. and M.K. in Nirvana Rooms for the period of 31/07/2012 to 03/08/2012 as it is showed by the email sent on 31 July 2012 by A.Ç from [email address] to Nirvana Rooms in Split, Croatia. This email has been addressed by the witness V.I. (minutes dated 09/02/2015, p. 5). The involvement of A.Ç is further established by the interception dated 30/07/2012 at 18.56.55 h., as A.Ç sent a sms to [telephone number] with the contents “send M.Oc. [no.]” (see interception binder 5, tab 30, p. 267). The mentioned email was confirmed by the witness M.J. (minutes dated 24/09/2014, p. 14).

(2) - In the period of July 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Y., and **F.K.** and **M.Sol.: A.Ç**

In relation to A.Ç:

According to the BMS report, I.Y. together with F.K. entered Kosovo by plane at Pristina Airport on 18/07/2012, at 4.20. h., pm., and left the next day, 19/07/2012, at 4.58 h. pm., by bus, crossing the border at Gllobocice. The BMS data in relation to I.Y. was confirmed by V.I. (see minutes dated 28/04/2015, p. 8, and minutes dated 15/04/2015, p. 14) and by A.R. (see minutes dated 16/06/2015, p. 5) and, in relation to F.K., by V.I. (see minutes dated 28/04/2015, p. 8), by M.J. (see minutes dated 24/09/2014, p. 7) and by witness A.R. (see minutes dated 16/06/2015, p. 5; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). The involvement of A.Ç can be established by the email received by him 4 days before the arrival of the two migrants, received on 14/07/2012 from H.I., [e-mail] with the scanned copies of the passports of I.Y. and F.K. attached (see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17). This was also confirmed by the witnesses V.I. (see minutes dated 15/04/2015, p. 15) and M.J. (see minutes dated 24/09/2014, p. 8). In addition, during the search of A.Ç's house, a [Turkish passport number] (issued to F.K., with [date of birth]) was found (see Police binder 7, file 3, p. 32 item 13), as it was also confirmed by A.R. (see minutes dated 16/06/2015, p. 5) and by V.I. (see minutes dated 28/01/2015, p. 21).

Furthermore, the surveillance evidence shows that on 18/07/2012 the individual identified as N.N. (defendant in other case) picked up I.Y. and F.K. (see Police Binder 1, tab 3, p. 34-38); this surveillance report was also addressed and its contents explained by the witness V.I. (see minutes dated 28/04/2015, p. 8). In addition, on the same day the two migrants were taken by N.N. to A.Ç (who went after to the bus station), at the Montenegro House café (see Police Binder 1, tab 3, p. 40).

Based on the BMS report, the data show these two migrants left Kosovo on 19/07/2012 at 45.8h. pm. and taking into account that on p. 48 of the first surveillance report (see Police Binder 1, tab 5) it is mentioned that on 19/07/2012 at 16.55 h.: "The Durmo Tours bus arrives at Gllobocica Border point with two alleged migrants who are still on the bus", as confirmed by V.I. (see minutes dated 28/04/2015, p. 8), it is clear beyond a reasonable doubt that these two migrants mentioned in the surveillance reports are indeed I.Y. and F.K..

In relation to M.Sol., the court considered the following evidence: According to the BMS report, M.Sol. entered Kosovo by plane at Pristina Airport on 3/07/2012 at 8.28 h. p.m., and left on the same day, at 23.22 h., by car, crossing the border at Hani Elezit, but re-entered also by car and at the same border on 4/7/2012, at 0.22 h., and finally left by car at the crossing point of Globbocice on 5/7/2012, at 14.41 h. (see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013 - SPRK/in/52/OC of 17/01/2013 -, Police file PINK 2, vol. 6, Tab 5, pp.135-143). These data were confirmed in the session held on 24/9/2014 by the witness M.J. (see the said minutes, p. 13). The involvement of A.Ç can also be confirmed by the emails: on 17/07/2012 he sent an email making a reservation in the said name to Nirvana Rooms, Split Croatia and he got the answer from N.P. [e-mail] as he received a confirmation of such reservation from 18/07/2012 up to 20/07/2012 also on the 17/07/2012 (see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network - A.Ç - covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, - SPRK/in/1212/OC of 19/10/2012 - Police file PINK 2, vol. 3, Tab 1, pp.1-17). The witness M.J. explained it and also mentioned an interception (see said minutes and page): "in this International Legal Assistance to Croatia, we have an interception dated 17 July 2012 A.Ç sent a sms to a certain number and the content is: you sent it to M.Sol. and the phone number".

(3) - In the period of August 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

O.Yl.: A.Ç

In relation to A.Ç:

The involvement of A.Ç stems from the fact that this migrant (Turkish citizen, [date of birth]) indeed came to Kosovo on 12/08/2012, arriving by plane at Pristina Airport, at 8.48 h., and left by bus on the following day, 13/08/2012, at 3.10 h., by bus at the border crossing point of Globocice and entered again on the very same day and border, less than one hour after, and then left again by the border of Kulla Pejes on 15/08/2012, at 10.24 h., by bus. The witnesses V.I. (see minutes dated 28/04/2015, p. 9) and A.R. (see minutes dated 16/06/2015, p. 6) explained the meaning of these movements contained on the BMS report (police files number 1, p. 126; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). On the day of the first exit by bus, 13 August 2012, the surveillance team spotted a migrant at the bus station together with A.Ç, he was in a Kebab shop at the bus station, then he left to platform10 and there he stopped next to A.Ç and next to UMP 13[71] - called as "A.P." - and they all started talking to each other (see 15 binders - Police file search reports - financial Investigation/surveillance report dated 13/08/2012, from page 151 to page 159); surveillance on

[71] Meaning Unidentified Male Person.

which the witness A.R. confirmed the details (see minutes dated 16/06/2015, pages 6 and 7); also on pages 130 and 131 of the same surveillance report we see photos connected to the live interception activity report on 14th of August 2012 and this was at 11.25 h., when A.Ç sends an sms to the same migrant, O.Yl., telling him that he was at the hotel, and then A.Ç was called by an unknown person at 11:30 h. and informs this unknown person that he is at the hotel with the migrant.

Also we can see that A.Ç received on his [e-mail] an email on 07/08/2012 from S.Ku. [e-mail] a scanned image of the passport of the said migrant and this was also confirmed by the witness V.I. (see minutes dated 15/04/2015, p. 15; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17). Also using the same e-mail, A.Ç on 16/08/2012 sent an e-mail to [e-mail], Nirvana Rooms, Split, Croatia, making a reservation between 16/08/2012 and 20/08/2012 for the said migrant (see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

On 15 Police binders, police file binder 1, tab.12.1, pages 126 and 127 of the surveillance report, specifically to the interception activity dated 12 of August 2012, the name O.Yl. has been mentioned at 09.10 h. According to it, O.Yl. had just arrived at Pristina airport and had sent an SMS to A.Ç on the telephone number ending in 818, referring to the fact that he had passed the passport control and was standing on the queue to come out.

Finally, were there any doubts, on 16/8/2012, at 16.09 h. A.Ç answering someone who identified himself as O.Y.'s uncle said the following: "He is on his way now to Croatia with a friend of mine. I am speaking to them and I'm following the situation" and then adds "they will enter Croatia, officially. And then tomorrow evening there is a possibility that they will continue to Austria, Italy" (- see Interception binder-vol. 10, tab. 4. pages.201-202).

I.K.[72]: **A.Ç / A.G.**

In relation to A.Ç:

There was evidence produced to establish the smuggling of I.K. born on [date].

In relation to A.Ç, he provided for obtaining a guarantee letter under the name of the co-defendant A.G., dully certified by a notary, for the individual I.K., this after having received a copy of his Turkish passport [number] that was sent by sms from "A.P." to A.Ç, on 14/8/2012 at 16.47 h.) from B.S. on 21 August 2012 (see EULEX Police, OCIU 4855, Police 15-day report

[72] For systematic reasons the reasoning in relation to A.G. and this migrant will be mentioned again.

on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

In relation to A.Ç together with A.G., we can see the guarantee letter issued by the defendant A.G. (police binder 3, p. 413), done at the notary on the 17/08/2012 and it was sent by email to A.Ç on 20/08/2012. Apart from that, we can see the entrance of the migrant at Pristina Airport on 22/08/2012, at. 6.43 pm., as per the BMS report; these facts were also confirmed by the witnesses A.R. (see minutes dated 16/6/2015, pp. 11/12) and V.I. (see minutes dated 28/4/2015, p. 12; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

On 17/08/2012 an individual named M.Ki. transferred an amount of 100 Euros to A.G. This defendant has [identification number] and was born on [date], the same date and same identification number[73] as in the answer by Western Union, despite in the indictment it says he was born on… (Police Binder 10, tab 1, Summary of Financial Report dated 11.04.2013, page 17); in regards to the material benefit we can also say, from a subjective point of views (the defendant's), that following his contacts with the co-defendant A.Ç, on 28/9/2012 he asked him some money to take his sick son to the doctor. From the surveillance report (p.171) report with regards the 22 August 2012, and this incident is reported at 16:35 hours, "surveillance team noticed an UMP 17, allegedly taxi driver, approaching a migrant who had just come out of the terminal, short and with dark completion and the unknown male person asks him if he was I.K. and the young boy answers 'No'. The unknown person moves again in the direction of the terminal". These facts allow the conclusion that the defendant A.G. went to the airport to pick up the person he had guaranteed for.

This defendant, however, would after voluntarily quit his criminal collaboration with the defendant A.Ç by asserting not to want any farther engagement with him. Actually, on 20/8/2012 at 18.25 h. A.Ç called A.G. (from [telephone number] to [telephone number]) and A.G. said to him "Yes, but come to talk, if there is anything serious regarding the police, my name, I don't want any problems, you know?; A.Ç: No, no problem, at all, we have explained… guest, e.g. brother, brother knows you (….); A.G.: yes, yes, I am just saying" - see 64 police binders, binder 62, tab 10, pp. 474/476. Also on 22/08/2012, at 17.40 h., A.G. (on [telephone number]) called A.Ç (on [telephone number]) and the conversation went like this: "(…) A.G.: where is your house? I want to give you this and finish with you; A.Ç: Excuse me? (…)"- see 64 police binders, binder 13, tab 3, p. 223.

M.S.B.: A.Ç

In relation to A.Ç:

[73] As it will be again mentioned in the reasoning of the smuggling of the individual I.K. in August 2012 (following the reasoning of count 6).

There was evidence produced to establish the smuggling of M.S.B. We have emails dated 21/08/2012 from S.Ak. (on which the witnesses were heard, V.I. and A.R. – see minutes dated 2/12/2014, p. 12, and minutes dated 16/06/2015, p. 10, respectively; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17) sent to A.Çs's [email account] and on the following day M.As. also sent him an email with the copy of the passport of the said Turkish migrant, passport no. U 01220702 of the Republic of Turkey (the witness A.R. also was heard about this email, see minutes dated 16/06/2015, p. 10). Apart from that, we can see the entrance of the migrant at Pristina Airport on 23/08/2012, at. 08.24 h., as per the BMS report (police files vol. 6, tab 5, p. 269, and EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143) and on the day before (22/08/2012, at 23.37 h.); we also see that A.Ç. was called by [Nickname for M.As.] [phone number] on 16/08/2012 at 16.54 h. asking about arrangements on the photo, date of birth and passport of a boy named M.S.B. (64 binders, binder 10, tab 5, pp. 235/236; on p. 246 we have an sms from the same number again to A.Ç. sending the details, date of birth and number of passport and on p. 253 we have the transcript of another conversation between A.Ç and [Nickname for M.As.] discussing A.Ç's need of having a photocopy of the passport and instructing [Nickname for M.As.] to check his e-mail to see what he had sent him from [e-mail account]; the witness V.I. confirmed also these facts on the session held on 2/12/2014.

M.Ha.: A.Ç

In relation to A.Ç:

There was evidence produced to establish the smuggling of M.HA.Ç sent an email on 22/08/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 23 to 26/8/2012 (on which the witnesses V.I. was heard – see minutes dated 15/04/2015, p. 17; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17). Apart from that, we can see that indeed the individual came to Kosovo as he landed at Pristina Airport on 07/08/2012, at. 08.45 h am., this per the BMS report (- see police files vol. 6, tab 5, p. 269).

(4) - In the period of September 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Go., **R.K.G.** and **T.Ya.**: **A.Ç**

In relation to A.Ç:

M.Go., born on…and Turkish citizen, arrived in Kosovo on 02/09/2012 at 19.23. h. by plane, in Pristina, and then exited at the border crossing of Kulla Pejes on 04/09/2012, entered again on 05/09/2012 and on 14/0/20129, and then at the border of Hani Elezit left on 15/9/2012 by car (see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). This data from the BMS Report was confirmed by the witness A.R. (see minutes dated 16/06/2015, pp. 12/13). We also know that A.Ç made a reservation on 6/9/2012 for the said individual from 6 to 10/9/2012 at the Hotel Villa Osa, Mostar, Bosnia and Herzegovina through [email], having received by e-mail the confirmation on the following day for the period of 8 to 12/9/2012 (the witness V.I. addressed this on the session 9/2/2015, see minutes p. 10; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

R.K.G., born on [date] (and Turkish citizen), and T.Ya., born on [date] (and Turkish citizen), arrived in Kosovo on 4/09/2012 at 14.19. h. by car, in Gllobocice, and then at the border crossing of Kulla Pejes exited by car on 4/6, entered by car on 5/9, entered on 14/9 by bus and left on 18/9/2012 at 16.16 h. by bus at Kulla Pejes. These data from the BMS Report (see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143) was confirmed by the witness A.R. (see minutes dated 16/06/2015, p. 13) and by V.I. (see minutes dated 28/1/2015, p. 18, and minutes dated 9/2/2015, p. 9 – this after being questioned about a sms, "on 7th of September 2012 at 12.34.42 hours, Mr. A.Ç received an SMS from a woman from hotel Villa Osa, saying, 'I send the reservations for R.Ko., M.Go., T.Ya. and I asked when they will arrive'"). Also in the same email, A.Ç on 07/09/2012 received the confirmation from hotel Villa Osa, Mostar, Bosnia and Herzegovina, after on the 6/9/2012 he had sent an e-mail to [e-mail] making reservations for these 3 individuals for the period 06/09/2012 to 10/09/2012 (see minutes dated 9/2/2015, p. 10, see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

About these 3 individuals there were several contacts between C.K. and A.Ç, from [phone number] to [phone number] (as of 04/09/2012, at 11.10 h.): for example, in one A.Ç was receiving their names, then he was asked whether he had received and A.Ç took the chance to confirm one of the individuals had 3 names, then on the same day but at 11.19 h., A.Ç tells C.K. that "the invitations shouldn't be delivered to them until they reach the Bosnian border and give the money. C.K. agrees" (- see 64 Interception binders, binder 20, tab 4, p. 164, 166 and 167).

D.E., **S.E.** and **E.E.: A.Ç**

In relation to A.Ç:

These individuals, a family (D.E., S.E. and E.E.), arrived in Kosovo together, by plane, at Pristina airport on 14/09/2012 at 08.06, and then at the border crossing of Kulla Pejes exited on 16/9/2012 at 10.18 h. (see EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). This data from the BMS Report was confirmed by the witness V.I. (see minutes dated 20/04/2015, p. 10). In his email account, A.Ç received an email on 11/09/2012 from D.E. [e-mail] with the scans of the passports of these 3 persons and he also received on 16/09/2012 from [e-mail] the reservations for them, for the period of 18 to 19/09/2012; the witness V.I. also explained these facts (see minutes dated 20/4/2015, p. 10; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

H.Ce., **K.C.** and **B.C.: A.Ç**

In relation to A.Ç:

These individuals, another family (H.Ce., K.C. and B.C.), arrived in Kosovo together, by plane, at Pristina airport on 16/09/2012 at 08.07 h., and then at the border crossing of Kulla Pejes, by car, exited on 19/9/2012, at 3.21 h. (before they had also left by bus at the border of Hani Elezit, on the 17/9/2012, at 7.11 h.; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). These 3 individuals were mentioned on a guarantee letter in the name of H.Ku., dated 13/09/2012, sent by email from [e-mail] to A.Ç's email (as he also received on 13/09/2012 the scanned passports of the same persons from I.Ba. [e-mail] and on 21/09/2012 A.Ç received from the hotel Villa Osa, in Mostar, Bosnia and Herzegovina, at [e-mail] the confirmation of reservation for the period 21-25/09/2012); from his email, A.Ç sent the following: on 13/09/2012 to H.Ku. [e-mail] scans of the same passports, guarantee letter issued by H.Ku., on 21/09/2012 reservations to Villa Osa in Mostar, Bosnia, at Villaosa [e-mail], reservations for the period stated above, and on 23/09/2012 reservations for the period from 23/9/2012 to 26/9/2012 at Nirvana Rooms, Split, Croatia, at [e-mail]; the witness V.I. also explained these facts (see minutes dated 20/4/2015, p. 12; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

After the individuals had already left Kosovo, A.Ç received a sms from [phone number] on [phone number], on 20/9/2012, at 16.15, with their names and dates of birth and passport numbers (see 64 interception binders, binder 23, tab 6, p. 320).

L.D., S.K., H.K. and **A.Ak.: A.Ç**

In relation to A.Ç:

These individuals also travelled on the same days (L.D., S.K., H.K. and A.Ak.), arrived in Kosovo together, by plane, at Pristina airport on 20/9/2012 at 8.35 h., 8.41 h., 8.42 and 8.36 h., respectively, and then at the border crossing of Dheu I Bardhi they exited by car on 21/9/2012, at 5.12 pm. (re-entered Kosovo at 5.42 pm again by car and at the same border crossing but, in relation to A.Ak., there is no data about this re-entrance) and then left again by car but this time at the border of Kulla Pejes at 9.40 pm (see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). The scans of the passports of these individuals had been sent by email from M.Gu. [e-mail] on 16/6/2012 to A.Ç's email; the witness V.I. also explained these facts (see minutes dated 20/4/2015, pp. 10 to 12; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

G.K.: A.Ç

In relation to A.Ç:

This individual (born on…and Turkish citizen, as also confirmed by the witness V.I. – see minutes dated 20/04/2015, p. 14) travelled to Kosovo, arrived by plane, at Pristina airport on 18/9/2012 at 8 h. pm. (see EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). The scan of the passport of this individual had been sent by email from M.Gu. [e-mail] on 16/6/2012 to A.Ç's email; the witness V.I. also explained these facts (see minutes dated 20/4/2015, pp. 10 to 12; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

M.P. and E.P.: A.Ç

In relation to A.Ç:

These individuals, (M.P. and E.P.) arrived in Kosovo together, by plane, at Pristina airport on 19/09/2012 at 08.20, and then left by bus at the border crossing point of Hani Elezit on 20/9/2012, at 4.44 h. pm. and re-entered on foot at 5.59 and 6 pm. They left Kosovo for good at the border crossing of Kulla Pejes, by car, on 22/9/2012, at 3.44 h. (see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of

17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these 2 individuals A.Ç received an email on 17/9/2012 from O.S. at [e-mail] with the scanned passports of the same persons and on 19/09/2012 from A.Be. at [e-mail] the guarantee letters for the same individuals, issued by M.By. and on 22/9/2012 he sent an email to the hotel Villa Osa, in Mostar, Bosnia and Herzegovina, [e-mail] making the reservation for them for the period from 23 to 25/9/2012 and from the same email address he got the confirmation of the said reservation on the very same day. From his email, A.Ç also sent on 19/09/2012 to O.S. at [e-mail] the guarantee letters; the witness V.I. also explained these facts (see minutes dated 19/3/2015, pp. 6, 14, 1512; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

M.S.D.: A.Ç

In relation to A.Ç:

This individual (born on…and Turkish citizen, as also confirmed by the witness V.I. – see minutes dated 20/04/2015, p. 13) travelled to Kosovo, arrived by plane, at Pristina airport on 20/9/2012 at 8.34 h. pm. (see EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). The scan of the passport of this individual had been sent by email from 17.09.2012 / [e-mail] on 17/9/2012 to A.Ç's email; the witness V.I. also explained these facts (see minutes dated 20/4/2015, p.13; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

F.U. and **H.E.: A.Ç / A.M.**

In relation to A.Ç:

These individuals (F.U. and H.E., both Turkish) arrived in Kosovo together, by plane, at Pristina airport on 25/09/2012 at 3.59 h. pm., and then left by bus at the border crossing point of Kulla Pejes on 26/9/2012, at 10.01 h. am. (the witness A.R. confirmed these movements, see minutes dated 16/6/2015, p. 14; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these 2 individuals A.Ç received an email on 19/9/2012 from O.S. at [e-mail] with the scanned passports of the same persons and on 19/09/2012 and on 26/9/2012 he sent an email to the hotel Villa Osa, in Mostar, Bosnia and Herzegovina, [e-mail] making the reservation for them for the period from 27/9 to 1/10/2012 and from the same email address he got the confirmation of the said reservation on the same day he made it (the witness A.R. confirmed these facts, see minutes dated 16/6/2015, p. 15).

On 20/09/2012 A.Ç had sent to A.M. at [e-mail] the scanned passports (as the witness V.I. confirmed, see minutes dated 20/04/2015, p.7; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17) and on 22/09/2012, prior to the arrival of the individuals in Kosovo, he sent to O.S. at [e-mail] the guarantee letters issued by M.Bo. There is also a relevant phone interception from A.Ç's phone number ending in 818 with S.S., see 15 Police binders, police file 1, tab. 12.1, p.138, on 25/09/2012 at 15:54 h., when S.S. mentions that they are waiting at the arrivals, but no passengers are coming out of the airport yet. He has to pick up H.E. and F.U.

In relation to A.M.:

Having received the e-mail mentioned above would not be sufficient to establish the engagement of A.M. in the smuggling of these 2 individuals, also because the guarantee letters were not issued by him but by M.Bo.

However, on that very same day of arrival, 25/9/2012, prior to the arrival, during and after the arrival there were different conversations between A.Ç and A.M. (namely between 14.21 h. and h. and 16.26 h., pages 316 to page 345 tab 5 of 64 binders interception/ interception binder vol. 25 A); it is worth pointing out that going to the airport is not a criminal offence itself (as later on will be addressed again), but it is if it is part of the execution of a criminal offence and about this it is important to say that the kind of conversation by itself shows that themselves were perfectly aware that they were doing something against the law, by trying to use implicit wording in their conversations, conversations that from an objective point of view are not normally explicit.

In those conversations we see, apart from what we already mentioned above, that first they are discussing the time of arrival (which matches perfectly the times of arrival mentioned above as per the BMS report), A.M. discusses with A.Ç whether the contact of one passenger was sent or not, what will happen next, then A.M. goes to the airport, later in another conversation informs A.Ç that he is still waiting, later A.Ç tells A.M. to send the man inside to which A.M. says the man is already inside, etc.

Actually, on the very same plane E.Si., V.Oz. and S.C. (that A.M. admitted to have picked up at the airport, picked them up, came to Prizren and accommodated them in "Holiday" Hotel, and then they went to Albania, stayed there for a while and came back. – see minutes 18/12/2015, pp. 3/4) also arrived, but were not allowed to exit the airport (but to these migrants we will come back later) and this explains not only also the contents of the above mentioned conversations in the said period of time, but also why on the BMS report they enter again on the following day, 26/9/2012.

On the events of this afternoon of 25/9/2012 see 64 binders interception/ interception binder vol. 25 A and also the surveillance report dated 26/9/2012 on the facts of the eve (25/9/2012), that can be found on 15 police binders, police file binder 1, tab 12.1, pp. 137/138.

U.K.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 19/09/2012 at 8.19 h. pm., and then left by bus at the border crossing point of Hani Elezit on 20/9/2012 at 4.44 h. pm. and re-entered on foot by the same border and on the same day, at 5.58 h. pm., and exited by car at the border of Kulla Pejes on 22/9/2012, at 3.44 h. pm. (the witness V.I. confirmed these movements, see minutes dated 15/4/2015, p. 11; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). In regards this individual, A.Ç received an email on 19/9/2012 from the email A.Be. [e-mail] with the guarantee letter issued by M.By. (and also on the same day he sent also by email the same guarantee letter to O.S. at [e-mail] – the individual arrived in Kosovo that same evening, 8.19 h. pm) and on 22/9/2012 he sent an email to the hotel Villa Osa, in Mostar, Bosnia and Herzegovina, [e-mail] making the reservation for the period from 23 to 25/9/2012 and from the same email address he got the confirmation of the said reservation on the same day he made it (the witness V.I. confirmed these facts, see minutes dated 15/4/2015, p. 11; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

I.T.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 21/09/2012 at 8.01 h. pm., and then left by bus at the border crossing point of Kulla Pejes on 22/9/2012, at 10.11 h. am. (see EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). In regards this individual, A.Ç received an email on 20/9/2012 from the email of O.S. at [e-mail] the scanned passport of this individual – who arrived in Kosovo on the following day (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

E.Si., **V.Oz.** and **S.C.: A.Ç / A.M.**

In relation to A.Ç:

These individuals (E.Si., V.Oz., Turkish citizens) arrived in Kosovo, by plane, at Pristina airport on 25/09/2012 at 3.59 h. pm. (V.Oz. at 3.58 h. pm.) and again by plane at the same airport on the following day but at 1.12 pm (there is no record of exit after the first entry), and then entered again by car at the border crossing point of Vermice on 27/09/2012 at 2.33 pm (there is no record of exit after the second entry) and left by motorbike at the border crossing point of Kulla Pejes also on 27/9/2012, at 10.12 h. pm. (facts addressed by the witness A.R. – see minutes dated 16/06/2015, pp. 13-15; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

In regards E.Si., A.Ç received an email on 20/9/2012 (on 22/09/2012 with regards V.Oz.) from the email of O.S. at [e-mail] with the scanned passports of these individuals – who arrived in Kosovo 5 days later and on the day of arrival (25/09/2012) A.Ç received also by email from A.Oz. at [e-mail] (the same email as the defendant A.M.) the guarantee letters issued by M.Haj. (as on the day before, 24/09/2012 A.Ç had sent the email with the passports he had received, email he sent to [e-mail]); also on the day A.Ç received the guarantee letters, on 25/09/2012, he forwarded them to O.S. at [e-mail]. A.Ç also made a reservation by email to Villa Osa, Mostar, Bosnia and Herzegovina from 28/9 to 2/10/2012 (facts addressed by the witness V.I. – see minutes dated 20/4/2015, p. 7 and 13, and the latter by A.R. – see minutes dated 16/6/2012, p. 15; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

Despite in relation to the individual S.C. (born on [date], Turkish citizen) there are other border crossing movements, as shown on the BMS report (see p. 5), the ones described above for E.Si. and V.Oz. also apply to the said individual (according to the BMS report, p.5): in fact, S.C. arrived in Kosovo, by plane, at Pristina airport on 25/09/2012 at 9.43 h. am., left by car at the border of Hani Elezit at 10.49 h. am on 26/6/2012, then entered again by car at the border crossing point of Vermice on 27/09/2012 at 2.33 pm and left by motorbike at the border crossing point of Kulla Pejes also on 27/9/2012, at 10.12 h. pm.

Also in relation to S.C. A.Ç received an email on 22/9/2012 from the email of O.S. at [e-mail] with the scanned passport of this individual – who arrived in Kosovo 3 days later and on the eve of arrival (24/09/2012) A.Ç received also by email another scan of the passport from B.R. at [e-mail] and on the day of arrival he received from A.Oz. at [e-mail] (the same email as the defendant A.M.) the guarantee letters issued by M.Haj. (as on the day before, 24/09/2012 A.Ç had sent the email with the passports he had received, email he sent to [e-mail]); also on the day of arrival, A.Ç sent the said guarantee letter to O.S. at [e-mail]. A.Ç also made a reservation (on 28/09/2012 through email to [e-mail]) by email to Villa Osa, Mostar, Bosnia and Herzegovina, from 28/9 to 2/10/2012 (facts addressed by the witness V.I. – see minutes dated

20/4/2015, p. 7, and the latter by A.R. – see minutes dated 16/6/2012, p. 15; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to A.M.:

With regards to the defendant A.M., apart from the involvement showed by the e-mails, on the same day of the first arrival on 25/9/2012 (at 3.59 pm.) at 16.23 h. he was intercepted talking to A.Ç saying that was still outside the airport waiting (see 15 Police binders, police file 1, tab 2.1, page 138 telephone call from A.Ç to A.M. at 16:23:25 hours, and this is of the surveillance report, where A.M. informs A.Ç that he is still waiting for three other migrants and he is still waiting outside at the airport).

To avoid unnecessary repeating of reasoning, see above reasoning on F.U. and H.E. for further details.

A.Akd. and **C.D.: A.Ç**

In relation to A.Ç:

These individuals (A.Akd., C.D.) arrived in Kosovo, by plane, at Pristina airport on 21/09/2012 at 8.02 h. pm. and on the following day at 10.11 pm left by bus at the border crossing point of Kulla Pejes (facts addressed by the witness V.I. – see minutes dated 15/04/2015, p. 12; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

A.Ç received an email on 20/9/2012 from the email of O.S. at [e-mail] with the scanned passports of these individuals – who arrived in Kosovo on the following day and on the day of arrival A.Ç received also by email from A.Be. at [e-mail] the guarantee letters issued by M.Haj. after he had sent the scanned passports to [e-mail] (the same email as the defendant A.M.) the; also on the day A.Ç received the guarantee letters, on 25/09/2012, he forwarded them to O.S. at [e-mail] (facts addressed by the witness V.I. – see minutes dated 20/4/2015, p. 7 and dated 15/4/2012, p. 13; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to A.M. (considering the mention made to [e-mail]):

Having received the e-mail mentioned above would not be sufficient to establish the engagement of A.M. in the smuggling of these 2 individuals, also because the guarantee letters were not issued by him but by M.Haj.

D.B.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 18/09/2012 at 7.59 h. pm. and on the following day at 3.21 pm left by car at the border crossing point of Kulla Pejes (facts addressed by the witness V.I. – see minutes dated 15/04/2015, p. 14; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

A.Ç sent an email on 23/09/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 23 to 26/9/2012 (on which the witnesses V.I. was heard; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

S.Al. and **M.Ka.: A.Ç**

In relation to A.Ç:

These individuals (S.Al. and M.Ka.) arrived in Kosovo together, by plane, at Pristina airport on 26/09/2012 at 7.50 and 7.49 h. a.m. respectively (the witness M.J. confirmed these movements, see minutes dated 15/10/2014, p. 6, and the witness V.I. also confirmed these movements, see minutes dated 19/3/2015, p.12; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these 2 individuals A.Ç received an email on 25/9/2012 from O.S. at [e-mail] with the scanned passports of the same persons and received them again on 26/09/2012 from O.A. at [e-mail] (see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

Also in relation to this two individuals, on 26/09/2012 A.Ç sent an email to 26.09.2012 O.S. at [e-mail] regarding identification cards of Star Mobilja Company, Novi Pazar, Serbia (as the witness V.I. also mentioned, see minutes dated 19/03/2015, p. 12) and on the same day sent another to [e-mail] with scanned passports and guarantee letters issued by Star Mobilja Company (as the witness V.I. also mentioned, see minutes dated 15/10/2014, p. 7).

(5)- **In the period of October 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:**

I.Yl.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 26/10/2012 at 8.06 h. pm. and left by bus at Gllobocice border crossing point on 27/10/2012 at 4.47 pm. (the witness M.J. confirmed these movements, see minutes dated 15/10/2014, p. 5, and the witness V.I. also confirmed these movements, see minutes dated 19/3/2015, p.13 and 2/12/2014, p. 14; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on 24/09/2012 from S.Ku. at [e-mail] with the scanned passport of the said person, which he forwarded on the same day to M.C. at [e-mail], who also on the following day (25/9/2012) sent from the email address [e-mail] to A.Ç the invitation letter for the individual mentioned (the witness V.I., on the minutes dated 19/03/2015, p. 13, also made reference to the guarantee letters issued by Star Mobilja Company and sent by A.Ç's to [e-mail] on 28/09/2012; also the witness M.J., on the minutes dated 15/10/2014, p. 4, also made reference to the guarantee letter issued by Star Mobilja Company and sent by A.Ç by email to [e-mail] on 29/09/2012).

On 04/10/2012 A.Ç sent an email to O.S. at [e-mail] making a reservation at Hotel Evropa, Podgorica, Montenegro from 5 to 8/10/2012 (and received the confirmation on the same day, having forwarded it to [e-mail]) and on 29/10/2012 he made reservation at Nirvana Rooms by sending an email to N.P. at [e-mail] from 30/10 to 2/11/2012 and he got an email with the confirmation on the same day, 29/10/2012 (the witness V.I., on the minutes dated 19/03/2015, p. 13, and the witness M.J., on the minutes dated 15/10/2014, p. 4, addressed these emails; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17). Also V.I., on 19/03/2015 (see related minutes, p. 16) confirmed the interception of the phone call between A.Ç and M.C. on 25/09/2012 at 11.19. h.

Also in relation to this migrant there are relevant intercepted messages, as mentioned in another cases, on 25/10/2012 at 20.50 h. A.Ç sent an sms to A.M. with names, namely: "(…) A.Ar., "M.Y", S.Baj., and I.Yl..".

In relation to A.M.: the panel is of the opinion that having received an sms with the name of the individual is not sufficient to establish, in this regards and case, his criminal liability; when examined about this, the witness V.I. was not able to provide more details - see minutes dated 15/04/2015, p.5.

C.C.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 12/10/2012 at 20.41 h. (the witness V.I. confirmed this, see minutes dated 19/03/2014, p. 12; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on 27/9/2012 from O.S. at [e-mail] with the scanned passport and on 28/9/2012 A.Ç sent him to the same email a guarantee letter issued by Star Mobilja Company (the witness V.I. mentioned this, see minutes dated 19/03/2015, p.12; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

E.B.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 4/10/2012 at 12.09 h. (the witness V.I. confirmed this, see minutes dated 15/04/2014, p. 14; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an e-mail on 29/9/2012 from O.S. at [e-mail] with the scanned passport (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

N.S.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 4/10/2012 at 19.56 h. and left by car at Kulla Pejes border crossing point on 5/10/2012 at 16.52 h. (the witness V.I. also confirmed these movements, see minutes dated 20/4/2015, p.14; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an e-mail on 02/10/2012 from H.Si. at [e-mail] with the scanned passport of the said person, and on 04/10/2012 another from J.S. at [e-mail] with a guarantee letter issued by E.Y. On 06/10/2012 A.Ç sent an email to [e-mail] making a reservation for 8/10/2012 and he got an email with the confirmation on7/10/2012; on 08/10/2012 sent an email making another reservation to [e-mail] (facts confirmed by the witness V.I., on the minutes dated 20/04/2015, p. 14; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

V.A.: A.Ç / A.M.

In relation to A.Ç:

This individual (Turkish citizen, born on…) arrived in Kosovo, by plane, at Pristina airport on 17/10/2012 at 3.54 pm. and left by bus at Gllobocice border crossing point on 18/10/2012 at 3.54 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 15; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on 11/10/2012 from O.S. at [e-mail] with the scanned passport of the said person, which he forwarded on the same day to M.C. and on 15/10/2012 from H.Ki. at [e-mail] he received again a scan of the passport, which he forwarded on 16/10/2012 to A.M. at [e-mail] (the witness V.I., on the minutes dated 10/08/2015, pp. 15/16, also made reference to these emails). On 26/10/2012 A.Ç sent an email to Nirvana Rooms by sending an email to N.P. at [e-mail] making a reservation for the said individual from 26 to 29/10/2012 and he got an email with the confirmation on the same day (the witness V.I., on the said minutes addressed these emails; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to A.M.:

Also in relation to this migrant there are relevant intercepted messages, as mentioned in another cases, on 25/10/2012 at 20.50 h. A.Ç sent an sms to A.M. with names, namely: "(…) A.Ar., "M.Y", S.Baj., and I.Yl.". In the case of this individual, however, the panel is of the opinion that having received an sms with the name of the individual together with the contents of phone interceptions between A.M. and A.Ç about the said individual (namely on 5/11/2012, at 22.26 h. - see 64 interception binders, binder 62, tab 9, p. 435 and onwards) is sufficient to establish, in this regards, the criminal liability as having engaged in his smuggling.

H.Yu., **D.K.** and **A.D.: A.Ç**

In relation to A.Ç:

These individuals (born respectively on…) arrived in Kosovo, by plane, at Pristina airport on 11/10/2012 at 20.27 h. and the third at 20.28 h. (their exit is not registered; see EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these individuals A.Ç received an e-mail on 09/10/2012 from the e-mail address [e-mail] with scanned guarantee letters issued by Xh.Z. (see EULEX Police, OCIU 4855, Police 15-day report on interception of a

computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

L.B.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo then left by car at the border crossing point of Kulla Pejes, on 5/10/2012 at 16.52 h., and entered again also by car at the same crossing point, also on 5/10/2012, at 18.08 h., and left by bus using the same border on 9/10/20121 at 16.22 h. (facts addressed by the witness V.I. – see minutes dated 20/04/2015, p. 15; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

A.Ç sent an email making reservations for this individual 11/10/2012 to Reservation at Hotel Rosa, Mostar, Bosnia and Herzegovina (from 10 to 17/10/2012) and another on 17/10/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 17 to 21/9/2012 (on which the witnesses V.I. was heard; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

I.Pol.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 8/10/2012 at 8.38 h. and left by car at Kulla Pejes border crossing point on 9/10/2012 at 16.22 h. (the witness V.I. also confirmed these movements, see minutes dated 20/4/2015, p.15; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

A.Ç sent an email making reservations for this individual on 11/10/2012 to Reservation at Hotel Rosa, Mostar, Bosnia and Herzegovina (from 10 to 17/10/2012) and another on 17/10/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 17 to 21/9/2012 (on which the witnesses V.I. was heard as per the minutes dated 20/4/2015, p.16; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

S.Sa. and **S.Ba.: A.Ç**

In relation to A.Ç:

These individuals (the first is a Turkish citizen, born on…, and the second born on…) arrived in Kosovo, by plane, at Pristina airport on 15/10/2012 at 8.17 and 8.18 pm. respectively, and left by bus at Gllobocice border crossing point on 16/10/2012 at 4.33 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 16; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these individuals A.Ç received an email on 12/10/2012 from M.Met. at [e-mail] with the scanned passports of the said persons (the witness V.I., on the minutes dated 20/04/2015, pp. 16/17, also made reference to these emails; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

A.Bi.: A.Ç / M.B.

In relation to A.Ç:

This individual (Turkish citizen, born on…) arrived in Kosovo, by plane, at Pristina airport on 22/10/2012 at 7.50 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 17; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç received an email on 20/10/2012 from H.A.Y. at [e-mail] with the scanned passport. Also, A.Ç sent an email making a reservation for this individual, on 24/10/2012 to [e-mail], at Hotel Rosa, Mostar, Bosnia and Herzegovina (from 25 to 29/10/2012) and another on 26/10/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 26 to 29/10/2012 and received on the same day the confirmation of the reservation from N.P. at [e-mail] (on which the witnesses V.I. was examined on 20/4/2015, page 8 of the minutes; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

In relation to M.B.:

The panel establishes the engagement of M.B. in the smuggling of this individual.

The individual arrived on 22/10/2012 and three days before on 19/10/2012, at 14.21 h. A.Ç from [phone number] called to [phone number] belonging to M.B. (at the time identified only by the term "male") and among other things at one point the conversation goes like this: A.Ç: to Turkey; Male: no, in Kosovo to foreign office, last week two of my migrants returned that is why; A.Ç: aha the big, big small; Male: aha two 17-18 years old; A.Ç: aha, aha, now you can insert them into computer they might come on 22nd; Male: 2st; A.Ç: 21-22 they said as such,

and I am saying that we have to be very careful, I don't want to mess it up; Male: if they want they will release them and then follow them, this happened last year as well; A.Ç: we have to be careful, we need to take them home (see 64 binders interception, interception binder 61, tab 2/2.1, p. 124 up to 128).

A few days later, on 21/10/2012, at. 15.59 h., A.Ç from [phone number] sent an sms to [phone number] belonging to M.B. with the following contents: "A.Bi. [date of birth] Konya" and as we see it is the date of birth of the individual, as mentioned above together with his nationality (see 64 binders interception, interception binder 44, tab 3, p. 158).

On the day of the arrival, 22/10/2012, at 13.41 h. (prior to the arrival, that evening after 7 pm.), again A.Ç from [phone number] called to [phone number] belonging to M.B. and at one point A.Ç says: no, he cannot, how much money he gave to the man he is saying I will get him out today; "Male": 320 Euros, he took 320 Euros; A.Ç: how much money he has now?; Male: 350 Euros; A.Ç: it is never sure with them, they do the same as you, first they are talking all and they will never stop at 3, they will for sure grab another one 100 lira to fix that work, did you understand me?; Male: yes, I did; A.Ç: in this occasion how is your family?; Male: they are on the way going, do you remember that one who returned from Kosovo?; A.Ç: which one, I don't know; Male: did I told you that 3 have returned, I'm taking them tonight, is it ok? I'm taking them to Tirana; A.Ç: yes; Male: Tirana, Albania; A.Ç: Aha. (– see 64 binders interception, interception binder 61, tab 2.1, pp. 134 up to 140).

I.D.: A.Ç / A.M. /A.B.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 23/10/2012 at 3.42 pm. and left by bus at Gllobocice border crossing point on 24/10/2012 at 4.43 pm. (the witness M.J. confirmed these movements, see minutes dated 10/11/2014, p. 18; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on the eve of arrival, on 22/10/2012 from O.S. at [e-mail] with the scanned passport of the said person, which he forwarded on the same day to [e-mail] (used by A.M.) and on that day (22/10/2012) A.Ç received from [e-mail] a reservation for the Hotel Holiday in Prizren for the period 23-30/10/2012 and A.Ç forwarded such reservation to O.S. at [e-mail] also on 22/10/2012 (the witness V.I. made reference to these emails, on the minutes dated 20/04/2015, p. 8, see also minutes dated 10/9/2014, p.18, and 25/9/2014, p. 19 and 10 November. 2014, p. 18; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to A.M.:

Having received the e-mail with the scanned passport of the said person, mentioned above would not be sufficient to establish the engagement of A.M. in the smuggling. However, also from a [e-mail address], this time from [e-mail], he sent to A.Ç a reservation for the Hotel Holiday (reservations that the defendant has admitted) in Prizren, for the period 23-30/10/2012, and A.Ç forwarded such reservation to O.S., and A.M.'s engagement is part of the execution of a criminal offence.

In relation to A.B.:

On 24/10/2012 (one day after the arrival in Kosovo), at. 14.26 h., A.Ç using [phone number] called A.B. on [phone number] and the conversation went like this: A.B.: hallo!; A.Ç: may peace and blessing of Ala be up on you!; A.B.: thank you brother, what are you doing?; A.Ç: Thank you, I'm on the way to the station; A.B.: where: A.Ç: I'm on the way to the station, it is coming to you, the brother of your friend, did you understand?; A.B.: who, which one?; A.Ç: he is coming, I.D.; A.B.: where, here?; A.Ç: yes, first in Gostivar and then you know; A.B.: alright, alright, send me the number, so I will call him, did you tell him, did you give him my number?; A.Ç: I gave him, I gave him, I wrote it down; A.B.: aha, let him call me, as soon as soon as he comes out, tell him to give me a ring and then I will call him immediately by now it is not a problem; A.Ç: alright, done!; A.B.: because it is at the same time isn't it; A.Ç: yes, the same now at three; A.B.: bye brother!; A.Ç: bye, will keep in touch" (see 64 interceptions binders, binder 62, tab 1, p. 31 up to 34; see also M.J.'s statement on the minutes dated 25/09/2014).

An objective observer would have no doubts on interpreting this conversation and the direct engagement of A.B. in the smuggling of the individual.

A.O.: A.Ç /A.M.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 23/10/2012 at 3.48 pm. and left by car at Kulla Pejes border crossing point on 24/10/2012 at 4.43 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 17; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on the eve of arrival, on 22/10/2012 from O.S. at [e-mail] with the scanned passport of the said person, which he forwarded on the same day to the email address [e-mail] (used by A.M.) and on that day (22/10/2012) A.Ç received from the email [e-mail] a reservation for the Hotel Holiday in Prizren for the period 23-30/10/2012 and A.Ç forwarded such reservation to O.S. at [e-mail] also on 22/10/2012 (the witness V.I. made reference to these emails, on the minutes dated 20/04/2015, pp. 8 and18).

Also, A.Ç sent an email making a reservation for this individual, on 24/10/2012 to [e-mail], at Hotel Rosa, Mostar, Bosnia and Herzegovina (from 25 to 29/10/2012) and another on 26/10/2012 to [e-mail] making a reservation under such name at Nirvana Rooms, Split Croatia, for the period from 26 to 29/10/2012 and received on the 27/10/2012 the confirmation of the reservation from N.P. at [e-mail] (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17). Considering the same dates in movements and reservations, this individual was travelling together with the previous.

In relation to A.M.:

Having received the e-mail with the scanned passport of the said person, mentioned above would not be sufficient to establish the engagement of A.M. in the smuggling. However, also from [e-mail], this time from [e-mail], he sent to A.Ç a reservation for the Hotel Holiday (reservations that the defendant has admitted) in Prizren, for the period 23-30/10/2012, and A.Ç forwarded such reservation to O.S., and A.M.'s engagement is part of the execution of a criminal offence.

If there were any doubts, the conversations had between A.M. and A.Ç on the eve of the arrival would clear them: in fact, on 22/10/2012 at 15.02 h., there was a phone call from A.Ç to A.M. (from [phone number] to [phone number]) and among other things A.Ç tells him to make the reservation, that the individual could not come on that day as A.M. suggested, that only on the following day would be a place on the plane, A.M. informs A.Ç that there is an officer at the airport colluding in letting the migrants pass as long as he is provided with the names (also saying that given such fact there was no need of more paperwork or reservations…), then A.M. insists with A.Ç and says "I am telling you, there is no need… the officers there… I told you at the second gate from the first entrance 1, 2 because there are two officers at each", to what A.Ç says "I understood, you are saying 1 and 2" and then A.M. replies: "yes, anyhow after the names are given" and A.Ç added "you are saying today and tomorrow" and then A.M. ends saying "brother it would be good if you can do it today, but you can send tomorrow as well" (see 64 interception binders, binder 62, tab 8, pp. 360 to 364). Later on, at 15.18 h. again A.Ç using the same numbers called to A.M. and then after discussing again the need or not of a reservation (paper) A.M. says he will do it in a hotel that belong to a friend and then after A.Ç asking for notes to be taken about who would go inside, etc., A.M. says: "nobody is going to enter police… just the names will be provided to the officer… once the officer reads the names he will say go the man is waiting outside" and later A.Ç, among other things, mentions "… A.O. …." (- see same binder mentioned before, pp. 365 to 370). On page 394 of the same binder there is the transcript of another conversation, this time on the day of arrival (23/10/2012 at 12.53 h.) and A.M. insists with A.Ç to send more, to prepare 2-3, "if you wish, prepare 2-3 for 8 o'clock, it would be very good", "that person is there until 8 o'clock" and also asks for "petrol" (to what A.Ç replies "I will send petrol now for me and for you").

A.H.Y.: A.Ç

In relation to A.Ç:

This individual (Turkish citizen, born on…) arrived in Kosovo, by plane, at Pristina airport on 24/10/2012 at 7.54 pm. and left by car at Kulla Pejes border crossing point on 24/10/2012 at 10.55 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 18; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç received an email on the eve of arrival, on 23/10/2012 from M.Sa. [e-mail] with the scanned passport of the said person, which he and on 24/10/2012 A.Ç sent an email making a reservation for this individual, on 24/10/2012 to [e-mail], at Hotel Rosa, Mostar, Bosnia and Herzegovina (from 25 to 29/10/2012) and another to [e-mail] making a reservation under such name at Nirvana Rooms, Split, Croatia and received on the 27/10/2012 the confirmation of the reservation from N.P. at [e-mail] (on which the witnesses V.I. was examined on 20/4/2015, page 18 of the minutes; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

T.E. and **H.S.: A.Ç**

In relation to A.Ç:

These individuals (born on…, respectively) arrived in Kosovo, by plane, at Pristina airport on 12/10/2012 at 20.45 and at 20.44 h. respectively and left by car at Kulla Pejes border crossing point on 14/10/2012 at 21.28 h. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 18; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these individuals, T.E. and H.S., A.Ç sent emails to [e-mail] making reservations at for them on 17/10/2012 making a reservation at Nirvana Rooms, Split, Croatia for the period of 17 to 21/10/2012 (on which the witnesses V.I. was examined on 20/4/2015, pages 18 and 19 of the minutes; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

H.A.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 20/10/2012 at 8.27 am. and left by car at Kulla Pejes border crossing point on 21/10/2012 at 9.56 pm. (the witness V.I. confirmed these movements, see minutes dated 20/4/2015, p. 19; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç sent an email making a reservation for this individual, on 21/10/2012 (the day of departure from Kosovo…) to [e-mail], at Hotel Rosa, Mostar, Bosnia and Herzegovina for the period from 22 to 27/10/2012 (on which the witnesses V.I. was examined on 20/4/2015, page 19 of the minutes; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17).

A.Ar.: A.Ç / A.M.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 27/10/2012 at 8.50 pm. and there is no recorded exit on the BMS report (see on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç sent an email 5 days prior to the arrival to O.S. at [e-mail] with the guarantee letter issued by B.K. (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp.1-17). Also in relation to this migrant there are relevant intercepted messages, as mentioned in another cases, on 25/10/2012 at 20.50 h. A.Ç sent an sms to A.M. with names, namely: "(…) A.Ar., "M.Y", S.Baj., and I.Yl.".

In relation to A.M.:

If, on one hand, in relation to this migrant there are relevant intercepted messages, as mentioned in another cases, on 25/10/2012 at 20.50 h. A.Ç sent an sms to A.M. with names, namely: "(…) A.Ar., "M.Y", S.Baj., and I.Yl.", which was considered by the panel to establish beyond reasonable doubt the engagement of A.M. with regards this individual, in this case we also have a copy of his passport seized during the search in the house of A.M. (see 15 police binders, binder 6, page 52; copies of three other individuals' passports were also seized, however, those names cannot be found on the indictment). For more relevant transcripts see 64 interception binders, binder 48, tab 7, pp. 379 and 388/389 (A.M. informs A.Ç that the plane arrived, this on the day of arrival, 27/10/2012, at 20.11 h., and the passenger was registered on BMS report at 20.50 h.).

F.G.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 26/10/2012 at 8.07 pm. and left by bus at the crossing border point of Kulla Pejes on 28/10/2012 at 10.09 pm. (the witness V.I. also addressed these movements as per the minutes dated 15/04/2015, p. 6; see on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About this individual A.Ç sent an email 4 days prior to the arrival, on 22/10/2012, to O.S. at [e-mail] with the guarantee letter issued by B.K. Also, on 29/10/ 2012 A.Ç sent an email to the hotel Villa Osa, in Mostar, Bosnia and Herzegovina, making the reservation for the period from 30/10/2012 to 2/11/2012 (the witness V.I. confirmed these facts, see minutes dated 15/4/2015, p. 11; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

A.Di.: A.Ç / I.P.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 17/10/2012 at 5.36 h. am. (despite there are subsequent arrivals) and then he was trying to get out of Kosovo, onwards, as the following movements show: on 3/11/2012 at the border crossing point of Hani Elezit he left by car at 12.56 h. and entered Kosovo as pedestrian minutes later, at 14.21. On the same day, but now using the border of Kulla Pejes, he left by bus at 21.56 h. and then, four days later, on 7/11/2012 he re-entered Kosovo by bus, at the same border, at 2.31 am, but on the following day, 8/11/2012, left again by car through the same border, at 13.53 h., but re-entered Kosovo on the following day at 17.09 h. and left finally on 13/11/2012 at 1.50 h. again through the border of Kulla Pejes by bus (facts addressed by the witness V.I. on 20/04/2015, p. 19; see also EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç sent an email making a reservation for him, on 26/10/2012 sent it to Hotel Rosa, Mostar, Bosnia and Herzegovina at [e-mail], making a reservation for the period from 27 to 31/10/2012 and on 27/10/2012 he sent another to Villa Osa, Mostar (having received the confirmation from Villa Osa, Mostar, Bosnia and Herzegovina on 28/10/2012) for the period from 28/10 to 1/11/12012 (the witness V.I. confirmed these facts, see minutes dated 20/4/2015, p. 19; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012–11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17). About this individual A.Ç sent emails on 04.11.2012 at [e-mail] with the guarantee letter issued by O. Company and also 07/11/2012 A.Ç sent an email at [e-mail] with the passports and guarantee letters issued by O. Company.

In relation to I.P.:

The reservations are the same as in reference to H.M.K. and O.K. and again the time of border crossing at Kulla Pejas (17.09 h. on 9/11/2012) is exactly the same as in reference to the said individuals, H.M.K. and O.K., as they were coming by taxi with I.P. driving them back from Rozaje to Hotel Saraa, in Pristina. Actually there were numerous conversations between I.P. and A.Ç about the arrangements on different issues: prices (600 Euros, 700 Euros, 550 Euros etc.), itinerary (to Pristina as the migrants[74] insisted or going back), meeting point (bus station, then post office), etc. For reasons of efficiency, and because not everything has to be reproduced at this point (as already explained more than once) see the conversations they held between 7/11/2012 and 14/11/2012 (to be found on see 64 interception binders, binder 61, tab 4, pp. 410 up to 496). Also it is relevant to mention here the conversation they held on 14/11/2012 at 8.40 h., when A.Ç from [phone number] called I.P. on [phone number], when A.Ç asked for the money that he (I.P.) got from three boys / passengers. I.P. said they have paid him just 55 (see 64 interception binders, binder 52, tab 4, p. 240). Another worth mentioning conversation was held on 12/11/2012 at 14.34 h. and A.Ç said that passengers departed and they should their destination at about 4 o'clock. A.Ç said that called person should receive 600-650 Euros and to give 50 Euros to him (A.Ç) (…) - see 64 interception binders, binder 52, tab 4, p. 214.

H.M.K.: A.Ç / I.P.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 17/10/2012 at 5.52 h. am (despite there are subsequent arrivals by plane, namely on 25/10/2012 8.24 h. pm.) and another entrance on 29/10/2012 at 2.59 h. am, by car through the border Kulla Pejes; then he was trying to get out of Kosovo, onwards, as the following movements show: on 30/10/2012 at the border crossing point of Hani Elezit he left by car at 6.24 h. pm. and entered Kosovo through the same border on the same date, at 8.03 h. pm. On 1/11/2012 he again left by car through the Glloboçice border, at 15.22 h., but re-entered Kosovo on the same day through the same border, at 16.38, again, two days later, on 3/11/2012 he left again by car through the border Hani Elezit, at 12.56 h. and entered through the same border point as pedestrian, at 14.22 h, on the same date he again exited Kosovo by bus through Kulla Pejes, at 21.56 h., and four days later he entered Kosovo by bus through the same border point at 02.31 h., but on the following day, 8/11/2012 left again by car through the same border, at 13.53 h., he re-entered Kosovo on the following day, 9/11/2012 through the same border, at 17.09 h., and left finally on 13/11/2012 at 1.50 h. pm again through the border of Kulla Pejes by bus (facts addressed by the witness V.I. on 20/04/2015, p. 19; see also EULEX Police, Report OCIU 5246 on border crossing of migrants,

[74] The court sees no reason to elaborate on whether expressions as "shepherd", "sheep" were related to cattle, as in the context it is obvious that "sheep" were the migrants, in the very same way that in this particular event, apart from being addressed by the word "sheep" the migrants were also called "monkeys" – see 64 interception binders, binder 61, tab 4, p. 440.

dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç sent an email making a reservation for this individual, on 26/10/2012 to [e-mail], at Hotel Rosa, Mostar, Bosnia and Herzegovina making a reservation for the period from 27 to 31/10/2012 and on 27/10/2012 he sent another to Villa Osa, Mostar - having received the confirmation from Villa Osa, Mostar, Bosnia and Herzegovina on 28/10/2012 for the period from 28/10 to 1/11/2012 (the witness V.I. confirmed these facts, see minutes dated 20/4/2015, p. 20. see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17). About this individual A.Ç sent emails on 04/11/2012 at [e-mail] with the guarantee letter issued by O. Company and also on 07/11/2012 A.Ç sent an email at [e-mail] with the passports and guarantee letters issued by O. Company.

In relation to I.P.[75]:

The reservations are the same as in reference to A.Di. and O.K. and again the time of border crossing at Kulla Pejas (17.09 h. on 9/11/2012) is exactly the same as in reference to the said individuals, A.Di. and O.K., as they were coming by taxi with I.P. driving them back from Rozaje to Hotel Saraa, in Pristina. Actually there were numerous conversations between I.P. and A.Ç about the arrangements on different issues: prices (600 Euros, 700 Euros, 550 Euros etc.), itinerary (to Pristina as the migrants[76] insisted on going back), meeting point (bus station, then post office), etc. For reasons of efficiency, and because not everything has to be reproduced at this point (as already explained more than once) see the conversations they held between 7/11/2012 and 14/11/2012 (to be found on see 64 interception binders, binder 61, tab 4, pp. 410 up to 496).

O.G.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 22/10/2012 at 8.13 h. am, (the witness V.I. confirmed this movement, see minutes dated 28/4/2015, p. 3), again on 29/10/2012 at 2.59 h. am, he entered Kosovo through the border of Kulla Pejes, by car, and on the following day, 30/10/2012, at 8.03 h. pm, he entered Kosovo through the border of Hani Elezit by car and on 1/11/2012, at the border crossing point of Gllobocice, he left by car at 15.22 h., on the same day he re-entered Kosovo by car, at the same border, at 16.38 h., two days

[75] This paragraph is, logically, a repetition of the reasoning on A.Di..

[76] The court sees no reason to elaborate on whether expressions as "shepherd", "sheep" were related to cattle, as in the context it is obvious that "sheep" were the migrants, in the very same way that in this particular event, apart from being addressed by the word "sheep" they were also called "monkeys" – see 64 interception binders, binder 61, tab 4, p. 440.

later, on 3/11/2012 he left again by car through the border Hani Elezit, at 12.56 h. pm and entered through the same border point as pedestrian, at 14.21 h, and left finally on 4/11/2012 at 13.20 h. pm, again through the border of Hani Elezit by car (the witness V.I. confirmed this movement, see minutes dated 28/4/2015, p. 3; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç sent an email making a reservation for him, on 26/10/2012, to Hotel Rosa, Mostar, Bosnia and Herzegovina at [e-mail] for the period from 27 to 31/10/2012 and on 27/10/2012 he sent another email to Villa Osa, Mostar, making a reservation for the period from 28/10 to 1/11/2012 (having received the confirmation from Villa Osa, Mostar, Bosnia and Herzegovina on 28/10/2012 for the period from 28/10 to 1/11/2012).

A.Ç also sent an email making a reservation for this individual, on 6/11/2012, to Nirvana rooms, Split, Croatia, at [e-mail] for the period from 6 to 10/11/2012 (having received the confirmation from Nirvana rooms, Split, Croatia on 6/11/2012 for the period from 6 to 10/11/2012).

A.Ç has made another reservation for the said individual, this time he sent an email, on 8/11/2012, to Nirvana Rooms Split, Croatia, at [e-mail] making a reservation for the period from 8 to 11/11/2012 (having received the confirmation from Nirvana rooms, Split, Croatia on 6/11/2012 for the period from 6 to 11/11/2012 (the witness V.I. confirmed these facts, see minutes dated 28/4/2015, p. 3; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

O.K.: A.Ç / I.P.

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 17/10/2012 at 5.37 h. am, (the witness V.I. confirmed this movement, see minutes dated 28/4/2015, p. 3), again on 29/10/2012 at 2.59 h. am, he entered Kosovo, through the border of Kulla Pejes, by car, and on the following day on 30/10/2012, at 6.24 h. pm, he exited Kosovo through the border of Hani Elezit by car and entered Kosovo through same border on the same date, at 8.03. h. pm. On 1/11/2012 he again left Kosovo, by car through the Gllobоçice border, at 15.22 h., but re-entered Kosovo on the same day through the same border, at 16.38; again, two days later, on 3/11/2012, he left by car through the border Hani Elezit, at 12.56 h. pm, and entered through the same border point as pedestrian, at 14.21 h., but on the same date he again exited Kosovo, this time by bus and by a different border, through Kulla Pejes, at 21.56 h.. Four days later he entered Kosovo by bus through the same last mentioned border point, at 02.31 h., but on the following day, 8/11/2012, he left again by car through the same border, at 13.53 h., then he re-entered Kosovo on the following day, 9/11/2012 through the same border, at 17.09 h., and left finally on

13/11/2012 at 1.50 h, pm - again through the border of Kulla Pejes by bus, (the witness V.I. confirmed also these last movements, see minutes dated 28/4/2015, p. 3; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç also sent an email making a reservation for the said individual, on 26/10/2012 to Hotel Rosa, Mostar, Bosnia and Herzegovina, at [e-mail], making a reservation for the period from 27 to 31/10/2012 and on 27/10/2012 he sent another email to Villa Osa, Mostar making a reservation for the period from 28/10 to 1/11/2012 - having received the confirmation from Villa Osa, Mostar, Bosnia and Herzegovina on 28/10/2012 for the period from 28/10 to 1/11/2012 (the witness V.I. confirmed these facts, see minutes dated 28/4/2015, p. 4; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17). About this individual A.Ç sent an email on 04/11/2012 to [e-mail] with the guarantee letter issued by O. Company and also 07/11/2012 A.Ç sent an email to [e-mail] with the passports and guarantee letters issued by O. Company.

In relation to I.P.[77]:

The reservations are the same as in reference to A.Di. and H.M.K. and again the time of border crossing at Kulla Pejas (17.09 h. on 9/11/2012) is exactly the same as in reference to the said individuals, A.Di. and H.M.K., as they were coming by taxi with I.P. driving them back from Rozaje to Hotel Saraa, in Pristina. Actually there were numerous conversations between I.P. and A.Ç about the arrangements on different issues: prices (600 Euros, 700 Euros, 550 Euros etc.), itinerary (to Pristina as the migrants[78] insisted or going back), meeting point (bus station, then post office), etc. For reasons of efficiency, and because not everything has to be reproduced at this point (as already explained more than once) see the conversations they held between 7/11/2012 and 14/11/2012 (to be found on see 64 interception binders, binder 61, tab 4, pp. 410 up to 496).

A.Uz.: A.Ç

In relation to A.Ç:

This individual (born on..,) arrived in Kosovo, by plane, at Pristina airport on 26/10/2012 at 8.07 h. pm, (the witness V.I. confirmed this movement, see minutes dated 28/4/2015, p. 4) and

[77] This paragraph is, logically, a repetition of the reasoning on A.Di. and H.M.K..

[78] The court sees no reason to elaborate on whether expressions as “shepherd”, “sheep” were related to cattle, as in the context it is obvious that “sheep” were the migrants, in the very same way that in this particular event, apart from being addressed by the word “sheep” they were also called “monkeys” – see 64 interception binders, binder 61, tab 4, p. 440.

he left Kosovo, through the border of Kulla Pejes, by bus on 28/10/2012, at 10.09 h. pm. (see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

About this individual A.Ç (one day after his departure from Kosovo) also sent an email making a reservation for the said individual, on 29/10/2012, to Hotel Rosa, Mostar, Bosnia and Herzegovina, at [e-mail][79], for the period from 30/10 to 2/11/2012 (the witness V.I. confirmed these facts, see minutes dated 28/4/2015, p. 4; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

(6)- In the period of November 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

B.G.: A.Ç / M.B. / M.A.

In relation to A.Ç:

This individual (born on…) *arrived this time* in Kosovo, by plane, at Pristina airport on 29/11/2012 at 8.01 h. pm, (the witness M.J. confirmed this movement, see minutes dated 25/9/2014, p. 8) and left on 30/11/2012 at 1.24 h. pm through the border of Hani Elezit, by bus (see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

In relation to M.B. and M.A.:

Before we address the reservations made by A.Ç for the previous month of arrival (October), let us explain why we said "*arrived this time*" and why M.B. is involved also with this migrant: because this migrant had been returned from Croatia already and he was again flying to Kosovo and M.B. went to pick him up at the airport and at 8.28 pm. he was already with B.G., as M.B. told to A.Ç (on 29/11/2012 at 20.18 h. – A.Ç calls M.B.… and at 20.28 h. M.B. calls A.Ç. M.B. tells A.Ç that he is together with B.G. (- see 15 Binders -Police files, Binder 4, tab.9, pages 177-178). Also, other interceptions regarding M.B., one interception from 29 November 2012 at 01.19 h., the conversation between O.K. and A.Ç. O.K. calls A.Ç, and later on says that a migrant B.G. who was returned from Croatia will come as well and that M.B. will pick him up (- see minutes dated 25/9/2014, p. 8: this conversation can be found on see 15 Binders -Police file, Binder 4, tab 9, page 177). Indeed, M.B. went to the airport on the day of the arrival as recorded in the intercepts (including asking A.Ç to send him 1 or 2 Euros of credit – at 18.16 h. and at

[79] As the reference to [e-mail] on the final report on A.Ç. is a mistake as such email was used to forward the guarantee letter issued by O. Company.

20.28 h. M.B. told A.Ç that was still waiting to get money from B.G. and will send him to Hotel Sara and at 20.50 h. the conversation continues about sending a "worker" back to the airport and about prices to be paid). M.B. was also photographed during the surveillance that on that day was deployed at the airport (- see surveillance report, 15 police binders, binder 1, tab 17, pp. 223 up to 227), M.B. arrived in the terminal at 19.47 h. and also the defendant M.A. (at the time identified as UMP 31) was there as we was spotted and photographed at 19.57 h. and at 20.08 was shaking hands with M.B.. Also, that evening but on Bill Clinton Avenue, at 21.02 h. M.B. was talking on the phone and then handed it over to M.A. so he would finish the conversation (…) – see the said report, p. 226.

With regards the involvement of M.B. in the activities of smuggling, one conversation with A.Ç that took place one day later (30/11/2012, at 10.57 h.) is worth mention (summary): "M.B. calls A.Ç. M.B. asks A.Ç what happened to his workers. A.Ç tells him that it did not work out. A.Ç says that the guy also went inside. But we did not give his last name to passengers, so it did not happen. M.B. tells him that no-one went inside the airport last night. M.B. tells him that he was there and he did not see anyone going inside. A.Ç tells him that he went inside after M.B. left. M.B. tells A.Ç that this happens because A.Ç does not give the job to M.B. B.G. is at the hotel, they will decide later what is going to happen with him" and at 13.58 h. M.B. [phone number] calls A.Ç [phone number] and M.B. tells A.Ç that a family might come tomorrow (- see 15 Binders -Police file, Binder 4, tab.9, page 178). This was 2 days prior to the arrival, but in another intercept (also on the 27/11/2012 at 18.54) there is a mention to "the day after tomorrow evening" (and B.G. entered on 29/11 at 8.01 pm): "M.A. said that this person is available for tomorrow morning and advised A.Ç that passengers may fly tomorrow in the morning (…) M.A. asked if A.Ç arranged that matter. A.Ç said that he arranged it for day after tomorrow in the evening. M.A. said that he is going to inform that man about day after tomorrow in the evening. A.Ç was hesitating to talk and asked M.A. to visit him in order to discuss this matter" (- see 64 interception binders, binder 53, tab 3, p. 234).

On 27/11/2012 at 16.51 h. A.Ç called M.A. on [phone number] and the conversation went like this: "M.A. asked if new passengers will arrive tomorrow. A.Ç replied positively saying that tickets are paid. M.A. said that tonight he will go to Pristina, since tomorrow he is off duty and that "H." will show up tomorrow in Pristina, and he and "H." will go together to pick up passengers" (- see summary of the said conversation on 64 interception binders, binder 53, tab 3 , p. 232).

Going back to the involvement of A.Ç:

About the individual B.G., A.Ç, the month before, as explained, had sent an email making a reservation for him, on 21/10/2012, to Hotel Rosa, Mostar, Bosnia and Herzegovina at [e-mail] for the period from 22 to 27/10/2012 and on 6/11/2012 he sent another email to Nirvana rooms, Split, Croatia, at [e-mail] for the period from 6 to 10/11/2012 (having received the

confirmation from Nirvana rooms, Split, Croatia on 6/11/2012 for the period from 6 to 10/11/2012).

A.Ç has also forwarded on 26/11/2012 the scan of the passport of this individual to [e-mail] (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

H.T. and M.P.: A.Ç / A.M. / M.B.

In relation to A.Ç:

The individual H.T. (born on…) arrived in Kosovo, by plane, at Pristina airport on 8/11/2012 at 19.54 h. (the witness M.J. also addressed this as per the minutes dated 15/10/2014, p. 5; the individual M.P. (born on…) arrived in Kosovo, by plane, at Pristina airport on 8/11/2012 at 19.54 h. (the witness M.J. also addressed this as per the minutes dated 15/10/2014, p. 6; see on this movements also the EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). The data on their exit was not record recorded.

About the individual H.T. A.Ç received an email with the scanned passport on 26/9/2012 from Z.S. at [e-mail] and on the same day he sent an email with ID cards of Star Mobilja Company, Novi Pazar, Serbia to O.S. at [e-mail] and on 01/10/2012 he sent to [e-mail] the guarantee letter issued by Star Mobilija (the witnesses V.I. confirmed these facts, see minutes dated 19/3/2015, pp. 16 and 17, M.J. in the session on 10/9/2014, p. 15 of the minutes. In relation to M.P., A.Ç on 1/10/2010 A.Ç sent to [e-mail] the guarantee letter issued by Star Mobilija and on 17/10/2012 he received an email with the scanned passport from the same e-mail (this guarantee letter was issued on 29/9/2012, after the other individual with the same name but mentioned in paragraph 4 of count 5 had already arrived, as this other individual had entered the country on 19/9/2012). On these e-mail communications see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to A.M.:

In advance in relation to the date of arrival of these individuals (8/11/2012), A.Ç sent an sms to A.M. on 19/10/2012, at 20.51 h., with the following contents[80]: "M.Po., H.T., M.Ol." (-see 64 interception binders, binder 43, tab 4, p. 319). Actually, on this day there are plenty of conversations between A.M. and A.Ç in relation to the organization of smuggling migrants with the help of an officer working at the airport. Indeed, we can see that the sms copied above is

[80] Emphasis added and there was a mistake in relation to the first name of the second individual, as there was never a "M.Po." but only "M.P." (both in paragraphs 4 and 6 of count 5).

within a particular context, in which A.M. was complaining that it was embarrassing not having got yet the names to pass on to the officer, as before that sms, at 15.52 h. A.M. sent an sms to A.Ç saying: "it is embarrassing! The man is waiting since this morning for the names" and at 16.46 h. A.M. calls A.Ç and says that "he is coming back from the airport and there is nobody who was stopped. It seems that it was rumour. A.M. says that he had a coffee with his man and this man said that he can arrange entrance for up to 4 people. A.M. is pushing A.Ç to do something (on that day) and A.Ç said that something might come in two-three days". On the same day but at 20.21 h. A.Ç calls A.M. and says that "there is one person coming but to Skopje. A.M. explains A.Ç that it is important to bring somebody today so that his man can see that they are serious. He says to A.Ç that might lose credibility because his man has been tricked several times". At 20.46 h. A.Ç calls A.M. and informs him that "there are three people stopped and put in one room. A.M. says that he will ask the man, meanwhile A.Ç will get the names" and, finally, at 20.48 h. A.M. calls A.Ç and "asks if he can get the names. A.Ç says that he will find out now and send the names by sms" – and this is the context that we mentioned earlier (for all these transcripts, see 15 binders police files, binder 6, tab 2.1 p. 131).

In relation to M.B.:

On the day of the arrival of M.P. and H.T., 8/11/2012, there was a conversation between M.B. and A.Ç (calling from [phone number] to [phone number], at 16.50 h.) in which M.B. informs A.Ç that "two persons are coming and he will go in Pristina to pick them up" and "wants to meet A.Ç (…) after the workers are settled at the hotel" (- see 64 interception binders, binder 52, tab 3, p. 149).

R.B. and **E.Ba.**[81]**: A.Ç / T.Y. / M.B.** - R.B. only **/ A.B. -** R.B. only

In relation to A.Ç, T.Y. and M.B. (this last one only in relation to R.B., as will be explained) committed the offence of smuggling of migrants by engaging also in the smuggling of migrants R.B., citizen of the Republic of Turkey, born…, and E.Ba., citizen of Republic of Turkey, born…, to obtain a financial or other material benefit, (from 7/11/2012 to 22/11/2012, not 04/12/2012).

Indeed, R.B. landed in Kosovo International Airport on 11/11/2012 at 11.44 h., and left by bus through the border of Hani Elezit two days after, on 13/11/2012, at. 4.43 h. pm. (the witness V.I. also addressed this as per the minutes dated 28/04/2015, p. 4, the witness K.G. on 20/5/2015, p. 21 of the minutes; see on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

[81] For reasons of consistency this reasoning essentially corresponds to the one that will be found later on count 8, as such count pertains to the same migrants.

E.Ba. landed in Kosovo International Airport on 19/11/2012 at 7.51 pm., and left by bus through the border of Hani Elezit three days after, on 22/11/2012, at. 4.43 h. pm. (the witness V.I. also addressed this as per the minutes dated 28/04/2015, p. 5, the witness K.G. on 20/5/2015, p. 20 of the minutes; see on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

A.Ç, in relation to R.B., on 27/10/2012 from B.Ef. at [e-mail] received the scanned passport of the said individual and on the 1/11/2012 received it again but this time from F.U. Sahin at [e-mail] (the witnesses V.I. confirmed these facts, see minutes dated 28/1/2015, p. 8, and dated 10/2/2015, p. 4; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

A.Ç, in relation to E.Ba., sent an email making reservations for this individual on 26/11/2012 to Hotel Nirvana Rooms, Split Croatia at [e-mail] (from 27 to 30/11/2012) and received the confirmation on the same day from N.P. at [e-mail] (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

Despite the prosecution made reference to having no copies of guarantee letters issued by T.Y. (p. 10 of the minutes dated 15/10/2014), the panel believes that indeed the defendant has engaged in the activity of smuggling; the panel came to this conclusion after the analysis the contents of the intercepts between the number known to be used by the defendant T.Y. and the co-defendant A.Ç. In this regards, there are crucial intercepts dated (and this bearing in mind the time frame of the smuggled individuals being discussed here) 4/11/2012 (at 19.29.34 h. there is a call from [phone number], belonging to T.Y., to [phone number], belonging to A.Ç, in which T.Y. asked A.Ç whether there was need of sending an invitation to a passenger and when the passenger should arrive in Istanbul, to what A.Ç answered as soon as possible); on the same day, minutes later, at 19.38 h., the same defendant calls again to the same number and says to A.Ç that the passenger will arrive in Istanbul on the following day or in two days (this meaning day 6/11/2012) and A.Ç would then send the invitation to the passenger. It is worth pointing out that we are still talking about Istanbul and the alleged arrivals in Pristina have taken place after the 7/11/2012 (and also because at 20.54 h. T.Y. even informed A.Ç that the passenger wanted to postpone the onward trip for 2 to 3 days). Also, on 6/11/2012, at 16.10.54 h., T.Y. called A.Ç and informed the passenger would arrive in Istanbul on the following day and, very important, A.Ç called T.Y. on 10/11/2012 at 19.12 h. and T.Y. informed the passenger would arrive on the following day (and we will see below that R.B. landed on the following day, 11/11/2012) and that he had arranged for a vehicle to pick up the individual and also asked about [N.N's first name] and A.Ç answered and talked about more passengers coming and about "M." being under intensive care at the hospital. On the 11/11/2012, at 10.52 h., again T.Y. was called by A.Ç and

the latter was informed by him that the passenger would arrive on the Pegasus flight at 11 coming from Istanbul. Also on the same day, but at 12.01 h., A.Ç called T.Y. informing the passenger had arrived, passed the border and had been picked up. Finally, on 13/11/2012, at 17.22 h., T.Y. called A.Ç (always the same phone numbers already mentioned are the ones used) and A.Ç said he had received a sms indicating that passengers had passed the border. On 14/11/2012, at 14.11 h., A.Ç called T.Y. and the conversation was summarised like this "T.Y. asked how the situation is. A.Ç informed that UMP is already settled at one motel where he will be together with 4 other persons. A.Ç said that they are at the last pint and will be leaving during these 2 days".

On 17/11/2012 there were two phone conversations between T.Y. and A.Ç (between 19.29 h. and 19.45 h.) making arrangements for a meeting. Then on 18/11/2012 at 16.28 h. T.Y. calls A.Ç and the conversation was summarized as like this: "T.Y. called A.Ç. He asked about the situation. A.Ç said that all are gathered at that place. A.Ç said 2 of them are theirs and 2 others belong to O.K. T.Y. then asked if he meet theirs. A.Ç said he did not. T.Y. asked A.Ç about his location. A.Ç said he is at Hotel Sara A.Ç informed that "To." is here. T.Y. hopes that the thing will be finished toady. A.Ç said they were promised for tomorrow morning. T.Y. said they will be in contact during the day". Apart from this, on 18/11/2012, A.Ç is calling T.Y., at 17.40 h., and A.Ç informs that theirs will be sent away on Tuesday morning".

Finally, the witnesses were also examined on the contents of the BMS report having provided confirmation and explanation of its meaning, this was the case of the witness V.I. (minutes dated 28/04/2015, p. 05) and K.G. (minutes dated 20/05/2015, p. 20).

These conversations do are important and enable the court to establish T.Y.'s engaging in smuggling (regardless the fact on who actually produced the guarantee letters), beyond reasonable doubt, as we can see from the BMS report the dates and times of arrivals at Pristina Airport. According to the BMS report R.B. arrived at Pristina Airport on 11/11/2012, at 11.44 h., by plane, and left on 13/11/2012 at 04.43 by bus from Hani I Elezit; E.Ba. arrived on 19/112012 at Pristina Airport, also by plane at 07.51 h., and left by bus (Hani I Elezit) on 22/11/2012, at 04.43 h.

M.B. was also involved in relation to R.B. and E.Ba., it is important to mention the involvement of M.B. in picking up the migrant R.B. – although this individual did not come as initially planned, for the 3 November 2012, as he only came on 11 November, and the court says this because on 2/11/2012 at 18.59 h., A.Ç calls M.B. on [phone number] and the summary of the conversation went like this: "A.Ç and M.B. talked about picking up a passenger. M.B. has a passenger and with this one he will have two passengers. The passenger of M.B. will arrive tomorrow morning. M.B. is familiar with the passenger of A.Ç and he dictated details: R.B. [DOB], [passport no.]. M.B. said if the price of 300 is convenient. A.Ç said that taxi should be included in this price. M.B. said that he will give 130 Euros to the lady, while he [M.B.] will keep the rest of the money. M.B. asked A.Ç not to say anything to O.K. in regards to this

agreement, since he [M.B.] is used to ask 350-400 Euros from O.K. for the same services". The conclusion stated above, that initially R.B. was supposed to have arrived earlier, on the 3 November (not only on 11 November) is confirmed by another conversation again between M.B. (called on [phone number]) and A.Ç (calling from [phone number]) on the 3/11/2012, at 11.04 h. and the conversation went like this: "A.Ç asked if M.B. reached the airport. M.B. denied being at the airport saying that the passenger should arrive on Monday morning. M.B. does not know the purpose why this passenger delayed his flight" (- see 64 interception binders, binder 52, tab 1, pp. 20/21).

In relation to A.B.:

As we say, R.B. landed in Kosovo International Airport on 11/11/2012 at 11.44 h., and left by bus through the border of Hani Elezit two days after, on 13/11/2012, at. 4.43 h. pm., this meaning that after Kosovo he went to Macedonia and from there onwards towards his final destination, in which A.B. was involved, because before the individual entered Macedonia, on 13/11/2012, at 15.41 h., A.Ç using [phone number] called A.B. on [phone number]) and said that the individual will go to Hotel Calabria and look for a job and at 16.04 h. from the number [phone number] A.B. sent an sms to A.Ç asking "what is his name and surname" and one minute later A.Ç replied "R.B." (- see 15 police binders, binder 4, tab 6, p. 66).

Akr.A., **S.Az.** and the children **N.A.**, **Y.A.** and **D.A.: A.Ç / M.B.**

In relation to A.Ç:

This family is comprised of 5 individuals (citizens of Syria[82] born on…respectively) arrived in Kosovo, by plane, at Pristina airport on 16/11/2012 at 20.29 h., 20.31 h. and 20.32 h. respectively (the witness V.I. addressed this as per the minutes dated 28/1/2015, p. 7 and 10/2/2015, p. 3; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these individuals A.Ç received an email with the scanned passports on 31/10/2012 from H.B. at [e-mail] and on 14/11/2012 received another from N.E. at [e-mail] with regards the confirmation of reservations at Hotel Cowana as of the day of arrival at the airport (16/11/2012) and on 16/11/2012 A.Ç forwarded the scanned passports to the email [e-mail] (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

In relation to M.B.:

The engagement of M.B. in the smuggling of this family comprised of 5 individuals can be established from different sources; as an example, after the arrival (as they landed at Pristina

[82] According to the statement of the witness V.I., see minutes dated 10/2/2015, p. 3.

Airport on 16/11/2012 at 20.29 h.), on 17/11/2012, at. 14.37 h. A.Ç (on [phone number]) called M.B. (on [phone number]) and the conversation went like this: A.Ç asked M.B. how he would send the names and then M.B. asks him "which family" and A.Ç asks "the one that is at the airport", to what M.B. says "Oh, Akr.A." and the conversation goes on with A.Ç asking him to send him the papers to what M.B. replies to him to check his e-mail (…) – see 64 interception binders, binder 60, tab 4 , pp. 132/134. Later on, but at 16.44 h. there is another conversation related to the same documents and A.Ç's intention of talking to a lawyer about it.

Also, as the problems related to the documents concerning this family were persisting along the day, at 17.08 h. O.K. on the phone [phone number] called A.Ç on [phone number] and the conversation went like this: ("O" stands for O.K. and "C" for A.Ç): "C: yes, speak; O: Akr.A., name "Akr." surname "A."; C: A or E?; O: "Akr.", "Akr."; C: Yes. O: And his wife is called S.Az.; C: "S."; O: "A."… did you write the kids?" and the conversation goes on (see 64 interception binders, binder 60, tab 4, pp. 138/141).

C.Ko. and **N.C.: A.Ç**

In relation to A.Ç:

These individuals (born on… respectively) arrived in Kosovo, by plane, at Pristina airport on 14/11/2012 at 9.12 h. am. and 9.23 h. am respectively (the witness V.I. addressed this as per the minutes dated 28/4/2015, pp. 4/5; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143). About these individuals A.Ç received an email with the scanned passports on 10/11/2012 from Sun City at [e-mail] and on 13/11/2012 (eve of the travel) he sent to the email [e-mail] the guarantee letters issued by L.I. (on this the witness V.I. as per the minutes dated 28/4/2015, pp. 4/5; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp1-17).

M.M.B.:[83] A.Ç / M.A. / A.B. /M.B.[84]

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, for the second time, by plane, at Pristina airport on 24/11/2012 at 8.07 pm. and left on the following day, 25/11/2012, through the border of Hani Elezit, by car, at 5.02 pm. (the witness M.J. also addressed this as per the minutes dated 25/9/2014, p. 14 and the witness V.I. on the session held on 10/2/2015, as per the minutes, p. 5; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated

[83] There are data with regards another individual (the female spouse) A.Bu., for instance on the BMS report and references in sms and intercepts. However, this individual is not mentioned on the indictment.

[84] Only for the first attempt of entrance in Kosovo, on 13/11/2012, by plane at Pristina International Airport, arrival at 7.49 h. pm.

15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, tab 5, pp. 135-143). About this individual A.Ç received an email with the scanned passport prior to the arrival, on 21/11/2012, from the email address [e-mail] and on the day of departure from Kosovo to F.Y.R.O.M (via Hani Elezit), on 25/11/2012, he sent an email to the address [e-mail] making a reservation at Reservation at Hotel Centar in Skopje, F.Y.R.O.M for the period from 25 to 28/11/2012 and he received by email the confirmation of the reservation on the same day he made it (the witness M.J. also addressed this as per the minutes dated 25/9/2014, p. 13, and the witness V.I. on the session held on 10/2/2015, as per the minutes, p. 5; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, tab 1, pp. 1-17).

In relation to M.A. and in relation to A.B.

It is possible to establish the engagement of M.A. in the smuggling of this individual; for example, on the eve of the arrival (on 23/11/2012, at 15.01 h.) A.Ç (on [phone number]) sent a sms to him (M.A., on [phone number]) with the following contents: "A.Bu., [date of birth], M.M.B. [date of birth]", and this sms was preceded by important conversations. Indeed, on 21/11/2012 at 13.18 h. A.Ç called M.A. when he was in Kacanik and told him to speak to someone about 2 people a husband and a wife for invitations and on the following day (22/11/2012) at 13.32 h. this conversation took place between them: (summary) "A.Ç called M.A. A.Ç asked M.A. if he had spoken to someone about the family. M.A. said that he took care of it and asked if they can come on Saturday. A.Ç replied OK. M.A. said that it could also be done on Sunday. M.A. would speak to him at 4 pm. His uncle is a police officer and he is there every night. M.A. said that A.Ç should arrange the tickets to be done either for Saturday or Sunday". On the same day but now at 14.06 h. they said the following (summary) "A.Ç called M.A. A.Ç said that the tickets would have been bought for Saturday evening. A.Ç asked M.A. if the relative of that guy would be there. M.A. replied that '*he works there every evening*'". On the day of arrival (24/11/2012) after the sms addressed above, the following conversations between A.Ç and M.A. also took place (respectively at 12.15 h., 15.09 and 16.49; summaries): "A.Ç called M.A. and asked what they should say at the airport. M.A. replied that 'they don't need to say anything'. A.Ç said that 'they should say that they are visiting "H.", who works at the Mosque' ", "A.Ç called M.A. and said that the couple will depart in the evening. A.Ç said 'I will call them and tell them that they are going to Kacanik to visit "H."'. M.A. replied 'it will not be a problem' " and "A.Ç called M.A. M.A. told A.Ç that "H." would go inside to the police officer and take the passengers. M.A. would wait outside for them. "H." would also give the names of the passengers to the police officer". Also, at 20.10 h. M.A. called A.Ç and he told A.Ç that he got the passengers and he was going to take them to Hotel Sara. On the following, 25/11/2012, at 14.43 h. (day the individuals being mentioned left by Hani Elezit to Macedonia - and this brings us also to A.B. -[85]) A.Ç called M.A. and M.A. asked him about the some migrants. A.Ç replied

[85] Emphasis added.

that "he will send them to Croatia tomorrow at 1'o clock. A.Ç said that he was sending some to Macedonia today with A.B. M.A. replied that the names were given to the police officer that day. M.A. asked for another job from A.Ç"[86]. On 26/11/2012 there were again several conversations between them making arrangements for more individuals; namely, at 12.25 h. (summary) the following conversation took place: "M.A. asked if anything was going to move. A.Ç confirmed and invited M.A. making the necessary arrangements so he would be able to buy the tickets. M.A. asserted that he was in presence of the "boy' and he just needs to know their names" and on that day at 16.32 h. the conversation included details about a family and prices: "A.Ç called M.A. who was informed about the arrival of a family wife and 2 kids with Turkish passports and the husband from Mardin with a Syrian passport 'they can be counted as 3 people' said A.Ç. M.A. emphasized that that price they ask 500 Euros per person regardless how many people are coming. Not discount for groups'. A.Ç appeared to be worried as he believed that the payment requested by the police officers is too much but M.A. replied that 'they called "H."'. They are 3 people plus "H.", it makes 4 of them.'

When they share the money they do not get enough money at the end. M.A. stated that 'there are 3 police officers there. They want 500 Euros per person. They ask for 400 Euros per person, we get 100 Euros. We will have 200 Euros out of 1500 Euros. You can ask them for 2000 Euros, you can also earn more'. A.Ç seemed to be convinced stating that the work is guaranteed".

More conversations took place until on 27/11/2012, at 12.02 h., A.Ç asked M.A. about the situation and this one said that later would say something and then, at 16.51 h. (summary): "A.Ç calls M.A. A.Ç tells M.A. that he told the migrant to wait at Hotel Bristol. He is not there and his phone is turned off. The migrant is called [first name of M.M.B.]. A.Ç tells him that he probably spoke to his relatives in France and they changed his mind. M.A. tells A.Ç that he will call the relatives in France now. M.A. tells A.Ç that he is going to Pristina today. They don't work tomorrow. A.Ç will also go to Pristina tomorrow". After checking the availability for the following day, M.A., at 17.54 h. (on the same day) calls A.Ç and says that (summary): "they can purchase the tickets for tomorrow morning. M.A. and he ("H.") can go to the airport at 6 am., it is not a problem for them" and at 18.54 h. M.A. calls A.Ç and asks (summary): "if he took care of it. A.Ç tells him that it will be the day after tomorrow in the evening. A.Ç tells him that he will speak to M.A. later when he arrives to his house".

After many other conversations, on the following days (28/11/2012 and 29/11/2012, at 14.50 h. and 16.08 h., respectively) these conversations between A.Ç and M.A. took place (summaries): A.Ç calls M.A. and "asks if he talked to them (police officers) about their issue. M.A. says that it is arranged. M.A. says that it is arranged for tomorrow evening" and again A.Ç calls M.A. and tells "that he told the family "H."'s name since they hesitated. A.Ç asks M.A. if

[86] These conversations are being copied at length in order to clarify the involvement of M.A. I the smuggling of different individuals – were there doubts…

he also needs to tell "H."'s last name to them. M.A. tells him that the names were given inside. M.A. tells A.Ç that the names that A.Ç sent via sms were given to "H." by M.A. and "H." gave them to inside. A.Ç asks him if it is important which box office they approach. M.A. says it is not important. The passports will be checked inside (room). So, "H." arranged everything with them. They will do the job. M.A. says that they will be waiting at the airport. He also asks A.Ç what their telephone number is. A.Ç will send the number" – despite this particular event of smuggling did not end as planned (see calls on the same day at 20.34 h. and 21 h.) and as they realised what had gone wrong (namely taking "H." for interrogation and taking note of M.A.'s name) they had the following conversation on the 29/11/2012, at 21.47 h. (summary):

A.Ç called M.A. and M.A. tells him that "they released the guy ("H."). M.A. tells A.Ç that the passengers were dressed up really badly and they were messy. "H." saw them. They (passengers) mentioned "H."'s and A.Ç's name to the police officer, 4-5 police officers went outside and looked for A.Ç and "H.". They also told the boy ("H.") not to take any Arabs before the New Year. They can take Arabs after the New Year. There will be no problems after the New Year. There is no change that they could enter before the New Year. A.Ç tells him that they were married. The police officer said that it would not be a problem for the woman, but the man is the problem. A.Ç says that there will be more jobs in a few days. There was no problem with the boy ("H."). His uncle ("H."'s mother's brother) is a police officer and he said that he is nephew, there was no problem, the chief police officer messed it up. M.A. tells A.Ç that he should arrange something else"; apart from this, the very clear involvement of M.A. stems from (apart what was already asserted) questions, conversations like this (on 30/11/2012 at 14.42 h.): M.A. is talking to A.Ç and then says "arrange something else during this week. A.Ç tells him to ask the guy for when. A.Ç tells him that they asked for his last name. They told him ("H.") that there will not be a problem if they are Turkish citizens. M.A. tells him that he is with "H." now and he asks for other passengers".

Of course the court could repeat many more conversations, but to finish this part, just two more that took place on the 1st December 2012, at 10.55 h. and 13.22 h., respectively, and A.Ç called M.A. and M.A. asked A.Ç "if there is a job. A.Ç says there might be tomorrow. M.A. tells him to arrange 3 people for him, if there is a job" and later M.A. calls A.Ç and the latter says "he has a job, but is afraid that it will be the same as the last time. M.A. tells him that he can arrange it for tomorrow, 3 people. A.Ç says that the price should be 350 per person. A.Ç tells M.A. to talk to them. M.A. tells him that he inform him" (A.Ç) – for all these conversations see 15 police binders, binder 6, tab 2.1, pp. 141 up to 148 and the minutes of 25/9/2014, p. 13, when the witness M.J. was addressing the migrant M.M.B..

In relation to A.B., it stems from the conjugation of conversations held and dates of events, from the whole context, for instance, the already quoted conversation between M.A. on 25/11/2012, at 14.43 h., while talking to A.Ç, and when asked him how the migrants would be send onwards, A.Ç replied to him "that he was sending some to Macedonia today with A.B.". As we saw, M.M.B. landed in Kosovo International Airport for the second time on 24/11/2012, at

8.07 h. pm., and left by car through the border of Hani Elezit one day after, on 25/11/2012, at 5.02 h. pm., this meaning that after Kosovo he went to Macedonia and from there onwards towards his final destination, in which A.B. was involved, because before the individual entered Macedonia, on 25/11/2012, at 14.43 h., in the above already quoted conversation, at 14.43 h., M.A. asked A.Ç whether "there are any news from [first name of M.M.B.]?", to what A.Ç said "he will get out tomorrow, I told you (…) tomorrow, tomorrow I will get him at approx. one or twelve" and later on A.Ç says "now in the short time we will send them to Skopje and I hope we won't have any problem…", to what M.A. replied "I hope you have no problem… Please do a good job" and A.Ç answered "A.B. is trying".

The conversation copied now would be more than enough for an objective observer, but on the same day on 25/11/2012, at 15.13 h., A.Ç using again [phone number] called O.K. and the conversation went like this: A.Ç: "I just made the preparations, that taxi driver will come soon, in 30-40 minutes… now is 3.15… they will get out at 15.45, so they won't need to wait there…tell them to be patient", and O.K. asked: "how did you manage with the border?", to what A.Ç replied: "border…that monkey isn't working today, he will be working tomorrow afternoon.. I will prepare some two papers from that centre again" and then O.K. said "right, make them..ok.….what did I want to say…is A.B. going to that side too?" and A.Ç explained, "no he is not going, A.B.…here" (- see 64 interception binders, binder 60, tab 5 p. 199-200, 201-206 and 209-210).

In relation to M.B.:

The court, beyond reasonable doubt, established that M.B. was going to pick up two more migrants on that day, a couple, arriving on 13/11/2012 "around 8 pm. as usual" – but after we will transcribe the conversation he held with A.Ç – and if we look at the BMS report we will see that indeed on 13/11/2012, at 7.49 h. pm, the couple comprised by M.M.B. and A.Bu. arrived at Pristina International Airport (- see page 275 of BMS report).

But now let us have a look at one conversation held on the critical day: on 13/11/2012, at 14.46 h., A.Ç (on [phone number]) called M.B. (on [phone number]) and M.B. said that he "was waiting for two workers and A.Ç said: I know, at what time … I'm aware of it; M.B.: tonight, at 7,8, o'clock as any other evening, so in the evening; A.Ç: I hope so; M.B.: No, maybe it won't be difficult, as they are husband and wife; A.Ç: Then I wish that you do it (…)" – see 64 interception binders, binder 61, tab 2.1, pp. 211 until 214.

A.Gi.: A.Ç

In relation to A.Ç:

This individual (born on…) arrived in Kosovo, by bus through the border of Hani Elezit on 25/11/2012 at 6.25 h. am., then on the following day, 26/11/2012, he left through the border of Kulla Pejes, by car, at 5.12 pm. but re-entered again by car at 6.33 pm.; six days after, on

2/12/2012 he entered again the country (there is no record of having left between the two last mentioned dates) again by the same border, this time by bus, at 2.58 pm. and left the country through the border of Hani Elezit by bus at 18.57 pm. (the witness V.I. confirmed also these last movements, see minutes dated 10/2/2015, p. 6; see also on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, tab 5, pp. 135-143). On 26/11/2012, A.Ç sent an email making a reservation to Villa Osa, Mostar, Bosnia and Herzegovina at [e-mail] for the period from 27 to 30/11/2012 (on this the witness V.I. as per the minutes dated 10/2/2015, p. 5; see also EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, Tab 1, pp. 1-17).

Number of events or moments of smuggling vs. number of individuals smuggled.

The number of moments (or events, or criminal resolutions – that may be different from the number of individuals smuggled, if in one event there is more than one individual smuggled) in relation to those defendants that is relevant for the concurrency of criminal offences was established taking into consideration the dates of the operations (namely assessed from the dates of arrival in Kosovo), itinerary followed to leave Kosovo and whether the arrangements had been made for one or for more than one individual at the time.

For all defendants it can be determined from the reasoning above; in relation to those defendants to which the difference between the number of events or criminal resolutions (in different moments) is more relevant, the court as already established it: M.B. was involved in the smuggling of 11 migrants in 6 different moments (on 22/10/2012 1 migrant, 29/11/2012 1 migrant, 8/11/2012 2 migrants, 11/11/2012 1 migrant, 16/11/2012 5 migrants and 24/11/2012 1 migrant), A.M. was involved in the smuggling of 11 migrants in 7 moments (on 25/9/2012 2 migrants, 25/9/2012 3 migrants, 17/10/2012 1 migrant, 23/10/2012 1 migrant, 23/10/2012 1 migrant, 27/10/2012 1 migrant and 8/11/2012 migrants), A.B. was involved in the smuggling of 3 migrants in 3 different moments and M.A. was involved in the smuggling of 2 migrants in 2 different moments.

About the not established facts in this count 5:

Earlier, some comments were already made upon the reasoning of establishing the involvement of a particular defendant and not of another. However, something more must be said.

- In par. 3: **A.Se.:** In the case of this individual the facts constituent of the charge are not established as she is a citizen of Kosovo and is a bearer of a passport of the Republic of Kosovo; we can see this from the email dated 15/08/2012 from J.S. to A.Ç's email account in which the copy of the passport is attached. Also, the witness V.I., based on the contents of the BMS report, did not add much) A.Se. entered Kosovo on 13 August 2012 by car through Kulla Pejes point

and exited on 13 August 2012 by car through the same border crossing point. Another exit was registered on 24 August 2012 by bus through Merdare crossing border point, p. 269 of BMS report.

- In par. 3: **S.Baj.:** In relation to this individual we have two movements recorded on the BMS report, exited and entered Kosovo on 24/8/2011 (at 11.06 h. and 12.52 h., respectively), by car at the border of Hani Elezit. There is also email correspondence mentioning the same name (S.Baj.) more than one year after, between 29/30 October 2012, and such emails have to do with reservations from 31/10/2012 to 5/11/2012 at Nirvana Rooms, Split, Croatia. The witness V.I. was questioned about this individual but could not add more facts. There is no reference to this person on the financial report on A.Ç. The panel is of the opinion that the facts alone, namely the emails, are not sufficient to establish the individual was indeed smuggled; also there is an interval of more than one year from the dates mentioned in one piece of evidence and the ones mentioned on the emails. Apart from that the communications mentioned concern October and the Prosecution places the event in August 2012. All this despite the fact that one year after the name "S.Baj." was also mentioned on another sms, on 25/10/2012 at 20.50 h. A.Ç sent an sms to A.M. with names, namely: "(…) A.Ar., M.Y.er, S.Baj., and I.Yl.". But, as already said earlier, and now in relation to A.M.: the panel is of the opinion that having received an sms with the name of the individual is not sufficient to establish, in this regards, the criminal liability; when examined about this, the witness V.I. was not able to provide more details, see minutes dated 15/04/2015, p. 5.

- In par. 5 **G.Ba.:** This individual (born on…) arrived in Kosovo, by plane, at Pristina airport on 31/10/2012 at 11.50. h. pm. (see on this EULEX Police, Report OCIU 5246 on border crossing of migrants, dated 15/01/2013, SPRK/in/52/OC of 17/01/2013, Police file PINK 2, vol. 6, Tab 5, pp. 135-143).

Despite A.Ç has had one email related to this individual (see EULEX Police, OCIU 4855, Police 15-day report on interception of a computer network of A.Ç covering the period 21/06/2012 – 11/10/2012, dated 17/10/2012, SPRK/in/1212/OC of 19/10/2012, Police file PINK 2, vol. 3, tab 1, pp. 1-17), the panel is of the opinion that there are no sufficient pieces of evidence to establish beyond reasonable doubt what happened with this individual, as not only there is no record of his exit from the country but also because the individual was not addressed during the sessions.

Count 6 (defendant A.G.)[87]:

In the period between 17 August and 22 August 2012 the defendant A.G. engaged in the smuggling of the migrant I.K. by providing a guarantee letter whose contents did not correspond to the truth and going to the airport to pick up the individual he had

[87] As explained earlier, the reasoning of this count as already been reproduced earlier, in count 5, par. 5, where the same migrant was mentioned.

guaranteed for, I.K., to obtain a financial or other material benefit, specifically providing a guarantee letter for the said individual

I.K.: There was evidence produced to establish this fact as we can see the guarantee letter issued by the defendant (police binder 3, p. 413), done at the notary on the 17/08/2012 and it was sent by email to A.Ç on 20/08/2012. Apart from that, we can see the entrance of the migrant at Pristina Airport on 22/08/2012 as per the BMS report; these facts were also confirmed by the witnesses A.R. (minutes dated 16/6/2015, pp. 11/12) and V.I. (minutes dated 28/4/2015, p. 12). On 17/08/2012 an individual named M.Ki. transferred an amount of 100 Euros to A.G. (Police Binder 10, tab 1, Summary of Financial Report dated 11.04.2013, page 17).

Although the defendant denied that, indeed his identification number – exactly the same as his UN Id. number assigned by the United Nations Interim Administration is correctly mentioned on the information provided by Western Union on 05/03/2013 to the request of disclosure of financial data – see 15 police binders, binder 11, tab 6, p. 91.

But, apart from the coincidence of the surname [surname of defendant I.K.], the date of the transfer as the same of the guarantee letter (17/08/2012), if someone more demanding than an objective observer would require more than this to establish that the defendant had a material benefit from his acts together with A.Ç, then we could even disregard that and focus on the contents of an sms that typically has got nothing to do with a normal message between a taxi driver and a customer, as he was asking A.Ç for money to take his son to the doctor [on 28/9/2012, at 17.42 h., A.G. on [phone number] sent A.Ç on [phone number] an sms with the following contents: A.G.: A.Ç how are you. Can you find me some money, my younger son is sick, and I have to send him to a doctor, I'm broke (- see 64 interception binders, binder 62, tab 10, p. 504)][88].

From the surveillance report (p.171) report, already mentioned, with regards the 22nd of August 2012, and this incident is reported at 16:35 hours, "surveillance team noticed an UMP 17, allegedly taxi driver, approaching a migrant who had just come out of the terminal, short and with dark completion and the unknown male person asks him if he was I.K. and the young boy answers 'No'. The unknown person moves again in the direction of the terminal". These facts allow the conclusion that the defendant A.G. went to the airport to pick up the person he had guaranteed for.

Count 7 (the proceedings were severed)[89]

Count 8: (defendant T.Y.)[90]

[88] Part of this was already explained in the reasoning of the smuggling of the same migrant but in count 5.

[89] Count 7 is no longer being considered, as explained earlier, due to the fact that in relation to the defendant S.S. the proceedings were severed.

In the period between 7 November 2012 and 7 (not 4) December 2012 the defendant T.Y. engaged in the smuggling of the migrants R.B. and E.Ba. by providing information to co-defendant A.Ç (apart from discussing the issue with other individuals involved) and taking part in the arrangements for their travel from Turkey to Kosovo and entrance in Kosovo, to obtain a financial or other material benefit.

R.B. and **E.Ba.: A.Ç / T.Y. / M.B.** – only in relation to R.B.

In relation to A.Ç and T.Y.:

According to the BMS report R.B. arrived at Pristina Airport on 11/11/2012, at 11.44 h., by plane, and left on 13/11/2012 at 04.43 by bus from Hani I Elezit; E.Ba. arrived on 19/11/2012 at Pristina Airport, also by plane at 07.51 h., and left by bus (Hani I Elezit) on 22/11/2012, at 04.43 h.

Apart from A.Ç also T.Y. committed the offence of Smuggling of Migrants by engaging, at least, in the smuggling of migrants R.B., citizen of the Republic of Turkey, born on…, and E.Ba., citizen of Republic of Turkey, born on…, to obtain a financial or other material benefit, (from 7/11/2012 to 22/11/2012, not 04/12/2012).

Despite the prosecution made reference to having no copies of guarantee letters issued by T.Y. (on p. 10 of the minutes dated 15/10/2014), the panel believes that indeed the defendant has engaged in the activity of smuggling; the panel came to this conclusion after the analysis the contents of the intercepts between the number known to be used by the defendant T.Y. and the co-defendant A.Ç. In this regards, there are crucial intercepts dated (and this bearing in mind the time frame of the smuggled individuals being discussed here) 4/11/2012 (at 19.29.34 h. there is a call from [phone number], belonging to T.Y., to [phone number], belonging to A.Ç, in which T.Y. asked A.Ç whether there was need of sending an invitation to a passenger and when the passenger should arrive in Istanbul, to what A.Ç answered as soon as possible); on the same day, minutes later, at 19.38 h., the same defendant calls again to the same number and says to A.Ç that the passenger will arrive in Istanbul on the following day or in two days (this meaning day 6/11/2012) and A.Ç would then send the invitation to the passenger. It is worth pointing out that we are still talking about Istanbul and the alleged arrivals in Pristina have taken place after the 7/11/2012 (and also because at 20.54 h. T.Y. even informed A.Ç that the passenger wanted to postpone the onward trip for 2 to 3 days). Also, on 6/11/2012, at 16.10 h., T.Y. called A.Ç and informed the passenger would arrive in Istanbul on the following day and, very important, A.Ç called T.Y. on 10/11/2012 at 19.12 h. and T.Y. informed the passenger would arrive on the following day (and we will see below that R.B. landed on the following day, 11/11/2012) and that he had arranged for a vehicle to pick up the individual and also asked about [N.N's first name] and A.Ç answered and talked about more passengers coming and about "Mu." being

[90] As explained earlier, the reasoning of this count has already been addressed earlier, in count 5, par. 6, where the same migrants were mentioned.

under intensive care at the hospital. About the engagement of T.Y. in smuggling, another example could be the conversation he had with A.Ç on 8/11/2012 at 18.18 h. On 11/11/2012, at 10.52 h., again T.Y. was called by A.Ç and the latter was informed by him that the passenger would arrive on the Pegasus flight at 11 coming from Istanbul. Also on the same day, but at 12.01 h., A.Ç called T.Y. informing the passenger had arrived, passed the border and had been picked up. Finally, on 13/11/2012, at 17.22 h., T.Y. called A.Ç (always the same phone numbers already mentioned are the ones being used) and A.Ç said he had received a sms indicating that passengers had passed the border. On 14/11/2012, at 14.11 h., A.Ç called T.Y. and the conversation was summarised like this "T.Y. asked how the situation is. A.Ç informed that UMP is already settled at one motel where he will be together with 4 other persons. A.Ç said that they are at the last point and will be leaving during these 2 days".

On 17/11/2012 there were two phone conversations between T.Y. and A.Ç (between 19.29 h. and 19.45 h.) making arrangements for a meeting. Then on 18/11/2012 at 16.28 h. T.Y. calls A.Ç and the conversation was summarized as like this: "T.Y. called A.Ç. He asked about the situation. A.Ç said that all are gathered at that place. A.Ç said 2 of them are theirs and 2 others belong to O.K. T.Y. then asked if he meet theirs. A.Ç said he did not. T.Y. asked A.Ç about his location. A.Ç said he is at Hotel Sara A.Ç informed that "To." is here. T.Y. hopes that the thing will be finished today. A.Ç said they were promised for tomorrow morning. T.Y. said they will be in contact during the day". Apart from this, on 18/11/2012, A.Ç is calling T.Y., at 17.40 h., and A.Ç informs that theirs will be sent away on Tuesday morning".

Finally, the witnesses were also examined on the contents of the BMS report having provided confirmation and explanation of its meaning, this was the case of the witness V.I. (see the minutes dated 28/04/2015, p. 05) and K.G. (minutes dated 20/05/2015, p. 20).

These conversations do are important and enable the court to establish T.Y.'s engaging in smuggling (regardless the fact on who actually produced the guarantee letters), beyond reasonable doubt, as we can see from the BMS report the dates and times of arrivals at Pristina Airport.

In relation to M.B. (regarding R.B.):

With regards to R.B. and E.Ba. it is important to mention the involvement of M.B. in picking up the migrant R.B.. In fact, on 2/11/2012 at 18.59, A.Ç calls M.B. on [phone number] and the summary of the conversation goes like this: "A.Ç and M.B. talked about picking up a passenger. M.B. has a passenger and with this one he will have two passengers. The passenger of M.B. will arrive tomorrow morning. M.B. is familiar with the passenger of A.Ç and he dictated details: R.B. [date of birth], [passport no.]. M.B. said if the price of 300 is convenient. A.Ç said that taxi should be included in this price. M.B. said that he will give 130 Euros to the lady, while he [M.B.] will keep the rest of the money. M.B. asked A.Ç not to say anything to O.K. in regards

to this agreement, since he [M.B.] is used to ask 350-400 Euros from O.K. for the same services".

The witnesses were also examined on the contents of the BMS report having provided confirmation and explanation of its meaning, this was the case of the witness V.I. (minutes dated 28/04/2015, p. 05) and K.G. (minutes dated 20/05/2015, p. 20).

Last but not least, in this charge we are discussing the smuggling of R.B. and E.Ba. and there is a financial transaction recorded at Pristina Financial Unit (Western Union), dated 16/11/2012 (in the time frame covered by the charge) according to which from a person whose surname is also [surname of R.B.], sender in Turkey, this defendant received 1000 Euros (p. 19 of the financial report concerning this defendant)[91].

In count 8 it was not established whether apart from procuring and engaging, namely by contacting the passengers and providing information related to the travel arrangements the defendant T.Y. did produce the guarantee letters.

It is now time for some brief references to counts 1, 2 and 9, keeping in mind here what was stated earlier about the reality that in some cases the distinction between sheer Facts and Law (or concepts) is very difficult to establish.

In relation to counts 1 and 2 it was not possible to establish the facts constituent of the criminal offence of organised crime, namely that the defendants were an organised criminal group (and what this concept means in terms of facts). Nevertheless, the facts are established and if it is the case they can eventually be assessed in a different way (now it is not the proper moment to address other issues related to the said criminal offence).

As said in the established facts, if with regards to some defendants (A.Ç who knew all the co-defendants, M.B., A.M., M.A. and A.B.) it is possible to say they knew other and acted (in co-perpetration) as members of a group comprised by (at least) 3 individuals, in the case of others (I.P., T.Y. and A.G.) it was not even possible to establish they knew other related individuals or co-defendants, it was not possible to say they were acting in the events of this case as members, as a part of a group and much less as a part of an organised criminal group, which, in this case, also leads to the impossibility of establishing the intent required by the legislator in this criminal offence of organised crime or participation in organised crime.

In relation to count 9, no evidence was produced and even the Prosecution admitted so in its closing statements. The criminal offence of money laundering has as one of its constituent elements a specific intent and the facts necessary to it were not established.

[91] In this count the Prosecution claimed the material benefit was 900 Euros The court could not find relevant data to this conclusion on the financial report with regards to T.Y. (and in A.Ç's tab of the same report the only transferred amount of 900 Euros was on 2/4/2011 to U.A.).

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The court also established the following fact[92]: "A.Ç was also **tampering passports** when needed, in some cases erasing stamps of refusal of entry at a given border in order not to create any doubts or suspicions to border officials in farther border controls". There are numerous transcripts with references to such activity, by calling the passports "notebooks". Indeed, on 7/11/2012, at 15.49 h., N.N. used A.Ç's phone and called M.B. and during the conversation she mentioned to him that A.Ç was cleaning passports [at a certain moment, during the conversation, it is said: "M.B.: Hallo; N.N.: Hallo, it is me [N.N's first name]. What's up? Brother A.Ç is cleaning a notebook and he asked me to call you" (- see 64 interception binders, binder 51, tab 3, pp. 229 up to 232)]. Also, in another conversation, on 23/06/2012, at 12.40 h., A.Ç was called by O.K. using [phone number], (-see 64 Interception Binders, binder 1, pp. 53-55). A.Ç informed O.K. that he would visit "them" in a bit and that the notary is open on Monday to arrange invitations, as in case they would not let them pass and they would be stamped with a "return"; O.K. responded that A.Ç should "clean up their notebooks" and asked whether they should be able to arrive there. A.Ç responded that it is good these days and they are able to pass (- see 64 Interception Binders, Binder 1, pp. 56-58).

About the fact the individuals mentioned as migrants were individuals that were coming to Kosovo as **a transit country**, despite not declaring it or declaring even the opposite to the authorities, as the aim was to reach third countries, namely European Union Countries, the court notes that usually people use return tickets because it is easier and cheaper, and also is usual that people leave from where they entered (as, by the way, pointed out by the Prosecution in the closing statements), but here, in this case, a sheer glance at the BMS report is enlightening… the individuals (migrants) were coming to Kosovo and leaving Kosovo using almost always different borders and means of transport. Apart from this notorious fact, the court emphasises, as examples and apart from what was said earlier, the following excerpts:

- On 10 September 2012, a conversation between A.Ç and A.M., when A.Ç says "I was just sending an sms, you know those went to Mostar. The man looked to the screen and found nothing; we copied it as you know, so now it has disappeared from the screen. I wrote to Turkey to write directly to your email", and then A.M. replied "No problem, but at least to have some document in our hands", and then A.Ç said "I wrote [e-mail], is it right" (see binder 56 of interception binders, page 282; see also the statement of the witness V.I. about this intercept on the minutes dated 20/04/2015).

- On 16/8/2012, at 16.09 h. A.Ç answering someone who identified himself as O.Yl.'s uncle said the following: "He is on his way now to Croatia with a friend of mine. I am speaking to them and I'm following the situation" and then adds "they will enter Croatia, officially. And

[92]As all facts, comprised by and related to the indictment.

then tomorrow evening there is a possibility that they will continue to Austria, Italy" (- see Interception binder-vol. 10, tab. 4. pages.201-202).

- On 17 December 2011, recorded at 17.24 h., there was a conversation between A.Ç and A.B. and A.B. told to A.Ç "I have two in Subotica, how do I get them in Croatia" and then A.Ç replied "are they clean", to what A.B. said "yes, they are clean" and A.Ç replied "send them to Mostar", to what A.B. reacted saying "how to Mostar, don't I have to take them to Belgrade" and then A.Ç replied "you are forced to leave them in Belgrade and go" (see ILA Italy files, binder 14, page 335; see also the statement of the witness V.I. on the minutes dated 24/11/2014, pp.11 to 14).

- Between 22 June 2012 and 19 August 2012, in the communications between A.Ç and Sezair I.S., A.Ç mentions "they are going to Novi Pazar as before, I will bring the books tonight. They will go to Croatia on Wednesday and on Thursday to Rijeka, there are two of "E.?'s in Croatia, and he will inform me in a bit where they are" (on this see V.I.'s testimony in the session held on 09/02/2015, p. 7).

- On 24 July 2012, at 19.04 h., A.Ç called (on [phone number]) A.B. (on [phone number]) and the conversation went like this: "I'm calling again and again, he doesn't even answer the phone now. I was going to receive 1500 Euros. We would be relieved and fine here. There are no real friends around here. The guy that was here with me, they know him, you don't know, he stayed here for 20 days, he was spying to them this and that, I have sent people to a far destination, those people. Believe me (…)" – see 64 interception binders, binder 5, tab 24, pp. 462/464 (the conversation that follows, however, leads to the conclusion that the said amount was not received as planned).

- On 11 September 2012, at 12.24 h., A.Ç is called by "N." - "I have here one person, he can fix papers and just showed me the road he has. A road from Kosovo towards Macedonia, Albania until Greece, and then transport them with a ship from Igumenica" to what A.Ç said "Talk also with this guy". Later, "N." introduced himself to this person and tells him, "I am a friend of A.Ç, I am from Albania", and he asked this person "What are you able to do?" The unknown male person said, "I fix Czech documents, and the total price of the documents is 1300 Euros. The documents are in the name of Czech person but we place the picture of the person that you want. Also, I accompany them from Pristina until Igumenica, do you know where it is? Then I board them onto the ship" (p. 291 of V.I.'s report and testimony in the session held on 09/02/2015, p. 10 of the minutes).

- On 7 July 2012 A.Ç said to an unknown person "you will only buy a bus ticket, you will go to Novi Pazar, my taxi driver has a house there, it is not a problem, call me when you get off the bus" and then the unknown person asked "aren't we going to walk if we go, the guy told us", to what A.Ç said "you will go on a different way, you will walk 45 minutes or 1 hour from Croatia to Slovenia, this is all, you don't understand me well, it is not through Hungary, call me

when you arrive there, it's not safe to speak while you are on the bus" (- see transcript Binder 2, page 74 and onwards; on this check also V.I.'s testimony on 3/12/2014, p. 8).

- On 7 July 2012, at 11.18 "Kommissar" says to A.Ç "Did you speak to them?" and A.Ç replies, "Yes, I spoke to them shortly. They said no, but I will call them again. I told them that they will travel legally to Bosnia and Croatia and then Italy or Vienna. They will only walk 40 minutes - at the most 1 hour 20 minutes", to what "Kommissar" replies that "Now I have a friend. His cousin came here from Syria. He went to Croatia and Bulgaria. He is in Bulgaria now and doesn't have any documentation. Can you help this guy? If you can help him I will send you his number", and then A.Ç replies "I could. I can't help directly but I have friends", then "Kommissar" replied "O.A., do some research and call me" and finally A.Ç replies "O.A., I hope it works out" (see binder 2 of interceptions, page 70; see also on this V.I.'s testimony on 3/12/2014, p. 3).

- On 25 November 2012 at 23.11 h. there was a conversation between A.Ç and O.K. and O.K. said that B.I. gave money to the Macedonian police, and A.Ç replied "how come the crazy one, fuck it", and after O.K. said "they gave 20 Euros each while leaving Macedonia. Macedonian police took the money. Put it in their pockets, and now the Serbian police is asking for money (…)it is not that family but those others", to what A.Ç added "what fools they are!" and then O.K. replied that "they also gave 300 Euros to the Serbian police (…) I told them, if the Serbian police officer asks for money, then I told them 20 Euros each" (see interception Binder 60, p. 227; see also M.J.'s testimony in the session held on 24/9/2014, minutes p. 9).

- On 27/11/2012, at 12.02 h.[93] "A.Ç asked M.A. about the situation and this one said that later would say something and then, at 16.51 h. (summary): "*A.Ç calls M.A. A.Ç tells M.A. that he told the migrant to wait at Hotel Bristol. He is not there and his phone is turned off. The migrant is called "M.?" [surname unknown]. A.Ç tells him that he probably spoke to his relatives in <u>France</u> and they changed his mind. M.A. tells A.Ç that he will call the relatives in <u>France</u>[94] now. M.A. tells A.Ç that he is going to Pristina today. They don't work tomorrow. A.Ç will also go to Pristina tomorrow*".

Another conversation worth mentioning at this point was held on 12/11/2012 at 14.34 h. between A.Ç and I.P. and A.Ç said that passengers departed and they should their destination at about 4 o'clock. - see 64 interception binders, binder 52, tab 4, p. 214).

The defendants, as they knew their activities were illegal, often displayed signs of concern for talking on the phone about some issues or details; as an example of this, on 13/11/2012 at 20.47 h. A.Ç (on [phone number]) called I.P. (on [phone number]) and the conversation was as follows (A.C. stands for A.Ç and I.P. for I.P.): I.P.: hello (…); A.C.: Good. I

[93] This conversation was copied earlier in the reasoning of M.M.B. (See 15 police binders, binder 6, tab 2.1, p. 144).

[94] Emphasis added.

will tell to that with moustache 'give 50 Euros to those boys'. No problem. I.P: No. Nothing, I will call him now; A.C.: give, give; I.P.: don't talk too much, telephone is listening, you know – see 64 interception binders, binder 55, tab 3, p. 127.

As explained, above only examples (some of them useful for more than one purpose of for the reasoning of more than one fact) were quoted, not a full or a complete list of evidence in this regards.

But, at this point, we make reference to a conversation between A.M. and A.Ç, that concerns not only the reference to final destinations (as Vienna, in Austria), but also to the **material benefit** – as a small list of examples concerning the material benefit will also follow (we mention now "material benefit", but actually the relevant element is the intent of obtaining it, not that it is indeed obtained):

- On 24 July 2012, at 19.04 h.[95], A.Ç called (on [phone number]) A.B. (on [phone number]) and the conversation went like this: I'm calling again and again, he doesn't even answer the phone now. I was going to receive 1500 Euros. We would be relieved and fine here. There are no real friends around here. The guy that was here with me, they know him, you don't know, he stayed here for 20 days, he was spying to them this and that, I have sent people to a far destination, those people. Believe me (…) – see 64 interception binders, binder 5, tab 24, pp. 462/464 (the following conversation, however, leads to the conclusion that the said amount was not received as planned).

- On 13/11/2012 at 17.59 h. in a conversation between A.Ç and M.B., M.B. said "where are the workers now? A.Ç asked: Which ones? And later M.B. to A.Ç and he says: 'It's not about that, if the boy has 600-700 Euros he could go there officially. The guy took the money and he also took other's money. He beat up some kids. I don't know what, he is not my passenger, otherwise I would fuck him, he didn't have to do with me, I gave him one-two jobs for the ones who couldn't pass the boarder officially. He jumped them, I didn't have any problems'. A.Ç states that he doesn't know what the problems of these people are".

- On 2/11/ 2012, at 1.45 h. (- see 64 interception binders, binder 52, tab 1, p. 1), in a conversation between A.Ç and A.M., A.Ç said that he would check the final destinations. On the same day A.Ç had dictated to A.M. the following names A.T., [year of birth], I.G. [year of birth], S.U. [year of birth]. A.M. asked him at what time they will arrive in Kosovo and A.Ç was not sure about that, but said that initially these passengers should reach Istanbul and then he would check their destination. And A.M. asked him if he had to prepare invitations for the following day and A.Ç asked how much A.M. was going to earn, and A.M. told him that he wanted 450 Euros and the rest would be for you (A.Ç), and A.M. also reminded him of a 250 Euros debt

[95] This conversation was also used as an example earlier, about sending the migrants to a farther destination…

from the past and A.Ç told him that he thought that he (A.M.) has received that money from the passengers.

- On 5/11/2012, at 22.26 h. (see 64 interception binders, binder 62, tab 9, p. 435 and onwards): A.Ç complaints to A.M. that Volkan after having gone to Vienna days before stopped answering the phone and A.M. says "of course, as he had money to give". A.Ç then says that he is the damaged one and A.M. says that he is also damaged as he was supposed to gain. After a small discussion over the phone, A.M. complaints to be damaged in the amount of 5000 Euros and later on clarifies that it is 4760 Euros and later A.Ç says the following: "you are also saying that you caused 5000 Euros damages to me… you booked five tickets… you lunatic, five tickets don't cost 5000 lira. Five tickets cost… let's say 1500-1600 lira… you are not counting those who have left, you are not counting the alighted ones neither… why are you booking five tickets … don't block five tickets for one person … it means that you will profit 10000 lira from that person, so this is why you are booking five ticket at once" and A.M. answers "I will talk to you later".

Another good example of the intent of the defendants and how it involved different people, discussing prices, margins of profit, bribes to police officers, etc. is, among others that have already been mentioned along this reasoning, the following (already quoted earlier about the reasoning of the smuggling of the individual M.M.B.): "A.Ç called M.A. who was informed about the arrival of a family wife and 2 kids with Turkish passports and the husband from Mardin with a Syrian passport 'they can be counted as 3 people' said A.Ç. M.A. emphasized that that price they ask 500 Euros per person regardless how many people are coming. Not discount for groups'. A.Ç appeared to be worried as he believed that the payment requested by the police officers is too much but M.A. replied that 'they called "H."'. They are 3 people plus "H.", it makes 4 of them.' When they share the money they do not get enough money at the end. M.A. stated that 'there are 3 police officers there. They want 500 Euros per person. They ask for 400 Euros per person, we get 100 Euros. We will have 200 Euros out of 1500 Euros. You can ask them for 2000 Euros, you can also earn more'. A.Ç seemed to be convinced stating that the work is guaranteed"[96].

- On 1/12/2012, at 13.22 h., M.A. calls A.Ç and the latter says "he has a job, but is afraid that it will be the same as the last time. M.A. tells him that he can arrange it for tomorrow, 3 people. A.Ç says that the price should be 350 per person. A.Ç tells M.A. to talk to them. M.A. tells him that he inform him" (A.Ç)[97].

- On 14/11/2012 at 8.40 h., A.Ç called I.P. (from the number [phone number] called I.P. on 049811629) and A.Ç asked for the money that he (I.P.) got from three boys / passengers. I.P. said they have paid him just 55 (see 64 interception binders, binder 52, tab 4, p. 240), but this has to bead in the context of the conversations they were having at that period of time since the 7th of

[96] See 15 police binders, binder 6, tab 2.1, pp. 143.
[97] See *idem*, p. 145.

November, as this was not about the sole payment of a taxi ride, it was also about on how much it should be asked from the migrants (600, then 550, etc. in connection or versus the amounts the migrants claimed to have in their possession and their alleged need of going to Western Union in Pristina or Peja to collect more money and their discussion on what day of the week it was and if it would be open; as an example of the said conversation, on 12/11/2012 at 14.34 h. A.Ç said that called person should receive 600-650 Euros and to give 50 Euros to him (A.Ç) (…) - see 64 interception binders, binder 52, tab 4, p. 214.

As said, there are numerous examples along the case file and a substantial part of them has been written along this judgment.

After this list of examples about material benefit, the court asserts that the actions of the defendants that are described as constituent of the criminal offences were aimed at obtaining a financial or other material benefit from it; the court emphasizes that it has to be kept in mind that the court is bound by the legal criterion (in assessing the evidence) of the ordinary citizen, how a *bonus pater familiae* would interpret it, to take into account the "common experience" assessed by an ordinary citizen –as said – namely when answering the question "*why would they be engaging in this if not receiving anything, any financial or material benefit from it*?") – to this, somehow *rhetoric question*, the court deems that the answer is obvious: no-one engages in this kind of "work", activity, also getting involved in (potential) trouble with the police, Justice System, etc. (as they often display to be afraid of, when talking on the phone and even using a weird way of speaking – vocabulary, slang, etc. - in most of the conversations and that kind of holding a conversation does not correspond to the way normal people talk on the phone…) without having any kind of gain, any kind of profit or, as this particular criminal offence makes reference to, a "material benefit".

The court will, at a later stage, come back to the elements constituent of the criminal offence, but it is worth pointing right now (as already quickly mentioned above) that actually the law does not require that the person indeed has gained or obtained an actual profit, has had a material benefit; what the law requires is that the individual has acted with the **intention** (emphasis added) of achieving a material benefit, the cornerstone is therefore not the result (indeed obtained a benefit) but the **intention** (emphasis added) of the individual ("any action with the **intent** to obtain, directly or indirectly, a financial or other material benefit, from the illegal entry of a person into the Republic of Kosovo, when such person is not a Republic of Kosovo national (…)" – see Article 170, par. 8, subpar. 8.1 C.C.R.K..

Before finishing this part, another ultimate example of what the court has been stating: On 9/11/2012 at 15.14 h. A.Ç (on [phone number]) called I.P. (on [phone number]) and the conversation was as follows (A.C. stands for A.Ç and I.P. for I.P.): I.P.: come on A.Ç; A.C.: How are you Coban (meaning shepherd), you said that you will get out there. They have in total 600 – 700 something like that; I.P: have 400. He said 'I don't have more'; A.C.: No. That boss said that someone will take 400 now and he will send the second part on next Monday: I.P.: They

lie, you know it; A.C.: I will ask. No, no, they are clean. I'm saying that I will ask, I don't know; I.P: No, no, it is not possible because that one there is asking for it, you know; A.C.: yes (…) – see 64 interception binders, binder 55, tab 8, pp. 356/357.

Finally, but not the least, to finish this part, the court deems that the conclusions set on page 28 and onwards of the Summary Report of Financial Investigation, dated 11/4/2013 (to be found on 15 police binders, binder 10, "DOC") could be enlightening when it comes to the amounts of money being transferred between some of the defendants in this case and other individuals who are also defendants in similar cases (e.g. N.N. and M.C.) and other individuals who are often mentioned also by the defendants in their conversations (e.g. O.K.).

Also with regards the **financial transactions** (as it is a notorious fact that who runs a business or conducts any legal economic activity needs, nowadays, to have a bank account, to be registered in the tax system, etc.), but now in a different perspective, the court took into consideration[98] the information by the Kosovo Customs / Ministry of Finance, dated 28/02/2013, the information by the Kosovo Ministry of Trade and Industry, dated 20/02/2013 and the Summary Report of Financial Investigation Ref. No. 2011-DHKO-027/2013, dated 11/04/2013, to be found respectively on 15 police binders, binder 11, tab 10, pp. 134/135, on 15 police binders, binder 11, tab 11, pp. 141/142 and on 15 police binders, binder 10, pp. 1 up to 59.

About **defendants knowing each other**, the court has also established that "all the other defendants of this case knew the defendant A.Ç, the defendant A.Ç and others as M.B., A.M. and A.B. knew defendants of connected cases (as, for example, N.N. and O.A.) or of other individuals involved (O.S., for example) and some of the defendants of this case had contacts between themselves and cooperated in different events of smuggling. Indeed, if A.Ç knew them all, it is true that the defendants M.B., A.M., M.A. and A.B. were sometimes acting alone or with other individuals (including police officers or border officers) but sometimes were acting together, in different events, being that it is possible to establish that they knew about and were in contact with at least 2 more out of them".

To establish this fact, apart from what stems from the reasoning above on each of the migrants, it is confirmed by the contents of the intercepts (there are numerous examples of conversations between two defendants where a third name is mentioned and there is no question on who such individual might be, meaning that the persons involved in the conversation knew exactly whom they were talking about). Apart from what can be extracted from other parts of the reasoning, here there are examples of the said references to at least one more co-defendant apart from the one(s) taking part in the conversation: Apart from the interceptions of A.Ç's conversations with all co-defendants, M.B. on 19/10/2012, at 11.04 h. had a conversation with A.Ç where the name of another co-defendant in this case (A.B.) is mentioned as A.Ç was telling M.B. that when he goes there to call A.B.; A.M. on 8/12/2012, at 17.59 h. had a conversation

[98] As already mentioned earlier, at the proper place, for reasons of clarity.

with A.Ç where they talked about A.B.[99] (another co-defendant) is mentioned; M.A. on 25/11/2012, at 14.43 h., while talking to A.Ç, and when asked him how the migrants would be send onwards, A.Ç replied to him "that he was sending some to Macedonia today with A.B." and in relation to A.B., logically, it stems from what has been just said in relation to the others.

Apart from that, mentioned as an example, it can also be confirmed by the fact that, accordingly, the contacts of more than one co-defendant were found in the forensic analysis performed on the phones and sim cards related to the phone numbers mentioned along this trial and in use by the defendants. For example, A.B. had the contacts of at least[100] M.A. and A.Ç (who had numerous contacts will all co-defendants) saved on his [phone number] (see p. 251 of the report on analysis of numbers detected on devices/SIM cards cross matched with final reports on the said number), M.B. also had contacts at least with A.Ç and with A.B. (see pp. 4/5 of the analyzing report for incoming and outgoing phone calls of phone numbers on the Pink case, dated 02/12/2013), A.M. (from [phone number]) also had calls with A.B. on [phone number] [see page 5 of the said report (and this last number was also used by A.B., even when in contact with A.Ç – see page 12 of the same report)] and M.A. had also 109 phone calls with A.Ç and at least 1 phone call with the Macedonian number of A.B. [phone number] – see p. 24 of the analyzing report for incoming and outgoing phone calls of phone numbers on the Pink case, dated 02/12/2013.

About the **involvement of police officers** in some events of smuggling: Above, one of the established facts reads as follows: "In other cases the officials, both in Kosovo and in other countries, namely in F.Y.R.O.M and in Serbia, were corrupt and knew the illegality underlying the border crossings by some individuals who were being smuggled and allowed the illegal crossings in accordance with the agreements they had made with the smugglers (price, amount of bribe, per smuggled migrant – whose names they were, sometimes, provided with, in advance). At least the defendants A.Ç, M.B., A.M., M.A. and A.B. were, in some particular events of smuggling migrants, not only were aware of this situation but also it was part of the execution".

Let us now explain such fact was established in this way. With regards the "awareness and expectations" mentioned, in relation to the defendants A.Ç. and A.B. two conversations suffice to explain why the court was convinced of this. Indeed, on 08/11/2012, at 14.10 h. A.Ç (on [phone number]) calls A.B. (on [phone number]) and the conversation went like this (summary) "A.Ç tells A.B. that he sent 3 migrants to Rozaje. A.Ç says that he is trying to find out if any of the drivers has any connections with the police officers at the Serbian border. A.Ç

[99] The said conversation went like this (summary): "[First name of A.Ç] informed [First name of A.M.] that passengers are on the airplane and that he advised them to say that in 2005 they have worked on the construction of municipal building and that now they are visiting A.M. who may open a business for them. [First name of A.M.] said that he found a friend who from Skopje they may transport (by airplane) people to all destinations for a price of 2200 Euros. They continued to talk about A.B. [First name of A.Ç] passed his phone to A.B. Then [First name of A.Ç] took his phone back. [First name of A.Ç] advised [First name of A.M.] where to park his vehicle in the airport compound for a cheaper price" – See 64 interception binders, binder 56, tab. 1, pp. 62/63.

[100] As we said we are talking about sheer examples…

says that he will send one migrant to Macedonia tomorrow" - see 15 police binders, binder 6, tab 1, p. 36.

Also, on 18/11/2012, at 19.06 h., A.Ç (on [phone number]) calls A.B. (on [phone number]) and then A.B. asks "Alright, alright my friend, when will the others come. Is there any other?" and A.Ç replies: "tomorrow evening". A.B. then says "I hope that tomorrow evening it will pass" and A.Ç replies "he will pass, it will pass" (- see 64 interception binders, binder 60, tab 4, pp.157 until 160.

On 20/11/2012, at 13.11 h. and at 13.13 h., respectively, these conversations took place (A.B. was together with "his man" who needed the names of the migrants as he would be working that night and A.Ç had to send the names by sms, so, after calling Hotel Sara, where he had placed them, he even clarifies to a migrant that on the occasion the crossing would be done in cooperation with a police officer): A.B., "AB" (on [phone number]), calls A.Ç, "A.Ç." (on [phone number]), and the conversation goes like this: A.B.: Brother, send me the names immediately, is this ok?; A.Ç. Done!; A.B.: This person is next to me… is next to me…. Send me the names immediately because he is going to work… at 5 you will put them at Rule Tours (…) All three of them in one… but the names, immediately…. When can you send them? (…) This person is next to me; A.Ç.: in 5 minutes I will send it". Then, at 13.13, on the same number A.Ç calls Hotel Sara on [phone number] and talks to a migrant (and after mentioning the names of others) and at some point tells him: "These in Macedonia… you will go in agreement with police officer" (- see 64 interception binders, binder 60, tab 4, pp. 161/163). Also, before On 25 November 2012 at 23.11 h. there had been a conversation between A.Ç and O.K. and at a given moment A.Ç replied "how come the crazy one, fuck it", and after O.K. said "they gave 20 Euros each while leaving Macedonia. Macedonian police took the money. Put it in their pockets, and now the Serbian police is asking for money (…) it is not that family but those others", to what A.Ç added "what fools they are!" and then O.K. replied that "they also gave 300 Euros to the Serbian police (…) I told them, if the Serbian police officer asks for money, then I told them 20 Euros each" (see interception Binder 60, p. 227; see also M.J.'s testimony in the session held on 24/9/2014, minutes p. 9).

-On 10/11/2012, at 16.46 h, A.B. (on [phone number]) called A.Ç (on [phone number]) and at a given moment said to A.Ç: "Tell me, should he go to that person or not", and A.Ç says "well, let him go", to what A.B. replies "do you understand, he will go to the biggest person…. At all, at all… he is going at … all borders… he is going to the chief of all borders" and then A.Ç replies: "I got it… you don't need keep talking, we are not amateurs… let him go" (- see 64 Interception binders, binder 62, tab 1, pp. 43 up to 46).

- On 13/11/2012, at 14.46 h., A.Ç (on [phone number]) called M.B. (on [phone number]) and at a given moment the conversation went like this: "A.Ç: those guys… those youngsters … reached the place… I spoke at around 10/11; M.B.: They are the place?; A.Ç: Yes, I was very happy for them … once they got … you know and then with the officer I did, well, … it was like

that, at least they slept only one night and then they left; M.B.: That was good; A.Ç: yes, indeed… the guys … expired … and the officer took… on the train the police officer took, son of the bitch…; M.B.: aha; A.Ç: he also took 50, the Serbian took 50, never mind, I said only to prevent their return, right?; M.B.: it does not matter, honestly sometimes luck gets things done (…)"– see 64 interception binders, binder 61, tab 2.1, pp. 211 until 214.

In relation to M.A., although the conversation has already been transcript, for systematic reasons it will be repeated here. It is a particular conversation between A.Ç and M.A. (among the many they had) that goes like this: "A.Ç called M.A. who was informed about the arrival of a family wife and 2 kids with Turkish passports and the husband from Mardin with a Syrian passport 'they can be counted as 3 people' said A.Ç. M.A. emphasized that that price they ask 500 Euros per person regardless how many people are coming. Not discount for groups'. A.Ç appeared to be worried as he believed that the payment requested by the police officers is too much but M.A. replied that 'they called "H."'. They are 3 people plus "H.", it makes 4 of them.' When they share the money they do not get enough money at the end. M.A. stated that 'there are 3 police officers there. They want 500 Euros per person. They ask for 400 Euros per person, we get 100 Euros. We will have 200 Euros out of 1500 Euros. You can ask them for 2000 Euros, you can also earn more'[101].

With regards A.M., in this regards, and as an example, we will use here part of the reasoning stated above in relation to the migrants H.T. and M.P. As a matter of fact, on 19/10/2012 there were plenty of conversations between A.M. and A.Ç in relation to the organization of smuggling migrants with the help of an officer working at the airport and in a sms A.M. was complaining that it was embarrassing not having got yet the names to pass on to the officer, as before that sms, at 15.52 h. A.M. had already sent another sms to A.Ç saying: "it is embarrassing! The man is waiting since this morning for the names" and at 16.46 h. A.M. calls A.Ç and says that "he is coming back from the airport and there is nobody who was stopped. It seems that it was rumour. A.M. says that he had a coffee with his man and this man said that he can arrange entrance for up to 4 people. A.M. is pushing A.Ç to do something (on that day) and A.Ç said that something might come in two-three days". On the same day, but at 20.21 h., A.Ç called A.M. and said that "there is one person coming but to Skopje. A.M. explains A.Ç that it is important to bring somebody today so that his man can see that they are serious. He says to A.Ç that might lose credibility because his man has been tricked several times". At 20.46 h. A.Ç calls A.M. and informs him that "there are three people stopped and put in one room. A.M. says that he will ask the man, meanwhile A.Ç will get the names" and, finally, at 20.48 h. A.M. calls A.Ç and "asks if he can get the names. A.Ç says that he will find out now and send the names by

[101] See 15 police binders, binder 6, tab 2.1, pp. 143.

sms" – and this is the context that we mentioned earlier (for all these transcripts, see 15 binders police files, binder 6, tab 2.1 p. 131)[102].

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Brief references to the defendants' statements.

The defendants had given statements that were used to cross-examine them, the dates of such statements were on the following days[103]: A.Ç on 10/6/2013 and 5/8/2013[104], M.B. on 21/1/2013[105], A.M. on 11/1/2013[106] and on 14/11/2013[107], M.A. on 1/6/2013 and 14/11/2013[108]

[102] Also in relation to this issue, in the session of 15 April 2015, when the witness V.I. was being examined he was questioned about a transcript with the following contents: A.Ç calls A.M. and A.M. says "it's good to try at least with one family. A.M. informs A.Ç. that he said to his man that he will take 1900 Euro for one family, and according to A.M. the share will be divided as follows: five hundred Euros for A.M., one thousand Euros for the police officer inside, and five hundred Euros to his man".

[103] In foot notes we will mention the core of the statements given at the time without entering details, as the complete statements can be read; will be very short summaries.

[104] On 10/6/2013 and on 5/8/2013, A.Ç. at S.P.R.K. stated that he had come to Kosovo in the end of 2011 or beginning of 2012; admitted having used [phone number] until he was arrested. A.Ç stated he worked in the company Gold Star dealing with ceramics, all sorts of accessories used in buildings and he was working on a percentage basis, getting 3-5%, depending on how much he was selling. Said he knew M.A. as a worker at the mosque in Kakanic doing renovation. When asked if he knew M.B., A.Ç stated not to remember him, recalled knowing T.Y. as a worker in a Doner shop; also stated not knowing A.G. and I.P. A.Ç said he knew A.M., who was working with plastic doors and windows. A.Ç denied using [phone number], whereas in relation to the number [phone number] said to think it was the old number and that it was under custody by the police.

[105] On 21/1/2013 M.B. was interviewed at S.P.R.K. and admitted using [phone number]. He stated not knowing any of the defendants mentioned in the indictment. He furthermore denied knowing where Hotel Sara was, and stated that he knows what a guaranty letter is and replied "yes" to the question whether he had ever made any guaranty letter so someone would come to Kosovo.

[106] A.M. admitted to use the phone numbers mentioned by the investigators, as well as the e-mail addresses, to be self-employed going through a difficult period, denied knowing the names of several individuals later mentioned on the indictment as migrants, only new [first name of A.Ç] or [first name of A.Ç] "the drunk" (not by the surname of A.Ç), to have travelled to visit family in Turkey the year before, to have sold plastic and manufacturing window frames, he said he never had any business relation with [first name of A.Ç], did not know how many times had spoken with [first name of A.Ç] on the phone.

[107] A.M. admitted A.Ç. had told him there were some guests coming from Turkey and whether he could go to the airport to pick them up - which he did 2 or 3 times, that even paid the tickets of 3 or people coming expecting to profit with the interest, to have worked for the "B. Company", denied to have received anything from [first name of A.Ç] to pick the people from the airport (that A.Os., H.O. and "M.?" [surname unknown] H.Si. managed to enter Kosovo and others not probably because did not meet the requirements despite had landed in Kosovo), took A.Os. to Hotel Holiday in Prizren and the other two to Hotel Bujari also in Prizren, another occasion went to pick up people at the airport as requested by [first name of A.Ç] but the individuals didn't come out (one was M.V.). Also he said to live at his parents with a brother and a sister.

[108] On 13/6/2013 and 14/11/2013 M.A. at S.P.R.K stated that he is in Kosovo since 2008, stated that he was working in a Mosque, Fati Mosque, for 6 years, admitted using the IPKO [phone number] and also said that with A.Ç. he had no business – they were just companions at the Café. He admitted that around December 2012 A.Ç called him and informed him that 3 guests (male, female and child) would come and asked him to receive them, and then he went to the Airport to pick up them but they did not come, they were returned back to Turkey. M.A. said he was going to receive money for that. To the question "Do you know why the guests would come to Kosovo to [first name of A.Ç]?" M.A. stated "[first name of A.Ç] used to organise them and send them to Europe, he did everything, and he is the chief". He stated that he went only once to the airport to pick up [first name of A.Ç]'s guests.

(who really incriminated A.Ç and also himself…), I.P. on 18/1/2013[109], A.B. on 17/1/2013[110], A.G. on 8/2/2013[111] and T.Y. on 14/6/2013[112].

[109] I.P. said that there was an ongoing proceeding against him in Gjilan but did not want to tell what it was about, admitted to use [phone number], declared to be taxi driver since 2000 and go to Montenegro often (only to Rozhaje), to have an average income between 200 and 250 Euros, to have known A.Ç. since 2 or 3 years before as at the time the latter lived about 300 meters from the taxi stand and once drove him to Montenegro and waited for about one hour to bring him back to Peja and since then has not met him again until he called in October /November 2012 asking whether he was still driving to Rozhaje (on what they had about 4/5 phone calls until [first name of A.Ç] was arrested), that by the time of these last phone calls [first name of A.Ç] was living in Pristina.

[110] A.B. confirmed he used [phone number] (F.Y.R.O.M.) and [phone number] (Kosovo) and other he could not remember, explained that some relatives live in Kosovo, he said that he used to speak in Turkish with his friend A.Ç. – also known as "drunk [first name of A.Ç]" – whom he knew from 4 years before, the day the search was conducted he had stayed at [first name of A.Ç]'s where he had arrived with him and when the police came he called [first name of A.Ç] – whose phone was there on the table and rang – and witnessed the search, did not remember to have been in Kosovo 3 days before the search, declared to be an unemployed constructer but the monthly income of his family to be around 800 Euros, denied the charges and ever have done any work for [first name of A.Ç], that [first name of A.Ç] worked in reconstruction of monuments, mosques and bridges, denied to know O.A., O.K., A.By., "N.", "T.", "Ha.", B.F., A.M., I.S., O.S., L.I., Y.D. and only have met M.B. on the way to the prison in Dubrava and [first name of S.S.] was [first name of A.Ç]'s neighbour. Stated that maybe he knew any policeman from FYROM but not working at the border. Said that received 85 Euros in his account via Western Union that were for A.Ç. because he had no passport with him, also said they never spoke about migrants and that [first name of A.Ç] had mentioned "workers" to him and that as far as he knew [first name of A.Ç] did not work for any company, declared to know Hotel Sara in Pristina as it is located on the way to [first name of A.Ç]'s house and for having gone there once to have a cup of coffee, declared never have gone with [first name of A.Ç] to any notary and he described the search conducted at [first name of A.Ç]'s place and how he was authorised to leave.

[111] On 8/2/2013 at the S.P.R.K. he admitted that before his arrest he was using only one mobile, [phone number], and worked as a taxi driver and had known A.Ç. one year before, to whom he provided services as taxi driver; also said that one day A.Ç asked for his help and asked if he could be a guarantor for two "workers", to what he stated that they could ask police and courts about it and if those two institutions gave permission he would do so. After [first name of A.Ç] told him that it had to be done with a Notary and after that A.Ç. took his data and on the same or following day they went to the office of the notary, also said that he did it for humanitarian reasons… After signing the documents [first name of A.Ç] said those documents would be sent by fax to Turkey as those persons were ready to come and told him he would inform him in order to collect one of those persons from the airport. One day later was informed about the time of arrival and he went to the airport to pick him up, but as the individual was late he went to the information desk and then he was told that it was a police issue and later a police officer said the person in question could not enter Kosovo and after his identification was registered he was allowed to go, knowing that the passenger could not come out the terminal. After he asked [first name of A.Ç] by phone to pay him for having gone to the airport and remembers the name I.K.

[112] On 14/6/2013 at S.P.R.K. he said to be in Kosovo since May or June of the year 2000 and after that he got employed in the restaurant "Extreme Pizza". He admitted using the mobile [phone number], to know A.Ç from the time he was working in a restaurant where he would go, as a client; also said that A.Ç. was telling him that he was the owner of a company and that he had employees working for him. He said that he had a friend from Turkey who wanted to come over here to work and [first name of A.Ç] told him that his friend could come and work for him, but in the end [first name of A.Ç] did not did not bring his friend from Turkey. Also said to have asked [first name of A.Ç] what was the procedure to come to Kosovo and, after speaking about the procedure, he wanted to make a favour to his friend and guarantee for him, but then gave up for different reasons and told his friend to come on his own. T.Y. told to [first name of A.Ç] that his friend was coming by plane using Pegasus and asked [first name of A.Ç] if could arrange a way to pick him up at the airport and [first name of A.Ç] mentioned some of his friends. T.Y. said that he changed his mind again and told his friend who was coming from Turkey to take a taxi to Pristina and pay 15 Euros. His friend came on a Sunday, they sat with him and drank coffee. On the following morning he went to work and [first name of A.Ç] came to the restaurant and his friend then told him that he was going to Macedonia to work there and then [first name of A.Ç] asked him how he was going there and he said "by bus". After that he was worried about his friend, but [first name of A.Ç] told him that his friend was in Subotica. He

During the trial none of the defendants has accepted to have carried out any criminal act, despite all have admitted some facts (for instance A.G.), to be the owners or to have used the e-mail addresses (A.Ç and A.M.) or the phone numbers that the prosecution claimed to be theirs[113] and used during the interceptions of the phone calls and text messages. The defendants also clarified which languages they speak, as this might have actually been used, at least from a theoretical point of view, to eventually cast doubts on who might the intercepted individuals be, considering their nationalities and mother tongues – of course this would have to face the problem that the surveillance reports and record of events taking place following the live intercepts would lead to a different conclusion…

When questioned about the compromising contents of the recorded conversations (*verbatim*) or summaries, or transcripts of the text messages, the answer, most of the times, was "I don't remember", as the minutes of the main trial regarding the statements of the defendant's clearly show.

As already stated, the logics and veracity of statements (as every piece of evidence) has to be assessed in the light of an objective observer, in the light of a normal and ordinary citizen's sound judgment, similar to the criterion one used in Article 19 C.P.C.K. in relation to the definition of "well-grounded suspicion" – "admissible evidence that would satisfy an objective observer that" (and now we add) that the facts have or have not occurred as claimed, always assessing the reliability of different versions in the light of the common experience.

Indeed, most of the answers given during the trial lead the court to assess them as intrinsically unreliable (to say the least) in the light of the "normal and objective observer" criterion and in the light of common experience. It makes no sense to say, as the defendant A.Ç, that he was engaged by a company, allegedly his employer, of the travelling arrangements for individuals coming to work in Kosovo and abroad (even in countries where the said company would, according to his very statements, had no business), not only this is not logical as there is no information concerning any recruitment at all, but also the data pertaining names and dates of birth of those travelling show we are talking, sometimes, of families and children. Also, considering his situation before the Kosovo authorities (Migration Office, Tax System, etc.), absence of bank accounts, he could not be engaged in the activity he claimed to be.

The same applies to the alleged workers being provided by the defendant A.Ç to the defendant A.M. and also to why the latter would use A.Ç´s so called "services" of bringing manpower from abroad to Kosovo (to Mamusha), where the unemployment rate is so high (as throughout the country…) and on top of this we note a complete absence of any work-related

admitted that the name of his friend was [R.] and the reason why he spoke to [first name of A.Ç] was to find out about the procedure of the letter.

[113] As already said M.B. stated that some of the numbers are connected to other proceedings and A.B. rejected having ever used [phone number].

messages (discussing professional experience, salaries, place of work and other terms of contract, for example, of the alleged "workers").

In relation to the fact that some of the "alleged workers" were entering and leaving the country in very short period (in some cases in a few hours, other times on the same day or on the following couple of days), not using return tickets to get out of the country, as the BMS report corroborates; also the explanation given to the fact that the so called "workers" were staying for short periods of time (to what the answer or explanation given was that the said "workers" would go through a training or probation period) makes no sense in the light of the above mentioned criteria – as it also makes no sense the explanation given by the defendant M.B. to the contents of the frequent conversations and phone calls between him and A.Ç, when he explained it claiming that A.Ç was often drunk and that would explain, according to him, the phone calls and the contents of the text messages. In this regards, it is the Court´s view that this kind of explanation is worth no more words.

The defendant M.B. also said, when being cross-examined by the prosecution that "B.G." was his friend but did not remember at all the intercepts he was then questioned upon, namely:

- The one on 29 September 2012, at 17.21 h., when M.B. was talking with A.Ç, "Amo", and A.Ç asked him; "how old are the kids, do you know?" and M.B. said "one is three, the other is five and mother and father", and then A.Ç answers "so, two adults, good" and he (M.B.) replied "it means I didn't take more, 900 Euros money and the taxi fee" and then A.Ç replied "of course", to what M.B. again said "900 Euros plus the money for the taxi, for the kids I took half price, one adult for two kids; the price for one adult is 300 Euros, two adults 600 plus 2 kids 300 Euros, total 900 euro, and I took 100 Euros for taxi, total 1000 Euros", to what A.Ç replied "of course, did they come to you or they called the taxi themselves?" and you (M.B.) replied "I don't know, how can I know?";

- On 9 October 2012, at 9.17 h.: A.Ç asked M.B. "did the mother place the guests" and you (M.B.) replied "she placed them, but fuck it, they are giving us less money, they are joking with us";

- On 8 November 2012, at 22.52 h., O.K. says to M.B.: "listen, don't do anything to them" and M.B. replied to him "what should we do, we will get 300 Euros more" and O.K. said "don't say anything like that in their presence" and M.B. replied "we are going to get 300 Euros more and we will go to Prizren in Matrix" and then M.B. goes on talking about moneys: "let us take 300 liras more, so we won't go there empty pockets", to what O.K. said: "I sent three persons, so from each of them you'll get 350 lira" and then you (M.B.) replied "O.K., 350 lira for each is o.k., because the lady is going and she might take them" and O.K. replied again "my son, they are not mine, I took 500 lira to bring them down", to what you (M.B.) replied "o.k." (– with regards to these transcripts see the minutes dated 01/12/2015).

As far as the defendant M.A. is concerned, when confronted with the collected data and intercepts recorded, he would say either "not to remember anymore for having been detained for so long" or would insist on his version, that he only went to the airport once (despite he was not mentioning anymore in his testimony that he had gone to pick up relatives as he did or claimed during one of his outbursts at the beginning of one session) and insisted to have had only two phone calls with the defendant A.Ç. Once more, during his statement, he insisted that "picking up someone at the airport" is not a criminal offence… – these words to phrase it as he does it.

In relation to the defendant I.P.: whereas A.Ç would say that apart from having used his (I.P.´s) services to transport "workers" and to go to "Live Music" places, I.P. emphasised that he does not work at border control (meaning he is not a border officer), that he is a taxi driver and therefore would see no problem at all and, again, claimed to be innocent. With regards to the frequency of his contacts with A.Ç, and when challenged with the contents of some intercepted conversations he had had with A.Ç, he also claimed not to remember them anymore and gave no farther explanation.

When it comes to T.Y.´s statement: after having addressed his moving to Kosovo, back in the year 2000, his professional background, and saying that he had become an A.Ç´s acquaintance as the latter was a client at the restaurant where he worked, the defendant T.Y. stated he only remembered that they talked about the individual "R.B." and how the guarantee letter was made, having claimed they have not talked about anything else. In relation to the said invitation or guarantee letter under his name and on behalf of the said individual, R.B., according to T.Y. he has only asked A.Ç where the notary was, given that the R.B. was his friend, from Turkey... He also added that as later he found out that Turkish citizens need not a visa or a guarantee letter to legally enter Kosovo he ended up not sending the above mentioned guarantee letter, thus his friend came to Kosovo as a tourist. About the onward journey by [surname of R.B.], T.Y. said that as he was working at the restaurant, the only thing he knew about it was that at a given moment [first name of R.B.] went to tell him that he would go to Macedonia, this without remember when exactly this conversation took place or when indeed [surname of R.B.] left to F.Y.R.O.M. Finally, in this abstract, it is also worth mentioning that T.Y. has confirmed to be user of [phone number] (– in relation to this statement, see the minutes dated 18 February 2016).

Finally, in this very short summary of the defendant´s statements, it is the turn of addressing A.G.´s[114]. According to him, he had provided three or four times his taxi driver services to A.Ç, having had, in his version, only a few contacts over the phone and also a conversation in which A.Ç addressed him asking to sign a guarantee or invitation letter for a worker to come, to which he replied that he would be able to do it if after going to the police and notary it was clarified that it would be fine. He added that one day he went to the airport to pick

[114] Most of this defendant´s statements have already been thoroughly addressed, when the reasoning on the smuggling of the migrant I.K. was addressed; nevertheless, for systematic reasons, part of his statement his being repeated at this point.

up “a client” and then he realised something was wrong when all passengers who had arrived on that flight from Turkey had already come out of the terminal but not the one he had gone there for, I.K., not and this was the reason as to why he afterwards went to the airport information desk to ask what the problem was and this was the moment when he was told that it was a police matter. Among other details, he also explained that then he identified himself to the police officers as a taxi driver and showed them his documents, after which he was allowed to leave the airport but not without being told that there was a guarantee letter that had been issued by him on behalf of the said passenger, I.K. He also confirmed to be in possession and use [phone number]. Finally, to the Prosecutor´s question “why did you accept to guarantee for a person who you had never seen before” he replied saying that he accepted that it was a mistake and that he had been asking himself for 38 months such question but still not being able to answer it… (– see the minutes dated 18February 2016).

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The court has established the facts beyond reasonable doubt. All the evidence produced during the sessions was recorded *verbatim*, being therefore available for reassessment, be it the case.

D -The facts and the criminal liability of the accused (Articles 361 and 370, par. 7, C.P.C.K.):

The applicable law (statutory limitation and the established facts and criminal liability in relation to the remaining criminal offences)

The statutory limitation

Analysis of the statutory limitation in relation to each criminal offense:

Let us now check each of the criminal offences in relation to this procedural requirement that the statutory limitation has not lapsed[115].

1 - Smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6, of C.C.R.K.).

The criminal offences were, in accordance with counts 3, 4, 5 of the indictment, committed between 25/06/2011 and 02/12/2012; this is under the Provisional Criminal Code of Kosovo and therefore Articles 90 and 91 apply.

The criminal offense is punishable by “imprisonment of seven to twenty years”, which leads to the application of the statutory limitation period of 10 years (Article 90, par. 1.3,

[115] This will be done in reference to the criminal offence, in general; only if after such assessment more detail in relation to a specific defendant (count - and dates relevant for the court’s assessment) is needed then the court will address it.

P.C.C.K.) in relation to the commencement of investigations and 20 years (Article 91, pars. 1 and 6, P.C.C.K.) to absolute bar of criminal prosecution (including the possibility of the court convicting for the charge). Considering that the deadline starts on the day the criminal offence is (allegedly) perpetrated (as per Article 91, par. 1, P.C.C.K.), that it "is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence" (Article 91, par. 3, P.C.C.K.) and that "the first step taken towards the criminal prosecution occurred in any case in the year of 2012[116], then we conclude that the investigation started within the deadline allowed by the law (even before the end of the perpetration of the facts, in continuation, as per the indictment). The absolute bar on criminal prosecution will happen on 25/06/2031 (in the worst scenario for the prosecution).

1.1 - Smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3, of C.C.R.K.).

The criminal offences were, in accordance with counts 6 (A.G.) and 8 (T.Y.) of the indictment, committed between 17/08/2012 and 22/08/2012 (A.G.) and between 07/11/2012 and 04/12/2012 (T.Y.); this is under the Provisional Criminal Code of Kosovo and therefore Articles 90 and 91 apply.

The criminal offense is punishable by "imprisonment of two to twelve years.", which leads to the application of the statutory limitation period of 3 years (Article 90, par. 5, P.C.C.K.) in relation to the commencement of investigations and 6 years (Article 91, pars. 1 and 6, P.C.C.K.) to absolute bar of criminal prosecution (including the possibility of the court convicting for the charge). Considering that the deadline starts on the day the criminal offence is (allegedly) perpetrated (as per Article 91, par. 1, P.C.C.K.), that it "is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence" (Article 91, par. 3, P.C.C.K.) and that "the first step taken towards the criminal prosecution occurred in any case in the year of 2012[117], then we conclude that the investigation started within the deadline allowed by the law. The absolute bar on criminal prosecution will happen on 17/08/2018 (A.G.) or on 04/12/2018 (T.Y.).

[116] On 17 August 2012 the prosecutor issued a ruling on expansion of the investigation against A.Ç., on 3 December 2012 M.B. was subject of another identical ruling, on 5 December 2012 another ruling on expanding the investigation was issued by the prosecutor with regards to M.A., A.M., A.G., I.P., T.Y., (…) and on 14 December 2012 the prosecutor issued a ruling on expansion of the investigation with regards to A.B. The said rulings concerned investigation of the criminal offences of smuggling of migrants, organised crime and money laundering as per the applicable legislation.

[117] On 17 August 2012 the prosecutor issued a ruling on expansion of the investigation against A.Ç., on 3 December 2012 M.B. was subject of another identical ruling, on 5 December 2012 another ruling on expanding the investigation was issued by the prosecutor with regards to M.A., A.M., A.G., I.P., T.Y., (…) and on 14 December 2012 the prosecutor issued a ruling on expansion of the investigation with regards to A.B. The said rulings concerned investigation of the criminal offences of smuggling of migrants, organised crime and money laundering as per the applicable legislation.

2- Organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.).

The criminal offense was, in accordance with count 1 of the indictment, committed between 1/10/2010 and 03/02/2013; this is under the Provisional Criminal Code of Kosovo and therefore Articles 90 and 91 apply.

The criminal offense is punishable by "a fine of up to 500.000 EUR and by imprisonment of seven to twenty years", which leads to the application of the statutory limitation period of 10 years (Article 90, par. 1.3, P.C.C.K.) in relation to the commencement of investigations and 20 years (Article 91, pars. 1 and 6, P.C.C.K.) to absolute bar of criminal prosecution (including the possibility of the court convicting for the charge). Considering that the deadline starts on the day the criminal offence is (allegedly) perpetrated (as per Article 91, par. 1, P.C.C.K.), that it "is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence" (Article 91, par. 3, P.C.C.K.) and that "the first step taken towards the criminal prosecution occurred in any case in the year of 2012[118], then we conclude that the investigation started within the deadline allowed by the law (even before the end of the perpetration of the facts, in continuation, as per the indictment). The absolute bar on criminal prosecution will happen on 01/10/2030 (in the worst scenario for the prosecution).

2.1 - Participation in organised crime, as per Article 274, paragraphs 1 and 2 P.C.C.K., with regards the defendants A. A.G. and T.Y.

The criminal offense was, in accordance with count 2 of the indictment, committed between 17/08/2012 and 13/12/2012 (A.G.) and 07/11/2012 and 13/12/2012 (T.Y.); this is under the Provisional Criminal Code of Kosovo and therefore Articles 90 and 91 apply.

The criminal offense is punishable by "shall be punished by imprisonment of at least five years.", which leads to the application of the same statutory limitation period of 10 years (Article 90, par. 1.3, P.C.C.K.) in relation to the commencement of investigations and 20 years (Article 91, pars. 1 and 6, P.C.C.K.) to absolute bar of criminal prosecution (including the possibility of the court convicting for the charge). Considering that the deadline starts on the day the criminal offence is (allegedly) perpetrated (as per Article 91, par. 1, P.C.C.K.), that it "is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence" (Article 91, par. 3, P.C.C.K.) and that "the first step taken towards the criminal prosecution occurred in any case in the year of 2012[119], then we conclude that the investigation started within the deadline allowed by the law (even before the end of the perpetration of the facts, in continuation, as per the indictment). The absolute bar on criminal prosecution will happen on 17/08/2032 (A.G.) and on 07/11/2032 (T.Y.) – this in the worst scenario for the prosecution.

[118] As explained in the previous footnote.
[119] As explained in previous footnotes.

3 - Money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

The criminal offense was, in accordance with count 9 of the indictment, committed between 1/10/2010 and 13/12/2012 [and 03/02/2013, A.Ç]; this is under the Provisional Criminal Code of Kosovo and therefore Articles 90 and 91 apply [the Criminal Code of Republic of Kosovo will be mentioned after].

The criminal offense is punishable by "imprisonment of up to ten years", which leads to the application of the statutory limitation period of 10 years (Article 90, pars. 1.2 and 1.3 and 2, P.C.C.K.) in relation to the commencement of investigations and 20 years (Article 91, pars. 1 and 6, P.C.C.K.) to absolute bar of criminal prosecution (including the possibility of the court convicting for the charge). Considering that the deadline starts on the day the criminal offence is (allegedly) perpetrated (as per Article 91, par. 1, P.C.C.K.), that it "is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence" (Article 91, par. 3, P.C.C.K.) and that "the first step taken towards the criminal prosecution occurred in any case in the year of 2012[120], then we conclude that the investigation started within the deadline allowed by the law (even before the end of the perpetration of the facts, in continuation, as per the indictment). The absolute bar on criminal prosecution will happen on 01/10/2030 (in the worst scenario for the prosecution) [in relation to the date 03/02/2013, A.Ç, and the Criminal Code of Republic of Kosovo, pursuant to Articles 103, par.s 1.3 and 2, and 107, pars. 1 and 8].

The established facts and criminal liability in relation to the criminal offences

For systematic reasons, the criminal offences[121] will be addressed not in the order they are mentioned in the indictment; first the court will address the criminal offence of money laundering, then the criminal offences of organised crime and participating in organized crime and finally the criminal offence of smuggling of migrants.

Analysis of the criminal offence of money laundering.

The defendants A.Ç, M.B., A.M. and A.B. are charged, in count 9, with this criminal offence (Article 32 of Law 03/L-196).

As stated in the beginning of this judgment, although in the closing statements the Prosecution admitted not to have produced evidence on count 9, on money laundering, no charge was withdrawn (as might have, pursuant to Article 363, par.1. 1.1., C.C.K., which would lead to

[120] As has already been explained.

[121] Along this judgment we have addressed the legal classifications made by the Prosecution. No need to say that, if any question arises, the court is not bound by them, Article 360, par. 2, C.P.C.K., as only the facts are binding for the court, Article 361, par. 1, C.P.C.K.

a rejection of the charge in accordance with Article 363, par. 1.1 , C.P.C.K., not to an eventual acquittal, following Article 364, par. 1.3, C.P.C.K.). As the charge was not withdrawn then the court has to analyse this criminal offence as well.

A.Ç. between 1 October 2010 and 3 February 2013, M.B. between 6 April 2011 and 13 December 2012, A.M. between 28 June 2011 and 13 December 2012 and A.B. between 4 November 2010 and 13 December 2013, as per Article 32 of Law 03/L-196, in the territory of Kosovo and other States, committed the offence of money laundering by, knowingly or having cause to know, that certain property, namely cash or other monetary means, is the proceeds of criminal activity, and which property is in fact proceeds of crime (smuggling of migrants by members of the criminal group).

As per the indictment[122], and pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5 February 2004 (as amended), money laundering is punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

Nowadays, Article 308 C.C.K. reads: "whoever commits the offense of money laundering shall be punished as set forth in the Law on the Prevention of Money Laundering and Terrorist Financing", adding or subtracting nothing in relation to the elements or punishment of the criminal offence itself, as the Law in force has not changed.

It is important to address here the concept of "material benefit" from a criminal offence.

"Material benefit" was not defined in the P.C.C.K., neither in Article 107 (on the definitions of some terms), nor in any other Article; the C.C.R.K. now contains a definition of material benefit[123] in Article 120, par. 34, "any property derived directly or indirectly from a criminal offence. Property derived indirectly from a criminal offence includes property into which any property directly derived from the criminal offence was later converted, transformed, or intermingled, as well as income, capital or other economic gains derived or realized for such property at any time since the commission of the criminal offence".

The main international legal instruments setting the legal framework and the requirements of money laundering are the Palermo Convention (namely Article 6, par. 1, and Article 3, par.1, subparagraph b) and the Vienna Convention.

"Money laundering", in most of the Judicial Systems, can be defined as any action comprising concealing, disguising the "nature" or "origin", location, disposal, handling, or

[122] Which seems to correspond to a new pattern in the legal classification of the acts contained in the indictment, as in similar cases this charge did not exist [for example P. No. 244/10 Basic Court Pristina, P. 233/2013 Basic Court of Prizren, P. 316/14 Basic Court Pristina] and in another is was withdrawn by the prosecution following a plea agreement: see case PKR.Nr.488/14 (PPS 40/13) Basic Court of Pristina, page 8 of the judgment, dated 3 June 2015 (English version).

[123] As said, material benefit is not the same as acting with the intent of obtaining it.

property of an asset, right or value, that proceeds from a predicate criminal offence; in line with this, "*the term 'proceeds of crime' refers to property derived 'from a predicate criminal offence' in which context the term 'criminal offence' must obviously be applied to denote a concrete act rendered punishable by criminal substantive law which was committed at a certain time and place. In other words, there must be a specific criminal offence by which the assets were generated (predicate offence) and the prosecution has to prove the link between this offence and the related ML offence*"[124].

There are three typical stages along the perpetration of this criminal offence and to consider its perpetration completed it is not necessary the perpetrator goes through the three of them: "placement", "concealing" and "integration". This issue, this question, is also in connection with the disputed nature, classification of this criminal offence as instantaneous, permanent or instantaneous with permanent results[125]. In this regards we follow Professor Cruz Bottini's[126] stance, that it is instantaneous with permanent results (or effects). In the same way, money laundering is perpetrated as of the moment the property is initially concealed, as that is the moment when the juridical value protected by the incrimination (Administration of Justice) is affected, despite the perpetrator keeps the power of interrupting the laundering for the period of time the act of concealing or disguising lasts.

The *mens rea* comprises a specific intent and it is of the most importance to determine exactly the intention of the perpetrator; there must be enough pointers that the perpetrator really wanted to "conceal" or "disguise" the proceeds of the criminal offence. For instance, if the perpetrator spends an amount in restaurants or in clothes the specific intent of money laundering is absent, but a different conclusion might be reached if the same amount was deposited in a relative's account in order to be transferred back, but, as always, it will depend on the evidentiary proceedings, meaning to what extent evidence allows to come to a safe conclusion, at least beyond a reasonable doubt, that underlying an action there is the specific intent required.

In the domestic legislation, the specific intent is very clear in the overall description of the criminal offence, for example, in the following paragraphs "2.1. converts or transfers, or attempts to convert or transfer, the property for the purpose of concealing or disguising the nature, source, location, disposition, movement or ownership of the property; 2.2. converts or

[124] See DETAILED ASSESSMENT REPORT on compliance with international standards in the area of anti-money laundering and combating the financing of terrorism (AML/CFT), dated 10 June 2013 – in http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_aml_final_dar_17_06_2013.pdf, p. 42.

[125] As regards the perpetration (in the Continental Doctrine) the criminal offences can be instantaneous or permanent. Instantaneous are those which perpetration is finished when the result occurs (theft, for instance) and permanent those in which the perpetration lasts over time (for instance drunk driving). There is an additional category of similar criminal offences, the instantaneous with permanent effects, as money laundering, as despite the criminal offence is complete when the perpetrator conceals or disguises, but the effect of the perpetration lasts over time: keeping the *de facto* power over the concealed or disguised property (it is a simple consequence of the initial act).

[126] Professor at the Law School, University of Sao Paulo, Brazil.

transfers, or attempts to convert or transfer, the property for the purpose of assisting any person who is involved in, or purportedly involved in, the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences, of his or her actions".

In other paragraphs, the specific intent is as well very clear ("for the purpose", as in subparagraphs 2.3 and 2.4), exception made to subparagraph 2.5 ("2.5. acquires, possesses or uses, or attempts to acquire, possess or use, the property") as its wording may indeed cause doubts[127] whether the simple use of, let us say, money, might be considered as commission of the criminal offence.

No Law is safe from interpretation and it is the Judge's (amongst others) duty to interpret it and it has to be done always bearing in mind the juridical value that is protected by the criminal offence (the Administration of Justice, as said), all other elements enshrined in the criminal offence and the whole system; in case of ambiguity the interpretation should be in favour of the person against whom the criminal proceedings are being conducted, as the principle of legality clearly states (Article 1, par. 3, P.C.C.K. and Article 2, par. 3, C.C.R.K.).

"Money laundering" cannot be (mis)understood as being the "material benefit" resulting from the commission of the criminal offence itself if further action with the specific intent of concealing or disguising it is missing; for instance, if the amounts of money, *maxime*, payments acquired, transferred to and by the defendants were no more than payments for the "services" provided, for the actions undertaken, being therefore only the material benefit (resulting from the criminal offence, as the constituent element is only the intention of obtaining it) of the criminal offence, as apart from that it is required for the commission of the criminal offence of money laundering a specific intent, the purpose to conceal or disguise the proceeds of the crime[128], as said.

In relation to the "proceeds", to the "property", it must be determined from which criminal offence they are predicated; "*it can be concluded that the object of ML can be any property that is derived from the commission of one or more concrete criminal offence, including any sorts of offences that may generate proceeds but not a broader concept of "criminal activity" in terms of indefinite criminality (drug crimes, trafficking crimes etc. in general). No conviction for ML appears therefore possible where it is proved that the property that constitutes*

[127] On other criticisms to the legal definition and some "exaggeration "in the construction of the criminal offence in the said provision, see pages 39 to 42 of DETAILED ASSESSMENT REPORT on compliance with international standards in the area of anti-money laundering and combating the financing of terrorism (AML/CFT), dated 10 June 2013, in http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_aml_final_dar_17_06_2013.pdf . About the criticism to the reference to "some form of criminal activity" in Art. 32, par. 2, see details on page 43.

[128] In this sense, see the decision of the Court of Appeals in the PAKR. 25/14, dated 3 February 2015, p. 18 (English version).

the object of ML originated from a predicate offence but it cannot be established precisely which offence"[129].

With regards to the question whether a previous or at least parallel conviction for the predicate criminal offence is required to convict someone for money laundering [as Art. 32 paragraph 4.1 of the AML/CFT Law provides that: "(…) a person may be convicted of the criminal offence of money laundering, even if he or she has not been convicted at any time of the predicate criminal offence from which the proceeds of crime in the criminal offence of money laundering were derived"], we deem that as long as the elements that are constituent of the criminal offence of money laundering are established (including to assert which predicate criminal offence was committed), it is not necessary (despite it is convenient or facilitating) "*that a previous or at least parallel conviction for the predicate offence would likely be a precondition to achieve a conviction of the related ML offence*" as this somehow makes the said provision, Article 32, par. 4.1, meaningless. We believe this stance is not against the presumption of innocence (as it naturally has its role in the proceedings concerning money laundering itself), given that the perpetrator of money laundering can be other individual rather than the one(s) who committed the other, the predicate criminal offence (see, for instance, that Article 32, par. 2.2, clearly states "converts or transfers, or attempts to convert or transfer, the property for the purpose of assisting any person who is involved in, or purportedly involved in, the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences, of his or her actions").

Bearing the previous considerations in mind and considering the facts established it is clear that the specific intent required by the criminal offence is missing and therefore the defendants will be acquitted of this charge (count 9).

Analysis of the criminal offence of organised crime.

The defendants A.Ç, M.B., A.M., A.B., I.P. and M.A. are charged in count 1 with the criminal offence of organised crime (Article 274, paragraphs 1, 2 and 3, P.C.C.K., currently provided for in Article 283, paragraphs 1 and 2, C.C.K.), whereas in count 2 the defendants A.G. and (…) T.Y. are charged with the criminal offence of participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.K.).

In count 1, A.Ç. between 1 October 2010 and 3 February 2013, M.B. between 6 April 2011 and 13 December 2012, A.M. between 28 June 2011 and 13 December 2012, A.B. between 4 November 2010 and 13 December 2013, I.P. between 5 October 2012 and 13 December 2013 and M.A. between 21 June 2012 and 24 January 2013 are charged with the criminal offence of organised crime because (as per the indictment) in the territory of Kosovo and other countries

[129] See http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2590_peck_aml_final_dar_17_06_2013.pdf p. 43.

committed the offence of organised crime by organising, supervising, managing or directing the activities of an organised criminal group consisting of themselves and many other individuals mentioned on the indictment, committing a serious crime, namely smuggling of migrants, as part of an organised criminal group consisting of themselves and many other individuals mentioned on the indictment and actively participating in the criminal or other activities of the said organised criminal group, knowing that their participation would contribute to the commission of the said serious crimes by the group, in order to obtain, directly or indirectly, a financial or other material benefit.

In count 2, A.G. between 17 August 2012 and 13 December 2012 and T.Y. between 7 November 2012 and 13 December 2012 are charged with the criminal offence of participating in organised crime because (as per the indictment) in the territory of Kosovo committed the offence of participating in organised crime by committing a serious crime, namely smuggling of migrants, as part of an organised criminal group consisting of themselves, the co-defendants and other individuals mentioned on the indictment and actively participating in the criminal or other activities of the said organised criminal group, knowing that their participation would contribute to the commission of the said serious crimes by the group, in order to obtain, directly or indirectly, a financial or other material benefit.

According to Article 274 P.C.C.K., as per the indictment, the criminal offence was described as follows:

Article 274

(1) Whoever commits a serious crime as part of an organized criminal group shall be punished by a fine of up to 250.000 EUR and by imprisonment of at least seven years.

(2) Whoever actively participates in the criminal or other activities of an organized criminal group, knowing that his or her participation will contribute to the commission of serious crimes by the organized criminal group, shall be punished by imprisonment of at least five years.

(3) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

(4) Whoever commits the offence provided for in paragraph 2 of the present article shall be punished by a fine of up to 500.000 EUR and by imprisonment of at least ten years or by long-term imprisonment if the activities of the organized criminal group result in death.

(5) The court may waive the punishment of a perpetrator who commits the offence provided for in paragraph 2 or 3 of the present article if, before the group has committed a crime, such person reports to the police or public prosecutor the existence, formation and information of the organized criminal group in detail to allow the police to arrest or the prosecutor to prosecute the group.

(6) Whoever is punished by the accessory punishment provided for in Article 57 of the present Code for the commission of a criminal offence provided for in the present Article and violates the terms of such accessory punishment shall be punished by imprisonment of up to one year.

(7) For the purposes of the present article:

1) The term “organized crime” means a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit.

2) The term “organized criminal group” means a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit.

3) The term "serious crime" means an offence punishable by imprisonment of at least four years.

4) The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Nowadays, according to Article 283 C.C.R.K., the criminal offence is described as follows:

Article 283

1. Whoever, with the intent and with knowledge of either the aim and general activity of the organized criminal group or its intention to commit one or more criminal offenses which are punishable by imprisonment of at least four (4) years, actively takes part in the group’s criminal activities knowing that such participation will contribute to the achievement of the group’s criminal activities, shall be punished by a fine of up to two hundred fifty thousand (250,000) EUR and imprisonment of at least seven (7) years.

2. Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years.

3. When the activities of the organized criminal group provided for in paragraph 1 or 2 of this Article result in death, the perpetrator shall be punished by a fine of up to five hundred thousand (500,000) EUR and by imprisonment of at least ten (10) years or life-long imprisonment.

4. The court may reduce the punishment of a member of an organized criminal group who, before the organized criminal group has committed a criminal offense reports to the police

or prosecutor the existence, formation and information of the organized criminal group in sufficient detail to allow the arrest or the prosecution of such group.

5. For the purposes of Article, "actively takes part" includes, but is not limited to, the provision of information or material means, the recruitment of new members and all forms of financing of the group's activities.

The main differences between the two versions are mainly connected to the structure and legislative technique used in the description of the criminal offence.

Hence, the former paragraph 7, related to definitions, has disappeared, as now in the C.C.RK., the previous par. 7.1 (that was a kind of a summary of the elements constituent of the criminal offence) has no correspondence in the new Article, in the previous par. 7.2 the term "structured group" was replaced by "structured association" now defined in Article 120, par. 14, C.C.K., the previous definition of "serious crime" contained in the previous par. 7.3 (that meant "an offence punishable by imprisonment of at least four years") is now and again (as in practice there is no difference, as the underlying criminal offence must be punishable in abstract by imprisonment of at least four years) included in the criterion consisting of the minimum punishment that in abstract is applicable to the criminal offence(s) that are perpetrated, which is included in the 1st paragraph of the Article 283 C.C.K.: "punishable by imprisonment of at least four years". In relation to the previous par. 7.4 the term "group" is now defined autonomously as "group of people" in Article 120, par. 12, C.C.K. as "three or more persons", it is no longer defined in the criminal offence, as the previous term "structured group" is equivalent to the current definition of "structured association", meaning that it is one that is not randomly formed for the immediate commission of a criminal offence, but it does not need to have formally defined roles for its members, continuity of its membership, or a developed structure.

Other difference has got to do with the reunion of "committing" (previous par. 1) with "actively taking part" (previous par. 2), as previously these criminal actions were described in different paragraphs without a logic reason for such, as both actions are still within the concept of commission. However, the punishment that was foreseen in par. 2 for "actively taking part" (instead of "committing") was more lenient, as the minimum term of imprisonment was 5 years, therefore most favourable, as now such limit is 7 years.

The previous par. 3 ("whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years") corresponds to an aggravating circumstance now foreseen in par. 2, with the same fine but with a higher minimum of imprisonment, as now it is 10 years and therefore it is not more favourable.

Former par. 4 corresponds now to par. 3, the new version correctly makes reference to the 2 forms of perpetration that were previously mentioned in paragraphs 1 and 2, as before the aggravating circumstance mentioned only par. 2, not 1, which was not understandable. Apart

from this, the minimum of imprisonment foreseen nowadays is higher, as it is 10 years and therefore the current provision is not more favourable.

Current par. 4 corresponds to previous par. 3 and is not more favourable as well, as now the court may only reduce the punishment whereas before might waive it.

Finally, there is no equivalent to previous par. 6 and nowadays par. 5 is the definition of the expression "actively takes part".

From what has been said, it is logic to come to the conclusion that the new criminal code, when it comes to cases of punishing such criminal offence cannot be considered more favourable in any of the paragraphs.

In this criminal offence the perpetrator can be any person, being therefore a common criminal offence – as there are no specific requirements that must be met by the agent[130].

In relation to the juridical value protected by this criminal offence, it is dominant in the doctrine the idea that it is the "public peace", "internal security" and order – the Rule of Law Statehood[131], it aims at avoiding the social danger[132].

We agree with the doctrinal approach[133] that it is only possible to speak of organised crime when the encounter of the members' wills generates an autonomous entity, different and above of those inherent to the members themselves.

Following this, it is possible to defend an holistic understanding of the criminal offence of "organised crime", to base its dangerousness in the existence of the organised criminal group *de per se* (despite in Kosovo it has been understood that the criminal offence requires the perpetration of another criminal offence (in the case punishable at least by 4 years of imprisonment), to be concurrent with, and this dangerousness justifies the incrimination of such kind of associations, as they create danger (in abstract) to the public peace and order, to the Rule of Law, to the Statehood (the juridical value protected).

Although it is disputable, we are of the understanding that for the commission of this criminal offence it is necessary an encounter of wills, with at least some permanence over time, to commit a plurality of criminal offences, the intent aims at matching the common goal, activity,

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[130] "That the offense under paragraph 1 of this Article may be committed by any person". See point 6 under paragraph 1 of the Commentary to Article 283.

[131] We agree with Santos Cabette (Criminal Law Professor at the Law School of the University of Sao Paulo, USP, Brazil) that this criminal offence protects an abstract danger (see http://jus.com.br/artigos/31419/bem-juridico-tutelado-nos-crimes-de-organizacao-ou-associacao-criminosa).

[132] "This criminal offense under paragraph 1 of this Article has the character of preparatory actions for the general social danger, which is the reason for the punishment of such activities". See point 3 under paragraph 1 of the Commentary to Article 283.

[133] Among others, this is the concept of Figueiredo Dias and Costa Andrade (Criminal Law Professors at the Law School of the University of Coimbra).

and not the particular perpetration of a given criminal offence; there must be some organizational structure and a process of formation of the joint will in connection with the tie bonding the members of the structured group. This requires at least some stability and permanence over time to achieve the joint will of the group – and this is in connection with the holistic dimension of an organised criminal group and its dangerousness for the Public Peace and Statehood (Rule of Law Statehood) – which are the juridical values protected by the criminal offence, as said.

The elements of the criminal offence, as described earlier, are in our view marked by some inner conceptual contradiction as the definitions of "structured" (be it "group" in the P.C.C.K. or "association" in the C.C.R.K.) cannot be empty; one thing is to define a "group" or an "association", and then we might agree that it would be appropriate to describe it as "an association that is not randomly formed for the immediate commission of an offence, but it does not need to have formally defined roles for its members, continuity of its membership, or a developed structure", but if this is the definition of a structured association, and it is, then in our view the idea of "structure" is absent from its own definition.

Currently, Article 283, in par. 6, C.C.R.K. also describes the meaning of "actively takes part": includes, but is not limited to, the provision of information or material means, the recruitment of new members and all forms of financing of the group's activities) and in Article 120, par. 13, C.C.R.K. where it reads that an organised criminal group is a "structured association (which, on its turn, is defined in par. 14 as 'an association that is not randomly formed for the immediate commission of an offence, but it does not need to have formally defined roles for its members, continuity of its membership, or a developed structure'), established over a period of time, of three or more persons for the commission of a certain criminal offence that acts in concert with the aim of committing one or more serious criminal offences in order to obtain, directly or indirectly, a financial or other material benefit". Structured does not mean, however, that it must have a hierarchical structure[134].

These concepts, with such broad definitions, are also likely to conflict with other aspects of the Criminal Law Science, as for instance in relation to the forms of co-perpetration (co-perpetration *stricto sensu*, abetting and instigation), as it somehow appears to automatically encompass any form of co-perpetration as long as it is 3 or more people.

In this panel´s view, and in relation to the defendants I.P. (count 1) and A.G. and T.Y. (count 2) there is at least one essential fact missing, that they were acting as members of a group and therefore and *a fortiori* much less could be considered they were acting as members of an organized criminal group. In terms of the elements constituent of the criminal offence, there is one that is missing in relation to all defendants, as the concurrent underlying criminal offence of smuggling of migrants is not punishable by imprisonment of at least 4 years (and to avoid doubts, the Albanian and Serbian versions of the Code, languages that in case of discrepancy

[134] See page 16 of the English version of the judgment of the Court of Appeals in the case PAKR 259/14, dated 22 May 2015.

prevail over English, actually use the very same expression, not any similar or that might be interpreted in a different way); rather, the underlying criminal offence of smuggling of migrants is punishable from 2 years up to 12 years of imprisonment (Article 138, par. 1, Provisional Criminal Code) or up to 10 years of imprisonment (Article 17, par. 1, Criminal Code of the Republic of Kosovo).

In fact, as said, it is a requirement of the criminal offence of "organised crime" the commission of a "serious crime"[135], a criminal offence punishable with imprisonment of at least 4 years. The term used by the legislator "punishable" leads us to the abstract limits of the punishment, as it may not be read as "where a punishment of four years may be imposed" – see how the legislator clearly makes the difference between the two expressions ("punishable with imprisonment of at least" *vs.* "punishment of X years may be imposed"), for example when addressing the attempt, in Article 28, par. 2, C.C.R.K. (the same happened when P.C.C.K. was in force, at the time Article 20, par. 2) "an attempt to commit a criminal offence for which a punishment of three or more years may be imposed (…)". This leaves no room for doubt that the legislator uses the two said expressions with two precise meanings and the court cannot come to an interpretation as the expressions were synonyms, because they are not; the court cannot come to an interpretation of a given legal provision without support on the literal wording of the legal provision being considered, much less the court can come to an interpretation *contra legem* (apart from these general *criteria* on interpreting any law, in the case of the criminal law there is an additional argument that we will address after, about any ambiguity in the interpretation of the elements of a criminal offence).

The issue just addressed, of the minimum applicable years of imprisonment to the criminal offence of smuggling migrants (that can be 2 years) might take us to another: to know if the abstract threshold of being "punishable by imprisonment of at least 4 years" (as minimum, "at least") is necessarily referring to the plain, bear criminal offence (paragraph 1 in any version) or if it can be understood that it is referring as well to the case of aggravating circumstances. In favour of the last option (to the minimum of an aggravating circumstance), one can say the juridical values protected are different in the criminal offences (organised crime and other criminal offence as, for instance, smuggling of migrants); in favour of the first, the fact that the legislator may have wanted to clearly establish an abstract criterion on what kind of criminal offences may be considered together with organised crime, regardless the way the court assesses them in the particular cases (whether an aggravating circumstance was deemed to exist, established, or not) as we see that, for example, the minimum term of imprisonment foreseen for trafficking human beings, is 5 years (Article 171 C.C.K.)[136].

[135] As we saw before, despite the Law is not using anymore this expression, the minimum of punishment in abstract did not change as it is also 4 years of imprisonment.

[136] One type of criminal offences usually associated with organised crime is narcotic drug offences, currently in Chapter XXIII C.C.K. (Articles 273 up to 282) and we note that none of them (even in the aggravated form) foresees a minimum of at least 4 years of imprisonment, always less; maybe it is a mistake by the legislator

Apart from this, other problems would for sure happen if it was understood that the reference to the minimum could be made to the case of aggravating circumstances: not only it would no longer be a constituent element set in abstract, rather, it would be in concrete and depending on the particular assessment of a panel or of a court, but also it would lead to problems of double evaluation of the same fact contrary to the basic principle of *ne bis in idem*, as it would be clear in the case of smuggling as a member of a group, if apart of the existence of the group, the said group could be simultaneously classified as an organized criminal group (which minimum is imprisonment of 5 years): in such case the solution would be to use the element "group" just to meet the requirement of punishable with at least 4 years of imprisonment but then, do avoid the double evaluation of the same fact (group) to punish the smuggling only in accordance with paragraph 1, the plain or bear criminal offence of smuggling (this not to mention the additional doctrinal difficulty resulting from such understanding, consisting of the fact that the juridical values protected in the criminal offences are different, as already explained).

One thing is not disputable: despite the explained understanding of this panel, the problem exists and cannot go unnoticed, cannot be ignored, this to say that at least an ambiguity exists.

In this regards, we recall then the principle of legality, Article 1, par. 3, P.C.C.K. (Article 2, par. 3, C.C.R.K.), "the definition of a criminal offence shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offence shall be interpreted in favour of the person being investigated, prosecuted or convicted". Accordingly, we are of the opinion that the best solution will be to follow the understanding clearly stated above, the requirement "punishable by imprisonment of at least 4 years" is referring to the plain, bear criminal offence and in this particular case it is missing.

Going back to the analysis of other aspects of this criminal offence, although it can be established the other defendants (in count 5, A.Ç, M.B., A.M., M.A. and A.B.) acted as members of a group, this group cannot be considered as structured, nor it can be considered a structured association as the law currently reads, although the "co-perpetration" by some individuals was more frequent.

The defendants indeed acted as members of a group depending on the circumstances[137], despite it is also true that the defendants were acquainted to each other (in the exact way explained in the facts established), they knew about each other being prone to engage in the smuggling of migrants; if on one hand in it is not absolutely correct to assert that it was exactly

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when used the criterion 4 years (not 2, for example), similar to the mistake that existed before in Article 138 P.C.C.K., where the aggravated criminal offence of smuggling migrants as a member of a group was punished more leniently than the simple criminal offence, without any aggravating circumstance... but not all mistakes can be "amended" through interpretation, as there are limits.

[137] As shown in the thorough reasoning of the facts.

an *ad hoc* group of people (as they had their contacts, planned the events, etc.), on the other hand it is equally true that they acted to fulfil their own interests and will, acting simply in accordance with their own interests, availability and wishes at any particular moment or occasion; it is not possible to say that there was an interest different from their own, an "holistic higher interest" (of an organised group). We also see that again they had no specific roles, despite some were more limited in relation to the kind of facts being able to engage in; for instance, A.Ç was able to take care of the issuance of guarantee letters, make reservations, plan and alter onward trips, welcome and escort migrants, clean passports, instruct and organise other co-defendants.

It is one fact that individuals who know each other, who engage in a given activity, can have to some extent regular contacts, arrange their activities with each other, but this does not mean that it is a structured group or association, nor a simple and occasional co-perpetration; it can be something in between. The Law provides all means to take into consideration all the facts, as the manners of commission of a criminal offence (from simple co-perpetration, as a member of a group who engages in different actions, to a member of a structured association) can be considered in assessing the intensity of the intent, the personality portrayed in the acts, all the circumstances relevant to determine the punishment.

In this regards, the criminal offense "smuggling of migrants" (both in the P.C.C.K. and in the C.C.R.K.) among others, provides for two aggravating circumstances: the criminal activity of individuals acting as a member of a group and organising or directing others. About "acting as a member of a group" one must consider that to talk about a "group" (not talking about mere co-perpetrators, or even several co-perpetrators, no matter how many these might be..., as said) it requires a minimum of organization; otherwise they could not even carry on the perpetration of the criminal offense. The other aggravating circumstance, organizing or directing others, is graver than acting as a member of a group, as clearly results from the punishments foreseen in the Law.

In the jurisprudence about this criminal offence together or in concurrency with the criminal offence of smuggling of migrants, in related cases where some of the individuals mentioned by the prosecution in count 1 are prosecuted, we can find different examples (despite the naturally different established facts) stating that it was not possible to establish the existence of organised crime, not to mention that the charge was also rejected in the criminal case number P. 233/2013 of this same court, by a judgment dated 30 October 2013: the court rejected count 1 on organised crime under Article 271 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo, because the prosecutor withdrew the charge during the main trial[138], in the same way withdrew it in the initial hearing in the proceedings no. PKR. 316/14 of the Basic Court of Pristina[139].

[138] Actually, a vast number of names are exactly the same names as in this case file, including some that in this one are defendants: A.Ç., M.B. and A.M.; "(…) BECAUSE between 5 February 2012 and 17 April 2012, A.By., on the territory of Kosovo Montenegro, Croatia, Slovenia and Italy, committed the offence of Organised Crime by: 1. Organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K.,

In the judgment of the Court of Appeals PAKR 259/14, dated 22 May 2015 (against I.P., who is also defendant in these proceedings, and others), it can be read "the Panel finds that although some degree of a structure can be identified in which the defendants acted, the evidence suggests such a structure was insubstantial (…). The Panel therefore fully concurs with the reasoning of the Basic Court that the evidence put forth by the prosecution does not proof beyond a reasonable doubt that the acts committed by the defendants were committed as part of a structured association, established over a period of time"[140].

Also in the judgment of the Basic Court of Peja, P. 38/12, dated 23 January 2013, it was asserted that the evidence did not allow the conclusion there was a structured group.

In the judgment of the District Court of Pristina, P. 244/10, dated 17 June 2011, the panel convicted for organised crime after coming to the conclusion the evidence showed a solid and structured criminal group (this case in not related to ours with regards to the alleged members of the organised criminal group, in spite of it is also about smuggling of migrants).

Considering what was said above and the established facts, the panel concludes that not all elements of the criminal offence are established, *maxime*, the existence of the element "structured group" is missing and another element is also absent, the one related to the underlying or concurrent criminal offence that must be punishable with at least 4 years of imprisonment (as the minimum period of imprisonment foreseen for smuggling of migrants is 2 years), and therefore the defendants are acquitted of the charges contained in counts 1 and 2 (and in relation to the defendants already mentioned it was not even established that they were acting as members on any kind of group at all).

Analysis of the criminal offence of smuggling of migrants.

The defendants are charged, in different counts, with this criminal offence (Articles 138 and 23 P.C.C.K.):

- In **count 3** A.Ç. and A.B., between 25 June 2011 and 14 December 2011 (in co-perpetration with O.A. and others), as per "Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo, in particular by organising and directing others to commit the offence (…) with the aggravating circumstance of acting as a member of a group or in a manner that is likely to endanger the lives or safety of the migrants or that entails inhuman or degrading treatment, including exploitation, of such migrants";

- In **count 4** A.Ç., between 5 October 2011 and 9 October 2011, "attempt" (in co-perpetration), as per "Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo, in particular by organising and directing others to commit the offence (…) with the aggravating circumstance of acting as a member of a group;

C.K., E.K., L.K., "N.", A.By., A.Ç.., N.N., M.B., A.M., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., and other unidentified perpetrators (…)".

[139] See pages 5 and 14 of the English version of the said judgment, dated 16 July 2014.

[140] See page 12 of the English version of the said judgment.

- In **count 5**, A.Ç., M.B., A.M., A.B., I.P. and M.A., between 23 June 2012 and 2 December 2012 (in co-perpetration)), as per "Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo, in particular by organising and directing others to commit the offence (…) with the aggravating circumstance of acting as a member of a group or in a manner that is likely to endanger the lives or safety of the migrants or that entails inhuman or degrading treatment, including exploitation, of such migrants";

- In **count** 6, A.G., between 17 August 2012 and 22 August 2012 (in co-perpetration with A.Ç. and others), as per "Article 138 paragraphs 1, 2, 3 of the Criminal Code of Kosovo (…) by engaging in the smuggling of migrant I.K., citizen of Republic of Turkey, by procuring and providing fraudulent travel or identity documents to enable the smuggling of the (…) migrant to obtain a financial or other material benefit, specifically providing a guarantee"

and

- In **count** 8 T.Y., between 7 November 2012 and 4 December 2012 (in co-perpetration with A.Ç. and others), as per "Article 138 paragraphs 1, 2, 3 of the Criminal Code of Kosovo (…) by engaging in the smuggling of migrants R.B., E.Ba. and others, citizens of Republic of Turkey, by procuring and providing fraudulent travel or identity documents to enable the smuggling of the (…) migrant to obtain a financial or other material benefit, specifically providing a guarantee".

Starting by the Provisional Criminal Code of Kosovo (as per the indictment), C.P.C.K., "Article 138, Smuggling of Migrants[141]:

(1) Whoever **engages** in the smuggling of migrants shall be punished by imprisonment of two to twelve years.

(2) Whoever **produces, procures, provides or possesses a fraudulent travel or identity document** in order to enable the smuggling of migrants and to obtain, directly or indirectly, a financial or other material benefit shall be punished by imprisonment of up to five years.

(3) Whoever enables a person who is not a resident of Kosovo to remain in Kosovo or a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary legal requirements to remain by the means provided for in paragraph 2 of the present article **or by any other illegal means** shall be punished by a fine or by imprisonment of up to one year.

(4) An attempt to commit the offence provided for in paragraph 3 of the present article shall be punishable.

(5) Whoever **organizes or directs other persons to commit the offence provided for in paragraph 1, 2 or 3** shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

[141] Emphasis will be added along the quotation.

(6) When the offence provided for in paragraph 1, 2 or 3 of the present article is committed by a perpetrator **acting as a member of a group or** in a manner that endangers, or is likely to endanger, the lives or safety of the migrants concerned or that entails inhuman or degrading treatment, including exploitation, of such migrants, the perpetrator shall be punished by imprisonment of two to ten years.

(7) For the purposes of the present article:

1) The term "smuggling of migrants" means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into Kosovo, where such person is not a resident of Kosovo, or into a State of which such person is not a national or a permanent resident.

2) The term "illegal entry" means crossing a border or a boundary of Kosovo without complying with the necessary requirements for legal entry into Kosovo or crossing the borders of a State without complying with the necessary requirements for legal entry into such State.

3) The term "fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by any person other than a person or agency lawfully authorised to make or issue the travel or identity document;

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder.

(8) A person is not criminally liable under the present article if he or she is a migrant who is the object of the offence provided for in the present article".

In the new Code, the Criminal Code of the Republic of Kosovo (C.C.R.K.), in force as of 1 January 2013, the concerned provision is, "Article 170 Smuggling of migrants

1. Whoever **engage**s in the smuggling of migrants shall be punished by fine and imprisonment of two (2) to ten (10) years.

2. Whoever with the intent to obtain, directly or indirectly, a financial or other material benefit, **produces, supplies, provides or possesses a fraudulent travel or identity document** in order to enable the smuggling of migrants shall be punished by a fine and imprisonment of up to five (5) years.

3. Whoever enables a person who is not a national of the Republic of Kosovo to remain in the Republic of Kosovo or a person who is not a national or a permanent resident to remain in the State concerned, without complying with the necessary legal requirements to remain by the means provided for in paragraph 2 of this Article or by any other illegal means shall be punished by a fine and imprisonment of up to one (1) year.

4. An attempt to commit the offense provided for in paragraph 3 of this Article shall be punishable.

5. Whoever **organizes or directs other persons to commit the offense provided for in paragraph 1 or 2 shall** be punished by a fine of up to five hundred thousand (500,000) EUR and

by imprisonment of seven (7) to twenty (20) years, or by imprisonment of one (1) to ten (10) years, in case of the offense provided for in paragraph 3 of this Article.

6. When the offense provided for in paragraph 1, 2 or 3 of this Article is committed by a perpetrator **acting as a member of a group** or in a manner that endangers, or is likely to endanger, the lives or safety of the migrants concerned or in a manner that entails inhuman or degrading treatment, including exploitation, of such migrants, the perpetrator shall be punished by a fine and not less than five (5) years.

7. If the offense from paragraph 1, 2 or 3 of this Article results in death of one or more persons, the perpetrator shall be punished by a fine and imprisonment of not less than ten (10) years or lifelong imprisonment.

8. For the purposes of this Article expressions below have the following meaning:

8.1. **Smuggling of migrants -** any action with the intent to obtain, directly or indirectly, a financial or other material benefit, from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National or a foreign national into a State in which such person is not a permanent resident or a citizen of such State.

8.2. **Illegal entry** - crossing a border or a boundary of the Republic of Kosovo without complying with the necessary requirements for legal entry into the Republic of Kosovo or crossing the borders of a State without complying with the necessary requirements for legal entry into such State.

8.3. **Fraudulent travel or identity document -** any travel or identity document:

8.3.1. that has been falsely made or altered in some material way by any person other than a person or agency lawfully authorized to make or issue the travel or identity document;

8.3.2. that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner;

or

8.3.3. that is being used by a person other than the rightful holder.

9. A person is not criminally liable under this Article if he or she is a migrant who is the object of the offense provided for in this Article.

10. Whoever abuses the visa liberalization regime with EU member States or the Schengen Agreement shall be punished as follows:

10.1. whoever recruits, instigates, organizes, hides or transports a person in a EU member state for the purpose of obtaining a social, economic, or other benefit or right contrary to EU law, EU

member State regulations, Schengen Agreement, or international law shall be punished by imprisonment of at least four (4) years;

10.2 the perpetrator of this offense who should or might have known that the transport was conducted with the purpose of achieving the rights under paragraph 10.1 contrary to EU law, EU member State regulations, Schengen Agreement or international law, shall be punished by imprisonment of one (1) to five (5) years;

10.3. when the offense is committed for self-interest, the perpetrator shall be punished by imprisonment of at least eight (8) years for the offense under paragraph 10.2; and at least four (4) years imprisonment for offense under paragraph 10.2;

10.4. if the offense was committed by a legal person, it shall be punished by a fine;

10.5. all means and the transport vehicles used for commitment of this offence will be seized;

10.6. this paragraph shall start to be implemented at the moment the Council of European Union takes a decision for omission of visa regime for citizens of the Republic of Kosovo".

Elements constituent of the criminal offence

After quoting the description of the criminal offences, it can be said that, in essence, the elements of the criminal offence remain the same.

From the previous version to the current one, there are minor changing's in the wording (as, for instance, in par. 2 of both versions, in the definition of "smuggling of migrants", given that previously the word "procurement" in subparagraph 7.1 was used and now in the subparagraph 8.1 the expression "any action" is used), there is a new aggravating circumstance (currently par. 7, if the offence from paragraphs 1, 2, 3 of the this articles results in death of one or more persons) and there are changes in the sanctions foreseen in some paragraphs (as, for instance, in current par. 6, when the aggravating circumstance foreseen takes place the sanction is now a fine and the minimum has been raised to 5 years, as in the previous version, by what appears to be a mistake, the aggravating circumstance foreseen in par. 6 (namely, "acting as a member of a group") was being punished more leniently (imprisonment of 2 to 10 years) than the basic or bear criminal offence foreseen in par. 1, without a specific aggravating circumstance (imprisonment of 2 to 12 years).

Also, in the new description set in Article 170 of the Criminal Code of Kosovo (C.C.R.K.), a new entire paragraph (10) has been introduced (but not into force, yet), related to "whoever abuses the visa liberalization regime with EU member States or the Schengen Agreement shall be punished as follows (…)".

If further clarification, on a specific matter, is needed, then it will be done as it is only relevant when the new law could be considered most favourable as per Article 2, par. 2, P.C.C.K.

(Article 3, par. 2, C.C.R.K.), "in the event of a change in the law applicable to a given case prior to a final decision, the law most favourable to the perpetrator shall apply" – and this can be due to a more lenient sanction or, for instance, if from the changes in the description of a criminal offence the matter of decriminalization can be raised, as also, according to the principle of legality Article 1, par.3 P.C.C.K., "the definition of a criminal offence shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offence shall be interpreted in favour of the person being investigated, prosecuted or convicted", equivalent to the current Article 2, par. 3, C.C.R.K.: "the definition of a criminal offence shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offence shall be interpreted in favour of the person against whom the criminal proceedings are ongoing".

Apart from the said exceptions, the rule is, pursuant to Article 2, par. 1 (Article 3, par. 1, C.C.R.K.) P.C.C.K., "the law in effect at the time a criminal offence was committed shall be applied to the perpetrator".

The juridical value underlying the criminalization of smuggling of migrants is to protect a situation of vulnerability stemming from different social factors and aims at fighting the material benefit from its exploitation. In this regards, in the Commentary[142] it reads as follows: "*1. The basis for the international incrimination of this offense is constituted by the Protocol against the Smuggling of Migrants through Land, Water or Air. This Protocol supplements the UN Convention against Transnational Organized Crime. 2. The object of protection against this criminal offense is twofold. First protection against this offense is designed to safeguard the fundamental freedoms and rights of the migrants, and, secondly, to protect the regime of the legal crossing of migrants from one country to another (...)*"[143].

In a time immigration rules tend to be more and more strict in most of the countries, as far as allowing foreigners to work and reside is concerned, there is other problem preceding: to travel to and to enter these destination countries, as the legal requirements are again more and more tight. The vulnerability is then deeply connected to the migration of persons who are willing to pay to try to relocate to a different country for economic reasons, to make their living and improve their living conditions.

The main distinction between smuggling of migrants and trafficking in persons is that in the smuggling of migrants there is procurement, any action, to enable someone to illegally enter or stay in a country (where the person is not a national or permanent resident or other ways allowed to lawfully enter, that is why it is a "migrant" for this purpose) against the intent of obtaining a material benefit, usually the payment of a sum, but all the process takes place with

[142] "Kodi Penal I Republikës Së Kosovës", Komentar, Botimi I", by Deutsche Gesellshaft für Internationale Zusammenarbeit (GIZ) GmbH, Bonn and Eschborn, Germany (hereinafter "Commentary"). In point 1, English translation, to the commentary of the said Article.

[143] See points 1 and 2 of the Commentary to Article 170 C.C.R.K.

the consent (even if based on error) of the victim, whereas in the criminal offence of trafficking in persons the said consent is absent and the exploitation remains over time, even after the person has reached the final destination (to create profit to the trafficker), which does not happen in the case of smuggling – as it ends when the agreement, the "contract" is closed or until the completion of the journey.

Although more clearly in trafficking in persons than in smuggling of migrants, in both there is exploitation of someone (and by definition to very different extents), but it is worth pointing out that in the case of smuggling of migrants, as said, there is the consent (willingly…) of the smuggled individual and maybe this is the reason why the legislator addresses the smuggled persons as **objects** of the offence, not as victims… as explicitly stated in Article 138, par. 8, P.C.C.K. and in Article 170, par. 9, C.C.R.K. "a person is not criminally liable under this Article if he or she is a migrant who is the **object** of the offence provided for in this Article" [**emphasis added**].

In both versions, as to the perpetrator, it is a criminal offence that is common, not specific, this meaning that anyone can commit this criminal offence, the perpetrator must not have any specific characteristic.

The *mens rea* (or "subjective element" in the continental doctrine) is the intent. In both versions the criminal offense must be committed with intent (direct in some forms of action or at least eventual, as defined in Article 15 P.C.C.K. or in Article 21 C.C.R.K.), and negligence is not an admissible way of committing it (as "a person is criminally liable for the negligent commission of a criminal offence only when this has been explicitly provided for by law" – art. 11, par. 3, P.C.C.K., and art. 17, par. 2, C.C.R.K.), and this is due to the fact that on the contrary of most of the criminal offenses committable with intent, to what a generic intent suffices, in this criminal offence that is not enough because a specific intent (*dolus specialis*) is required by the legislator, and this intent must then be aimed at "obtaining, directly or indirectly, a financial or other material benefit (…)". Nevertheless, any kind of this specific intent, be it direct of eventual, suffices.

With regards to the manner of commission, this criminal offence, in both versions, can only be committed by an act (see art. 31, par. 1, P.C.C.K., and art. 8, par. 1, C.C.R.K.) as in the previous version it read "engages" and "procurement" and now it reads "engages" and "any action".

In relation to the passive subject of the action it can be anyone, anyone willing to relocate from one country to another in an unlawful manner for not meeting the legal requirements, "*the passive subject of this criminal offense is comprised of one or more migrants who cross into the*

territory of another country"[144]. To the unlawful manner or illegal entry or stay, other references will be made ahead.

Some concepts used in, or related to, this criminal offence demand some clarifications – that with all due respect for different understanding are this panel's views.

In this regards the court notes that in different judgments on the same matter there are different understandings when it comes to different issues, such as classification of the acts as an attempted criminal offence or as a perpetrated criminal offence, number of criminal offences perpetrated depending on the number of migrants not on the number of (criminal) decisions taken by the perpetrator, etc.

Number of criminal offences

In relation to the first issue just raised, attempt *vs.* perpetration, this panel is of the opinion that the criminal offence is what the Doctrine classifies as a formal crime or crime of sheer activity, in contraposition with material crimes – those where a specific result must occur so it can be said the act went beyond the attempt. Indeed, this panel believes that when the engagement, procurement or any action is carried away by the individual acting with the specific intent mentioned earlier, once the individual's action is completed the criminal offence is perpetrated. The court notes that in some cases it has been decided that if a migrant is not allowed to enter a transit country or the final country of destination then the criminal offence is considered as being only an attempt[145]. However, following what was just said, this panel is of the opinion that the law does not incriminate only the successful smuggling, the law incriminates any engagement, procurement or any action with the intent mentioned, "in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into Kosovo, where such person is not a resident of Kosovo, or into a State of which such person is not a national or a permanent resident".

What seems to be relevant is the intent (and action) of both the individual and the smuggled migrant, regardless the actions or omissions of third individuals or entities (or any other fact or reason why the entry was not achieved) as those actions or omissions are already completely outside the control of both the smuggler and the smuggled (although sometimes the engagement or procurement may seek to have full control of all possible events along the entire process leading to a successful result… for instance, bribing an official at the border passport control not to carry on the duties or to violate them).

Attempt *vs.* perpetration

[144] Commentary, point 2 in relation to par. 1

[145] For instance, Basic Court Gjilan, PKR 56/13, dated 05 December 2013, affirmed by the decision of the Court of Appeals PAKR 259/14 dated 22 May 2015.

This issue is connected to the doctrinal conceptions of attempt in conjunction with the type of the criminal offence, as it is also disputable whether it is possible to have an attempt in a criminal offence considered formal in the sense explained above (and in very few cases it is considered to be possible, the classical example is the attempted extortion).

In this matter, it is also important to take note that the legislator made specific references to "attempt", in Article 138, par. 4, P.C.C.K (Article 170, par. 4, C.C.R.K.), but made it with regards to the acts described in par. 3 (in both versions) by the means provided in par. 2 (in both versions) – related to producing, procuring, providing, possessing a fraudulent travel or identity document – and this reference is deemed to be in favour of what we have been saying, as otherwise such acts might be considered only as preparatory acts (in the sense mentioned in Article 26, par. 1, P.C.C.K. or as now thoroughly regulated in the new criminal code under Article 27, par.1, C.C.R.K)[146], acts which in the *iter criminis* are before the acts of execution itself and, as the new code made explicit, are punishable only if expressly provided for by the law (Article 27, par. 1, C.C.R.K.).

If the mention to the punishable attempt made in par. 4 had not been made, the means provided in par. 2 referred to in par. 3 and 4 of the criminal offence of smuggling of migrants (in both versions), might be considered not punishable for being possible to understand they would fall only in the category of (sheer) preparatory acts – as per Article 27, par. 2, C.C.R.K.: "(…) the preparation of the criminal offence includes supplying or making available the means to commit a criminal offence (…)".

The reasons underlying this kind of criminal offence and the value judgment the perpetrator deserves, or that can be made upon his or her action, are exactly the same regardless by an act of a third individual the successful illegal entry does not take place (in the case that even a bribe of a border official has taken place and due to a last minute operational change beyond the control of that specific official the officer in charge is replaced and the migrant's documentation and assessment of requirements to lawfully enter a country takes place, leading to the denial of the entrance).

There is no reason to assess differently, from a criminal perspective, the actions undertook in both cases, depending on whether the entry took place or not[147]: the harm to the

[146] With regard to preparatory acts, see also the Commentary, point 1 in relation to paragraph 2, "*Due to the very high risk and on criminal-political grounds, in order to intervene with the criminal law in an earlier stage of the commission of this offense, paragraph 2 of this Article also incriminates the preparatory acts which are undertaken for the purpose of committing the offense of smuggling of migrants*".

[147] Also, in the judgment of the District Court of Pristina, P. 244/10, dated 17 June 2011, p. 60 (English version), the panel was of similar opinion: " (…) in fact, in order to consider the crime as completed, it is enough that the migrant passes the border, even though without reaching the other country" – the panel was addressing the fact that the migrants had already left one country without having entered the other yet, as they died before reaching the border.

juridical values protected is already inflicted[148]. Indeed, after having said this, would be difficult to explain how the perpetrator (or otherwise "attempted perpetrator") would deserve a more lenient, reduced, punishment, as according to the general rule on sanctioning an attempt the punishment may be "more lenient" (Article 20, par. 3, P.C.C.K.,) or "reduced" (Article 28, par. 3, C.C.RK.).

When the prosecution, in this regards, qualifies the action as an attempt, it poses no juridical obstacle to the understanding of the trial panel as "the Court shall not be bound by the motions of the state prosecutor regarding the legal classification of the act" – Article 360, par. 2, C.P.C.K.

Other aspect deserving some notes is the number of criminal offences that are perpetrated.

Number of criminal offences, concurrency of criminal offences and criminal offence in continuation

In different judgments there are different decisions with regards to the way how the number of criminal offences is determined; for example, in the judgment of the District Court of Pristina, P. 244/10, dated 17 June 2011, on p. 65 (English version) it can be read: "(…) for each migrant smuggled as to the criminal offences of Smuggling of Migrants in co-perpetration, contrary to Article 138, paragraph 6 and Article 23 of the CCK (the smuggling of each migrant entails the commission of one criminal offence contrary to Art. 138, paragraph 6, of the CCK, therefore the above defendant has committed five criminal offences contrary to Art. 138, 6 of the CCK", whereas in the judgment of the Basic Court of Gjilan, PKR 56/13, dated 05 December 2013 it was considered (in reference to 3 migrants who had not reached the final destination) that the defendants had committed "(…) by which they committed the criminal offence of Attempted Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the CCRK (…)"[149].

The court sees no reason to deviate from the general rules on the theory of the criminal offence, according to which the number of criminal offences is determined by the number of criminal resolutions, number of criminal decisions executed by the perpetrator, which may lead to situations of homogeneous concurrency (as the criminal offences are of the same kind) of

[148] This issue is also connected to the different conceptions on abandonment of execution of a criminal offence, on whether the result that the law does not want to occur was avoided due to the fact that the perpetrator stopped the execution, the *iter criminis*, abandoned the planned on time to avoid the result or whether the result did not take place because the plan ended frustrated for an external reason. In relation to these specific matters, see Articles 21 and 22 P.C.C.K and Articles 29 and 30 C.C.R.K., respectively on inappropriate attempt and on voluntary abandonment of attempt.

[149] See p. 3 of the said judgment, English version.

criminal offences, due to the real concurrency[150] (from a naturalistic perspective), by repeating the criminal offence over time, in different moments.

Accordingly, if a perpetrator in one occasion base on one resolution smuggles 1 person or 3 persons will have in either case committed one criminal offence, regardless that in the second case the number of smuggled persons can be taken into consideration for other purposes, as assessing the intensity of the *mens rea*, the gravity of the criminal offense and, at a later stage, will be relevant to determine the punishment; if after this first execution a new criminal resolution takes place and the individual executes again the criminal offence, then there will be 2 concurrent criminal offences (or if the requirements are met, one in continuation).

The previous issue leads us to another problem, how to address the punishment of concurrent criminal offences.

In fact, what can be treated as concurrency of criminal offences may also be subject to the legal institute of the criminal offence in continuation, now explicitly provided for in Article 81 C.C.R.K.

According to Article 81 C.C.R.K., "a criminal offence in continuation is constituted of several same or similar offences in a certain time period by the same perpetrator, and that are considered as a whole due to the existence of at least two (2) of the following conditions: 1.1 the same victim of the criminal offence; 1.2 the same object of the offence; 1.3 the taking advantage of the same situation or the same time relationship; 1.4 the same place or space of commission of the criminal offence or 1.5 the same intent of the perpetrator".

The general doctrinal approach to the concurrence of criminal offences is that, as a rule, the number of criminal offences corresponds to the number of offences committed, the exception is when the multiple offences (at least two) were committed in a way matching the conditions set in the law, when the manner of commission is identical, the general situation or framework is basically the same in a way that it is possible to assert that the perpetrator's guilt is substantially diminished. To assess this diminishment of guilt, the conditions set in the law are used; in short, the criminal offence in continuation exists only when to the individual (the perpetrator) only one judgment of guilt, not more, can be made

The reason why the more lenient punishment in concurrent criminal offences is provided by the Law is to provide the court with the legal tools to allow it to be just in the light of the diminished guilt, it is not to give the perpetrator a discount for having practiced more than one criminal offence.

[150] Opposing to the ideal concurrency, when the same act (from a naturalistic point of view) suffices to materialise different criminal offences (that, on its turn, may be homogeneous or heterogeneous, depending if it is the same kind of criminal offence or a different one).

If the requirements are fulfilled, the concurrent criminal offences should be considered under the umbrella of the punishment of the criminal offence in continuation, as a specific rule should prevail over a generic one on the punishment of concurrent criminal offences. This is related to the fact that whereas the new criminal code has a provision on the punishment of the concurrent criminal offences, Article 80 C.C.R.K., and punishment of criminal offences in continuation, Article 81 C.C.R.K, the Provisional Criminal Code only provided for the punishment of concurrent criminal offences, in Article 71 (paragraph 1 read "if a perpetrator, by one or more acts, commits several criminal offences for which he or she is tried at the same time, the court shall first pronounce the punishment for each act and then impose an aggregate punishment for all of these act") and this has consequences, as it benefices more or is most favourable to a defendant to be punished by one criminal offence in continuation rather than by the rules that govern the punishment of concurrent criminal offences *tout court*. The exemption to this assertion is, for instance, the cases when not only the limits of imprisonment have been changed and have become higher or if there is, for example, in the subsequent law a new sanction, like a cumulative fine together with imprisonment.

In our case, of defendants committing several same or similar smuggling of migrants (with, at least, two criminal resolutions[151], this assessed also from the dates of their actions – which is the case of A.Ç, M.B., A.M., M.A., A.B. and T.Y.[152]), in the same place (or territory, as in Kosovo), taking advantage of the same situation (the knowhow, *modus operandi*, the flux of vulnerable people willing to be smuggled), with the same intent, we can consider that we have the requirements set in the law for the criminal offence in continuation: the same (specific) intent as set in the description of the criminal offence and in subparagraph 1.5 of the said Article 81 C.C.R.K., acting in the same place or space of the commission of the criminal offence (requirement set in subparagraph 1.4) and also the one comprised in subparagraph 1.3, the taking advantage of the same situation, this not to say that in such situation the offences have the same object as mentioned in subparagraph 1.2 (as 1.1. relates to the "victim" of the offence). Of course, in no-way this means that the least favourable law might apply, as the rule is exactly that the law in force at the time of the facts is applicable except if the new law is more favourable.

Finally, considering what was earlier said about the juridical value protected in this criminal offence and the systematic positioning of this criminal offence in the criminal code (Article 138 P.C.C.K., in the chapter XIV, Criminal Offences Against International Law and currently in Article 170 C.C.K., in the chapter XV, Criminal Offences Against Humanity and Values Protected by International Law) the offence of smuggling of migrants cannot be

[151] As per the established facts A.Ç. took part in the smuggling of 79 individuals, M.B. and A.M. in the smuggling of 11, M.A. in the smuggling of 2, A.B. in the smuggling of 3 and T.Y. in the smuggling of 2.

[152] From a naturalistic point of view, in relation to two defendants it is possible to establish only one criminal resolution: for A.G. on 17 (complemented on 22) of August 2012, related to one individual, and to I.P. also one criminal resolution, on 9 November 2012, related to three individuals.

considered as an offence perpetrated against personality[153] for the purposes of Article 81, par. 2, C.C.R.K.

Other aspect worth mention is the element "acting as a member of a group" (contained in Article 138, par. 6, P.C.C.K. or in Article 170, par. 6, C.C.R.K.), as in the provisional code there was no definition of "group" in any Article[154], including Article 107 P.C.C.K. related to definitions, whereas "group" is nowadays defined in Article 120, par. 12, C.C.R.K. "group of people – three (3) or more persons" and, therefore, the concept was to some extent vulnerable to interpretation, despite it appears to be quite logic to consider that even under the provisional code a "group" had to be more than simply "a pair" – a "pair" is 2 of a kind, by definition.

The element "illegal entrance"

One of the elements constituent of the criminal offence, in both versions (despite some differences in the wording, as already mentioned, namely in relation to the words "in order to" and "intent"), is the "illegal entry", as Article 138, pars. 7.1 and 2, P.C.C.K. and Article 170, par. 8.1 and 8.2 C.C.R.K. define "smuggling of migrants" and "illegal entry" as "smuggling of migrants means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into Kosovo, where such person is not a resident of Kosovo, or into a State of which such person is not a national or a permanent resident" and "illegal entry" means crossing a border or a boundary of Kosovo without complying with the necessary requirements for legal entry into Kosovo or crossing the borders of a State without complying with the necessary requirements for legal entry into such State".

Briefly put, "smuggling of migrants" is the procurement with the intent (it is not needed that in the end the perpetrator really obtains it) of obtaining (directly or indirectly) a financial or other material benefit from the illegal entry of a person in Kosovo or crossing the borders of other State (without complying with the requirements for legal entry).

The time frame covered by the counts ranges from 25 June 2011 until 2 December 2012 (4 December, in the case of count 8), and accordingly it is important to know what were the relevant legal provisions in force at the time governing the entry, movement (and "movement" is relevant for persons who enter Kosovo as a transit country, meaning that it is not the final destination of the person, as the law also sets requirements for the persons who are in Kosovo in transit for other countries) and stay of foreigners in Republic of Kosovo or crossing the borders

[153] Regardless one can say that the personality of someone vulnerable is always harmed when seen as the object of a criminal offence.

[154] Only of "terrorist group", in Article 109, par. 5, "a structured group of more than two persons, established over a period of time and acting in concert to commit terrorism" and in Article 274, par. 4, on organized crime, defining the term "structured group", "The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure".

of other State, so it can be assessed whether the entries / border crossings of the migrants were illegal.

The Law on Foreigners (in any version), in its Article 1 states its scope, "by this law is regulated the entry, movement and stay of foreigners in Republic of Kosovo".

In 2008 it was promulgated the Law No. 03/L-126, dated 16 December 2008, it was published in the Official Gazette on 10/08/2009 and pursuant its Article 98 the law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo: the Law entered into force on 25/08/2009. Accordingly this is the Law setting the requirements for the migrants arriving between 25/06/2011 and 26/01/2012.

In 2011 it was promulgated the Law No. 04/L-069, dated 21 December 2011, it was published in the Official Gazette on 12/01/2012 and pursuant its Article 99 the law shall enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo: the Law entered into force on 27/01/2012. Accordingly this is the Law setting the requirements for the migrants arriving between 27/01/2012 and 04/12/2012[155].

The most relevant provisions encompassed in the 2008 Law No. 03/L-126, comprise Articles 2 (namely on foreigners, as those who are not nationals of the Republic of Kosovo – and the names in the indictment are of foreigners…), Articles 7 and 25 on the duties of the transport carriers (1. Transport carriers shall only carry a foreigner to a border crossing point if he/she fulfils the conditions for entry in Article 4 of this Law) – and this is why transit countries are important, as a migrant can be entitled to enter a transit country as Kosovo, but not the final destination, why migrants are not flying directly for the real destination, because they do not meet the legal requirements applicable there, namely a Visa… –, Article 26 on entrance in Kosovo (1. A foreigner has entered the Republic of Kosovo when he/she has crossed the state border), and a few others.

From all these Articles, some will be addressed: Article 29 (on prohibition of entry) states that the "Entry to the Republic of Kosovo shall not be permitted to a foreigner if he/she: 1.1 does not fulfil the conditions in Article 4 of this Law; 1.2 does not possess sufficient means for living during his/her stay in the Republic of Kosovo and for travel to another country willing to admit him/her; 1.3.is in transit and does not fulfil the conditions for entry to a third country" and this Article explains the importance of the so-called "guarantee letters" and "invitation letters", as someone may be exempted from Visa to enter the Republic of Kosovo[156] and still may not be

[155] In the meantime a new Law was promulgated, Law No. 04/L- 219, dated 31 July 2013, it was published in the Official Gazette on 05/09/2013 and according to its Article 138 is in force since 24/09/2013.

[156] Turkish citizens, in contrast to Syria citizens, do not need Visa to enter Kosovo for a period up to 90 days (see website of the Ministry of Foreign Affairs of Kosovo, http://www.mfa-ks.net/?page=2,157). Also the Turkish citizens do not need a Visa to travel to many countries, including the following neighbouring countries of Kosovo: Albania (for 90 days), Bosnia and Herzegovina (90 days), Macedonia (60 days), Montenegro (90 days) and Serbia (60 days) – see https://en.wikipedia.org/wiki/Visa_requirements_for_Turkish_citizens. No need

permitted to enter the country for not possessing sufficient means, or be exempted from Visa to enter the country if it is the final destination but may not be permitted to enter the country if in transit, for not fulfilling the conditions to enter the destination country, namely, a Visa for that country.

Another very important Article is Article 30, as it explains why an apparently legal entrance becomes illegal, namely if read together with what was just said about Article 29. Indeed, Article 30 stipulates as follows, "Illegal Border Crossing, 1. An illegal crossing of the state border occurs when a foreigner: 1.1. attempts to cross the state border away from a state border crossing point or at a state border crossing point while it is closed; 1.2. avoids or attempts to avoid border control; 1.3. uses an invalid travel document, the travel document of another person, or any other invalid document during the border crossing; **1.4. provides false data to the authorized officials for control of the state border crossing to facilitate his/her illegal entry [emphasis added]**; 1.5. enters the Republic of Kosovo while a ban of re-entry is in force against him/her".

According to Article 30 par. 1.4., any entry based on a false statement or data is enough to render it illegal[157]. This is the case that happens if someone allegedly travelling to Kosovo as a final destination, regardless needing a Visa or not, provides false information about means, employment, invitation, or any other data alike; the same happens, *a fortiori*, when the person claims to come to Kosovo as final destination when in fact is using it simply as a transit point, nothing more than a place along the journey towards a country where a Visa would be required to enter legally, namely Schengen Area Countries[158]. In both cases mentioned, the entrances in the country are illegal, which suffices for the concept of smuggling of migrants, "(…) from the illegal entry of a person (…)".

The corner stone is therefore that the person who engages is aware of the falsity of the situation, is aware of the plan of entering Kosovo using false data (which includes the examples above given), and this is also the reason why migrants are willing to pay, it is because, in the first place, they need help (or believe to need help, or believe that what they will get is helpful) in knowing what is able to create an illusion, a misrepresentation of the reality (for example, what to say to the officials, "travelling as a tourist", "travelling as invited", "travelling as a worker with a guarantee letter or with an alleged contract", etc,), what to say and not to say; they pay

[157] In relation to Article 7 (adherence to law, it is important if the person is using Kosovo in transit, despite not stating this and thus providing false statements, because to travellers in transit other requirements apply, namely Articles 15, 16, 18 about transit visas (3. A foreigner may stay in the Republic of Kosovo for no longer than five days on the basis of a Transit Visa. 4. A Transit Visa may only be issued to a foreigner who can establish that he/she will be permitted entry to his/her destination state) for those who are in transit, as for those who have Kosovo as destination either they are exempted of Visa or should have an Entry Visa, in accordance with Article 17, 19 on Air-Transit Visa (1. A foreigner shall not be required to obtain an Air-Transit Visa if they do not leave the air transit area while in the Republic of Kosovo).

[158] Since 12 December 2008 includes all the EU countries except the United Kingdom, Croatia, Romania, Bulgaria and Cyprus (despite all of them being now EU members have not joined the Schengen Area yet) and Norway, Iceland and Switzerland – see https://en.wikipedia.org/wiki/Schengen_Area.

also for the information and organization of the onward trip to the final destination, the leg of the journey starting in Kosovo (where to stay, when to travel and how, including means of transport and itinerary; sometimes even lodging and the onward travelling, including transporters, is arranged).

These difficulties faced by anyone migrating, willing to enter a country illegally, concretize the vulnerability that we spoke about earlier. On the other hand, from the perpetrator's point of view, that vulnerability and "need of help" create the situation for the commission of the criminal offence: despite not being any tourism agent or tourist agency worker, not working for any entity lawfully providing assistance to travellers, and with the intent of obtaining a material benefit from the illegal entry of someone in Kosovo (or / and other State) procure ("procure" being a synonym of "anyhow takes part", covering any act of participation), engage, carry on any action suitable to enable that migrant's purpose: to migrate illegally even if being smuggled – as said before, this criminal offence requires the consent of the object, of the "victim".

This explains why some arguments[159] used by the defendants to rebut the allegation of smuggling do not stand, for example:

a) The existence of a family relationship (any kind of relatedness) between the perpetrator and the migrant: this situation does not constitute an exception to the requirements for the legal entry, to the Law on Foreigners; this fact might be relevant, for instance, and if established, as a mitigating circumstance, no more than that.

b) Not being the official who allowed the entrance: this has got nothing to do with the object of the incrimination enshrined in the criminal offence of smuggling of migrants, as the border official can only be in two situations: either is aware or not that the entry of that person is illegal. If there is awareness the official is then a co-perpetrator, at least an accomplice; if there is no awareness the official is not liable (as long as the duties have been dully discharged, namely by checking the requirements upon arrival, upon entry) and this is the reason why providing false data, information, to the border official makes the entry, *de per se*, illegal, as explained.

c) If a citizen needs no Visa to enter a country cannot be smuggled: this is wrong because being holder of a Visa is not the only requirement set in the Law on Foreigners, as explained. It is not being a citizen of a country to which the requirement of a Visa does not apply that exempts the person of complying with the other existing legal requirements, which includes to provide only true information, be it if the country is a transit country or a final destination and if it is final the information related to the applicable requirements as to the means to survive, purpose of travel, etc.

[159] As said in the reasoning of the facts, in reference to the jurisprudence of the European Court of Human Rights, the court does not have to address every single argument raised in the proceedings; however, and as the defendants insist on this kind of arguments (which is consistent with the total absence of repent or remorse displayed by them) then the court will address them.

d) Just to take part in something that isolated would not be a criminal offence, such as picking someone at the airport or making a online reservation or sending, forwarding an electronic ticket (or its scan), a taxi driver driving a taxi and passengers: despite some facts and claims are self-explanatory (including to what extent it is needed the court rebuts them) again it is obvious that the awareness, the intention and the context are the key factors to establish the difference; if such acts take place as part of the execution of a criminal offence of smuggling migrants then, as long as the other requirements are met, they fall in the category of (somehow) engaging in smuggling: it is procurement, it is "any action" as set in the law.

Again, what really matters is the willingness of defrauding the law, and that willingness is assessed from the facts, but it is ultimately a matter of on what the court believes, it is a matter of conviction – as long as the court can, of course, reason it. To create an appearance of a lawful reality and a lawful reality are obviously two different things…

Finally, Article 32 (on) departure from the Republic of Kosovo, states that it shall not be permitted if a foreigner: "2.1 presents an invalid travel document, the travel document of another person, or any other invalid document; 2.2 does not fulfil the conditions for entry into another state" – and this is the reason why it is important to make clear at the border (upon arrival in the first place) if Kosovo is the final destination or a transit country (because in the case of an airport transit passengers will not go through the borders if going to a connecting flight or if go through the border then if it is declared that it is an entrance as a transit country the requirements to the final destination must be met) and those who enter the border have to stay in the country, unless they meet the requirements to exit (for instance, a Turkish citizen cannot leave Kosovo if travelling to a country where a Visa is required).

Many other Articles on temporary stay, permanent stay and on illegal stay might be mentioned, but for the now envisaged purpose are not necessary.

After having gone through the Law No. 03/L-126, dated 16 December 2008 (setting the requirements for the migrants arriving between 25/06/2011 and 26/01/2012), it is important to say that the Law No. 04/L-069, dated 21 December 2011 (setting the requirements for the migrants arriving between 27/01/2012 and 04/12/2012), that in Article 97 repealed the Law 03/L-126, and it did not change any of the aspects mentioned in relation to its predecessor, only the number of the Articles and paragraphs have, in some cases, been altered, for instance, on providing false data or information rendering the entrance illegal: Article 30, par. 1.4 of the Law No. 03/L-126 became Article 32, par. 1.5 of the Law No. 04/L-069.

The nature of an invitation or guarantee letter

Finally, it is time to focus on what may be considered, or not, as a "fraudulent travel or identity document", namely because of the guarantee or invitation letters discussed in the proceedings, keeping in mind, however, that the criminal offence is committed by whoever engages or procures, commits any action, in smuggling of migrants.

The most relevant provisions encompassed in the 2008 Law No. 03/L-126, are Articles concerning what may be considered as "travel document" are: 3, 4, 5 (specially par. 1), 10 (on foreign travel documents – mentioning different types of passports) and 15 (on visas and travel document). The substance of these Articles has not been changed by the subsequent law(s) that repealed it.

The definitions of "fraudulent travel or identity document" in the Provisional Criminal Code of Kosovo (P.C.C.K.) and in the Criminal Code of the Republic of Kosovo (C.C.R.K.) focus on the concept of "fraudulent", not on what is a "travel document" (much less "identity document"), but give a hint when mentioning "made or altered (…) by any person other than a person or agency lawfully authorised (…)", whereas guarantee or invitation letters can be made by any person (although there are requirements, such as having it verified at the Notary or at the Court).

Guarantee or invitation letters are not a "travel document", rather, they are a document[160] but not a requirement to entry the country, it aims at convincing the border officials of the veracity of (in this case, false) statements, aims at facilitating the process of deceiving the officers, to make easier to convince them that the statements presented upon passport control (on destination, motive, dates, means, etc.) correspond to the truth, namely that "are coming to work", "are coming to visit someone".

Therefore, in this regards, the Court does not accept the stance of the Prosecution, that guarantee or invitation letters whose contents is false for not corresponding to the truth substantiate a "travel document".

It might then be argued that issuing a (false) guarantee or invitation letter that does not correspond to a true fact is a different criminal offence, as the court might re-qualify it (as per Article 360, par. 2, C.P.C.K., "the court shall not be bound by the motions of the state prosecutor regarding the legal classification of the act") to the criminal offence of legalization of false content – pursuant to Article 334, of the P.C.C.K. or Article 403 C.C.R.K.

However, the act of producing a "false document" (drawing a guarantee letter whose contents is false for not corresponding to the truth, false because it is false, because its contents simply is false – which in the Kosovo Criminal System corresponds to the criminal offence of legalization of false content) for the said purpose falls in the category of engaging in smuggling of migrants, as it is an act of procurement and it is an action with a specific intent, the criminal offence that provides better protection to the juridical value is indeed the smuggling of migrants as per par.1 in both versions of the criminal code, and both defendants to whom this modality concerns are accused by paragraphs 1, 2 and 3 and therefore it is not needed to re-qualify it.

[160] And as per the definition of document introduced in the meantime in the criminal code of Kosovo (Article 120, par. 8, C.C.K.), "document – any paper or other object suitable or designed to serve as evidence of some fact relevant to legal relations".

For the sake of clarity the court has been addressing different issues, one by one. Before concluding the analysis of this criminal offence, and apply it to the established facts, there is one more legal institute that has to be addressed, the co-perpetration in criminal offences (regardless some remarks have already been made at the proper place).

Co-perpetration

Articles 23 of the P.C.C.K or 31 of the C.C.R.K., on co-perpetration, state that "*when two or more persons jointly commit a criminal offense by participating in the commission of a criminal offense or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offense*".

Co-perpetration is a very complex concept, subject to different doctrinal approaches; the one encompassed in Article 31 C.C.K. is very broad[161]. In the most obvious and clear form of co-perpetration, there must be a previous and true agreement, whereas on the other forms this "agreement" can be only **implied [emphasis added]**[162], but, in both cases, the "participating" or "substantially contributing" still has to lead to an objectively joint contribution to the commission of the same criminal offence[163]; it is required therefore that in the light of the facts it is possible to come to the conclusion that the individuals wanted to execute **the same** criminal offence, that a **given result** might be achieved as a consequence of their act/omission, but it is not necessary that all the co-perpetrators take part in all acts of execution.

Consequently, there is no need for an express agreement, as a **conscious collaboration** in the activity of other(s)[164] in order to fulfil, or complete, the criminal offence will suffice to the co-perpetration. There is co-perpetration, despite the fact there was no express agreement, when the circumstances in which the individual acted or omitted to act indicates that there was an

[161] In the same way, see point 1 of the Commentary to Article 31 C.C.R.K. About "objective and subjective connection", points 6 and 7 ["6.*Objective connection is that each collaborator should undertake an action in which contributes to commission of criminal offense. All actions that are taken by the collaborators regardless whether they undertake at the same time and in the same place, should be related among them and directed in order to be achieved the same result, in order to be caused the specified consequence. With other words, the consequence of criminal offense should be the joint result of actions of all collaborators. 7 Subjective connection is that all collaborators should be aware that in commission of specified criminal offense will take part, will act together in different ways* (…)].

[162] See point 18A, *in fine*, of the Commentary to Article 31 C.C.R.K, "*based on this it results that the co-perpetration can be expressed even in cases when there was no previous agreement but at the meantime during the commission has been expressed. Regarding the existence of co-perpetration either the lawmaker does not foresees the agreement as necessary condition*".

[163] See points 15 and 16 of the Commentary to Article 31 C.C.R.K., "*(...) together commit their joint offense, in which each of them gives an important contribution without which the criminal offense would not be achieved or would not be completed (...).Everybody's contribution is an important part of achievement of criminal plan. One's contribution is fulfilled with the other's contribution and all of them are liable for the whole committed criminal offense*".

[164] See point 19 of the Commentary to Article 31 C.C.R.K. about the concept of "necessary co-perpetration".

implied agreement. **This implied agreement is based on the existence of a conscious willingness to collaborate, assessed in the light of common experience [emphasis added].**

So, if in some of the events the agreement was explicit, made and arranged in advance, in other events if not explicit it was at least implicit, by joining the execution at a given stage.

This is a case of "successive co-perpetration". Successive co-perpetration exists in cases where another person joins a person who is committing the criminal offense and, by his or her acts, participates in committing that criminal offence[165], but acts can also be omissions, "*Co-perpetration at criminal offenses by omission of action is shown in cases when two or more persons together are obliged to undertake an action but they do not undertake it*"[166]. It is also the case when acts are comprised by actions and omissions, and omissions can be, in the case of border officials, not fulfilling their duties.

Finally, co-perpetration is one of the elements in criminal law and it does not require or imply that all other relevant elements in the commission of a criminal offence are *ipso facto* applicable to all co-perpetrators, this to say that not necessarily implies that all relevant elements and circumstances that may be found in the case of one co-perpetrator are extended or applicable to all co-perpetrators (modalities of commission of criminal offence, mitigating and aggravating circumstances, etc.); the corner stone is always the level of awareness, of intent, and the individual liability – see, for instance, in this regards, Article 27 P.C.C.K (or Article 36 C.C.R.K.) on "Limits on Criminal Liability and Punishment for Collaboration: (1) A co-perpetrator is criminally liable within the limits of his or her intent or negligence, while a person who incites or assists in the commission of a criminal offence shall be held criminally liable within the limits of his or her intent".

The facts and the criminal offence

Bearing in mind the facts and all that the court has already said before it is now the moment to qualify (in juridical terms) the acts of the defendants.

All the defendants have committed the criminal offence of smuggling of migrants, though in different ways.

The defendant A.Ç has committed it in the aggravated form, as he was acting not only as a member of a group, in co-perpetration, but also organising and directing others in the activity of smuggling migrants, pursuant to Article 138 paragraphs 1, 5, 6 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2 C.C.R.K.).

[165] See point 22 a) of the Commentary to Article 31 C.C.R.K.
[166] See point 22 c) of the Commentary to Article 31 C.C.R.K.

The defendants M.B., A.M., M.A., A.B. have also committed the said criminal offence with the aggravating circumstance of acting as member of a group, pursuant to Article 138 paragraphs 1, 6 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1, 6 and 8.1 and 8.2 C.C.R.K.).

The defendants I.P., T.Y. and A.G. have engaged in smuggling of migrants and have committed the simple, bear criminal offence, pursuant to Article 138 paragraphs 1 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 and 8.1 and 8.2 C.C.R.K.).

All the defendants, except A.G. (who acted with eventual intent[167], as per 15, par. 3, Article P.C.C.K. or Article 21, par. 3, C.C.R.K.), acted with direct intent (as per 15, par. 2, Article P.C.C.K. or Article 21, par. 2, C.C.R.K.) and they knew their acts were forbidden and punishable by law.

All the defendants acted in co-perpetration in the sense explained earlier (as per 23 P.C.C.K. or Article 31 C.C.R.K.).

The defendants A.Ç, M.B., A.M., M.A., A.B.[168] and T.Y. have committed concurrent criminal offences of smuggling of migrants (in the particular way described above for each of them), as they acted more than once fulfilling all the elements that are constituent of the criminal offence (pursuant to Article 71 P.C.C.K. or Article 80 – and Article 81 in relation to the continuation – C.C.R.K.). The very different number of times they committed the criminal offence will be taken into account when sentencing, when other facts will be considered as well.

Considering what was said earlier, the court decides that the requirements of the criminal offence in continuation (in the exact terms already explained, pursuant to Article 81 C.C.R.K.) are met and that is the most adequate form of addressing their criminal liability (except for I.P. and A. A.G., as each of these only participated in single events), even in terms of punishment when it is more favourable (which will apply in most of the situations, except in one – when acting as a member of a group, pursuant Article 138, par. 6, P.C.C.K. –, when establishing the punishment for those whose the code in force at the time is more favourable, pursuant to Article 138, par. 6, P.C.C.K. – but this will be addressed in sentencing).

[167] The eventual intent, not direct, is the consequence of the wording used to describe his intent in the established facts.

[168] As already said more than once, on the *criteria* just explained and on the dates explained in the reasoning of the established facts that will follow, the events related to M.B. were on 22/10/2012 (1 migrant), 29/11/2012 (1 migrant), 8/11/2012 (2 migrants), 11/11/2012 (1 migrant), 16/11/2012 (5 migrants) and 24/11/2012 (1 migrant); in relation to A.M. were on 25/9/2012 (2 migrants), 25/9/2012 (3 migrants), 17/10/2012 (1 migrant), 23/10/2012 (1 migrant), 23/10/2012 (1 migrant), 27/10/2012 (1 migrant) and on 8/11/2012 (2 migrants); in relation to M.A. were on 24/11/2012 (1 migrant) and on 29/11/2012 (1 migrants) and in relation to A.B. were on 24/10/2012 (1 migrant), 13/11/2012 (1 migrant) and on 25/11/2012 (1 migrant).

Before sentencing, one last note is needed in relation to the punishment of criminal offences in concurrency or, when possible, in continuation.

The court is aware of the jurisprudence that follows the understanding that in case of concurrency of criminal offences only one punishment, as a whole or already as aggregated punishment, is applied – without determining first the punishment for each criminal offence or for each occasion in which the same kind of criminal offence was committed. However, taking into account the criminal law doctrine pertaining how to determine the number of criminal offences, how the punishment of concurrent criminal offences is to be determined and the text of the law with regards the punishment of concurrent criminal offences, the court finds that it is extremely difficult, not to say impossible, to justify the said understanding or jurisprudence, bearing in mind the literal contents of Article 71 P.C.C.K. (or Article 80 C.C.R.K.) and the already mentioned criterion of interpreting the law, that it must have correspondence with the text of the law.

Indeed, determining the number of times a particular criminal offence was committed is essential in order the court can then pronounce the punishment for each of them, in the same way it is essential to pronounce the punishment for each of the different types of criminal offences that eventually were committed, this before determining the aggregate punishment to be imposed.

Otherwise, the court sees no way of abiding by the law, namely the provisions explicitly set in Article 71 P.C.C.K. (or Article 80 C.C.R.K.) on "Punishment of Concurrent Criminal Offences", namely par. 1, "(1) if a perpetrator, by one or more acts, commits several criminal offences for which he or she is tried at the same time, the court shall first pronounce the punishment for each act and then impose an aggregate punishment for all of these acts" and then, in accordance with par. 2, "(2) The court shall impose an aggregate punishment in accordance with these rules (…)" [emphasis added].

Despite no need to say it, when the law reads "by one or more acts, commits several criminal offences" there is no distinction as to the several criminal offences are of the same kind (homogeneous concurrency) or of different kinds (heterogeneous concurrency).

This understanding is not hampered or limited by the way the charges or counts are described or classified in the indictment with regards to the legal classification of the acts; indeed, Article 360 C.P.C.K is clear, as in par. 1 it reads: "the judgment may relate only to the accused and only to an act which is the subject of a charge (…)" and in par. 2 it says "the court shall not be bound by the motions of the state prosecutor regarding the legal classification of the act" [emphasis added]. Nevertheless, the indictment, in each count, only mentions the name of the criminal offence (for example, "smuggling of migrants") and form of perpetration (co-perpetration), does not contain a legal classification of the acts in terms of number of times the criminal offence was committed or if it was in continuation (given that there are references there to the different moments in time, by "months" for instance).

Having said this, and with all respect for different understanding, the court will follow its understanding of the law, better said, the court will follow what the law says in Article 71 P.C.C.K. (or Article 80 C.C.R.K.), read together with Article 360 C.P.C.K., and in case of concurrency of criminal offences (of the same or of different kind) "shall first pronounce the punishment for each act and then impose an aggregate punishment for all of these acts" – in accordance with the applicable rule, namely par. 2.2 of the said Articles. In the case of criminal offences to which the new code is more favourable, if the requirements are met, then the court will apply Article 81, "punishment of criminal offences in continuation" (where the court pronounces a unique punishment, in contrast to the cases of sheer concurrency of criminal offences, as explained).

Sentencing

We start this part with two assertions already made along this judgment: as per Article 2, par. 2, P.C.C.K. (Article 3, par. 2, C.C.R.K.), "in the event of a change in the law applicable to a given case prior to a final decision, the law most favourable to the perpetrator shall apply" and this can be due to a more lenient sanction; the other is that depending on other legal circumstances, rather than the limits of the sanction itself, the set of rules as a whole regarding sanctioning can be more favourable in one code that in the other, which is for instance the case of the rules on suspending a sanction or in determining the punishment for concurrent criminal offences, *tout court*, or even as criminal offences in continuation, but each situation is different and therefore the different positions in which the defendants are must be assessed separately.

We will now address one defendant at the time and for each defendant all the relevant facts (though not needed to repeat them all this point, as they are laid down in this judgment, in **"C"**) will be addressed with short references, to allow the understanding of the punishments pronounced in accordance with the applicable rules or *criteria*.

According to Article 34 P.C.C.K., "the purposes of punishment are: 1) To prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; and 2) to deter other persons from committing criminal offences", which corresponds in essence to Article 41 C.C.RK., "the purposes of punishment are: 1.1 to prevent the perpetrator from committing criminal offenses in the future and to rehabilitate the perpetrator; 1.2. to prevent other persons from committing criminal offenses; 1.3. to provide compensation to victims or the community for losses or damages caused by the criminal conduct; and 1.4. to express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law".

Also in both codes the criteria to determine the punishments are basically the same: in Article 64 P.C.C.K. (pars. 1 and 3[169]) on "General Rules on Calculating Punishments" reads "(1) The court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment (mitigating and aggravating circumstances) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender. (3) When determining the punishment of a fine, the court shall consider the material situation of the perpetrator, and, in particular, the amount of his or her personal income, other income, assets and obligations. The court shall not set the level of a fine above the means of the perpetrator". The current Article Article 73, pars. 1 to 3, C.C.RK., reads"(1).when determining the punishment of a criminal offense, the court must look to any minimum and maximum penalty applicable to the criminal offense. The court must then consider the purposes of punishment, the principles set out in this chapter and the mitigating or aggravating factors relating to the specific offense or punishment. (2). The punishment shall be proportionate to the gravity of the offense and the conduct and circumstances of the offender. (3). When determining the punishment the court shall consider but not be limited by following factors: 3.1. the degree of criminal liability; 3.2. the motives for committing the act; 3.3. the intensity of danger or injury to the protected value; 3.4. the circumstances in which the act was committed; 3.5. the past conduct of the perpetrator; 3.6. the entering of a guilty plea; and 3.7. the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offense".

These are the factors the court will take into account, to the possible extent, but it will be taken into account, also, that except the defendant A.G. to some extent, the other defendants never accepted their guilt and never showed any kind of remorse or repent until the very end of the trial.

Despite the court has already made several references to the most favourable law, it is now time to finally establish what is the one in each case, for each defendant, pursuant the established facts, the way(s) the criminal offence(s) was (were) committed and the punishments foreseen in the different codes for the different situations, in the sense explained above and in accordance with Article 2, pars. 1 and 2 P.C.C.K [(1) the law in effect at the time a criminal

[169] The court will consider the previous criminal records of the defendants in the sense they can be used to show that a higher punishment becomes necessary for not being the first time the individual is not abiding by the law, by the formal system of control which is constituted by the criminal law, but the court will not consider any of the criminal records for the purpose of recidivism as the *criteria* are not met, neither pursuant Article 70 P.C.C.K. nor pursuant to Article 79 C.C.R.K (namely in the case of the defendant I.P.). Therefore, above the reference to par. 2 was not made.

offence was committed shall be applied to the perpetrator. (2) In the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply.)] and 3.2 C.C.R.K. [in the event of a change in the law applicable to a given case prior to a final decision, the law most favourable to the perpetrator shall apply], norms that encompass the said principle of the most favourable law, and considering what was decided earlier about the way the defendants committed the criminal offence, then the court decides now that the most favourable code for each defendant is as follows:

- A.Ç: The defendant A.Ç has committed the criminal offence of smuggling of migrants in the aggravated form, as he was acting not only as a member of a group, in co-perpetration, but also organising and directing others in the activity of smuggling migrants (aggravating circumstance of paragraph 5 both in Article 138 P.C.C.K or 170 C.C.R.K, "organising or directing others"), pursuant to Article 138 paragraphs 1, 5, 6 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2 C.C.R.K.).

Considering that the maximum and minimum of imprisonment (7 to 20 years) together with a fine up to the same amount (500.000 Euros) are the same, which *a priori* would lead to the applicability of the code in force at the time, on the other hand we see that in the new code the punishment in accordance with the rules of punishment of a criminal offence in continuation set in Article 81 C.C.R.K. are more favourable than simply punishing the defendant in accordance with the rules for punishing concurrent criminal offences, in which a sanction for each individual criminal offence must be determined in the first place (Article 71, par. 1, and par. 2.2 "if the court has pronounced a punishment of imprisonment for each criminal offence, the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of twenty years", P.C.C.K.).

Therefore, for A.Ç the new code is more favourable[170], Art. 3, par. 2, C.C.R.K., and will be punished in accordance with Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2, C.C.R.K, read together with Article 31, 41, 45, 46, 62, 71, 72, 73 and 81 C.C.R.K..

- The defendants M.B., A.M., M.A., A.B. have also committed the said criminal offence (in concurrency, in the sense explained earlier, as they committed it more than once) with the aggravating circumstance of acting as member of a group, pursuant to Article 138 paragraphs 1, 6 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1, 6 and 8.1 and 8.2 C.C.R.K.). In this case some elaboration more is required, even because in the previous law (Article 138, par. 6, P.C.C.K.) there was obviously a mistake, given that in the case of this aggravating circumstance the punishment was more lenient (2 to 10 years of imprisonment) than

[170] The maximum of the fine is the same, but the minimum in the Provisional Code was lesser than in the New Code (50 Euros, not 100 Euros, in accordance with Articles 39, par. 1, and 46, par. 1, respectively) but this does not change the decision in relation to the most favourable law because it is not a case in which the fine might be under 100 Euros and because the advantage of punishing in continuation clearly overcomes any doubt.

for the bear criminal offence of paragraph 1 (2 to 12 years of imprisonment). Apart from this, the new paragraph 6 of Article 170 sets the minimum of imprisonment in 5 years, without explicitly stating that the maximum is 10 years. Also, before there was no fine foreseen and now there is one. In this case, despite the benefits offered by the punishment in continuation, the court is of the opinion that the old code is more favourable, because the maximum is the same (10 years of imprisonment – because regardless there was a mistake in the Provisional Criminal Code, as explained above, the court is bound by the law), but the minimum at the time was less, 2 years of imprisonment, instead of 5 years, and at the time there was no fine foreseen.

M.B., A.M., M.A. and A.B. have committed concurrent criminal offences of smuggling of migrants (in the particular way described above for each of them), as they acted more than once fulfilling all the elements that are constituent of the criminal offence (pursuant to Article 71 P.C.C.K. or Article 80 – and Article 81 in relation to the continuation – C.C.R.K.). The very different number of times they committed the criminal offence will be taken into account when sentencing, when other facts will be considered as well. An aggregate punishment will be determined.

Therefore, these defendants will be punished in accordance with the rules of the old code, and 138, paragraphs 1, 6 and 7, P.C.C.K, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K.

- The defendants I.P., T.Y. and A.G. have engaged in smuggling of migrants and have committed the simple, bear criminal offence, pursuant to Article 138 paragraphs 1 and 7.1 and 7.2 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 and 8.1 and 8.2 C.C.R.K.). For these defendants, the new law is more favourable, not only because the maximum limit is now lower (10 years, instead of 12), but also because in the event the panel decides to suspend the sentence of a defendant the new law does not forbid it, because the current maximum is still comprised in the threshold (imprisonment of up to 10 years) set either by Article 44, par. 2, P.C.C.K. or by Article 52, par. 2, C.C.R.K. As T.Y. committed the criminal offence twice, he can be punished for the criminal offence in continuation, in accordance with Article 81 C.C.R.K..

Accordingly, these defendants will be punished pursuant Article 170, paragraphs 1 and 8.1 and 8.2 C.C.R.K., read together with Articles 3, 31, 41, 45, 46, 62, 71, 73 and 81 (the last applicable to T.Y.) C.C.R.K.

The pronouncement of punishments for the criminal offences committed as just explained:

Considering that:

- All the defendants, except A.G. (who acted with eventual intent[171], as per 15, par. 3, Article P.C.C.K. or Article 21, par. 3, C.C.R.K.), acted with direct intent (as per 15, par. 2, Article P.C.C.K. or Article 21, par. 2, C.C.R.K.) and they knew their acts were forbidden and punishable by law.

- All the defendants acted in co-perpetration in the sense explained earlier (as per 23 P.C.C.K. or Article 31 C.C.R.K.).

- The smuggling of migrants in the Balkans is in a substantial number and a grave problem[172].

- And considering all the other facts established above the punishments are as follows:

A.Ç (Count 5): The criminal offence is punishable by fine of 100 Euros up to 500.000 Euros and imprisonment of 7 to 20 years.

It is being taken into consideration a very high level of engagement, a very high number of smuggled individuals (79), a very intense and direct intent over a considerable period of time as shown in the facts, all this to justify that there are no arguments to determine his punishment in the minimum foreseen. This sentence is necessary considering his personality as shown by the facts (namely organizational skills), to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of smuggling of migrants in the aggravated form, of acting not only as a member of a group but also organising and directing others in the activity of smuggling migrants, in co-perpetration and in continuation, in accordance with Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 62, 71, 72, 73 and 81 C.C.R.K., is convicted to 7 years and 3 months of imprisonment and to pay a fine of 1000 Euros.

M.B. (Count 5): The criminal offence is punishable with imprisonment of 2 to 10 years.

It is being taken into consideration a high level of engagement, a considerable number of smuggled individuals (11), the repetition of the criminal offence over time (6 concurrent criminal offences of smuggling of migrants) an intense and direct intent, the engagement at the family level, the references to his own migrants which also show organizational skills, all this to justify that for each of the criminal offences the court sees no arguments to determine his punishment in the minimum foreseen. Therefore, the court pronounces the punishment of 2 years and 3 months of imprisonment for each concurrent criminal offence. Following the rules on determining an

[171] The eventual intent, not direct, is the consequence of the wording used to describe his intent in the established facts.

[172] It is a notorious fact.

aggregate punishment, the minimum is 2 years and 3 months and the maximum is 13 years and 6 months and the court decides to apply him the aggregated punishment of 5 years and 3 months of imprisonment.

This sentence is necessary considering his personality as shown by the facts (namely organizational skills and engagement even with family members), to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 6 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years and 3 months of imprisonment.

A.M.: (Count 5): The criminal offence is punishable with imprisonment of 2 to 10 years.

It is being taken into consideration a high level of engagement, a considerable number of smuggled individuals (11), the repetition of the criminal offence over time (7 concurrent criminal offences of smuggling of migrants, despite 2 of them were in the same day) a direct intent but a bit less intense than M.B., the engagement mostly at the level of the guarantee letters with false content and picking up migrants at the airport (when it comes to picking up migrants at the airport, the same applies to M.B.) and onward trips, all this to justify that for each of the criminal offences the court sees no arguments to determine his punishment in the minimum foreseen. Therefore, the court pronounces the punishment of 2 years and 3 months of imprisonment for each concurrent criminal offence. Following the rules on determining an aggregate punishment, the minimum is 2 years and 3 months and the maximum is 15 years and 9 months and the court decides to apply him the aggregated punishment of 5 years of imprisonment (as, for the said reasons, in spite of the fact that he has one more criminal offence than the previous, the general assessment as explained leads to the need of a lower punishment).

This sentence is necessary considering his personality as shown by the facts, to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 7 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years of imprisonment.

A.B. (Count 5): The criminal offence is punishable with imprisonment of 2 to 10 years.

It is being taken into consideration a high level of engagement, the number of smuggled individuals (3), the repetition of the criminal offence over time (3 concurrent criminal offences of smuggling of migrants), a very intense and direct intent in the operations namely in the urge of getting the names of the migrants from A.Ç to convey them to the corrupted police officer who at a given moment was with him, the know-how he showed about routes, borders, organising onward trips of the migrants, all this to justify that for each of the criminal offences the court sees no arguments to determine his punishment in the minimum foreseen. Therefore, the court pronounces the punishment of 2 years and 3 months of imprisonment for each concurrent criminal offence. Following the rules on determining an aggregate punishment, the minimum is 2 years and 3 months and the maximum is 6 years and 9 months and the court decides to apply him the aggregated punishment of 4 years of imprisonment.

This sentence is necessary considering his personality as shown by the facts, to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 3 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 4 years of imprisonment.

M.A. (Count 5): The criminal offence is punishable with imprisonment of 2 to 10 years.

It is being taken into consideration the level of engagement, the number of smuggled individuals (2), the repetition of the criminal offence (2 concurrent criminal offences of smuggling of migrants, 1 migrant each time), a very intense and direct intent in the operations he was arranging with A.Ç namely in relation to the arrangements with the corrupted police officer (in liaison also with "H.") who at a given moment would be working at the airport and the need of having the migrants smuggled on those particular occasions, all this to justify that for each of the criminal offences the court sees no arguments to determine his punishment in the minimum foreseen. Therefore, the court pronounces the punishment of 2 years and 3 months of imprisonment for each concurrent criminal offence. Following the rules on determining an aggregate punishment, the minimum is 2 years and 3 months and the maximum is 4 years and 6 months and the court decides to apply him the aggregated punishment of 3 years and 6 months of imprisonment.

This sentence is necessary considering his personality as shown by the facts, to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 2 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 3 years and 6 months of imprisonment.

I.P. (Count 5): The criminal offence is punishable by fine and imprisonment of 2 to 10 years.

It is being taken into consideration the level of engagement, the number of smuggled individuals in one occasion (3), a very intense and direct intent in the commission of the criminal offence as shown by the numerous conversations held on that occasion with A.Ç, about borders, itineraries, prices, etc., all this to justify that there are no arguments to determine his punishment in the minimum foreseen. In the case of this defendant it is worth pointing out that he has criminal record, as explained in the established facts, this to say that despite he was not considered a recidivist for the lack of necessary requirements, it is a case of an individual who has, more than once, violated the law, it is not the first time he is in contact with the criminal system. Out of the 9 children only 3 are under 18, he is now a farmer of his own land.

This sentence is necessary considering his personality as shown by the facts, to deter others from committing the criminal offence and also because he showed no regret (despite the fact that during the 18 months he was in detention on remand did have the opportunity to think about his acts), which increases the risk of committing it again and therefore a higher sanction to deter him from doing so is needed.

Having said this: For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 73 and C.C.R.K., is convicted to 2 years and 3 months of imprisonment and to pay a fine of 400 Euros.

A.G. (Count 6): The criminal offence is punishable by fine and imprisonment of 2 to 10 years.

It is being taken into consideration the low level of engagement, that he engaged only in the smuggling of one individual, the fact he was the only one who acted with eventual intent but also the only one who voluntarily stopped his engagement.

This also leads the court to decide that there are particular mitigating circumstances, in accordance with the rules set in Article 75, pars. 1 and 2.1, C.C.R.K., and therefore the court will apply a punishment below the limit set above.

The defendant continues to be a taxi driver and is of poor economic condition and he has 3 children, still young.

Having said this: For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 21, par. 3, 31, 41, 45, 46, 73 and 75 C.C.R.K., is convicted to 1 year of imprisonment and to pay a fine of 200 Euros.

T.Y. (Count 8): The criminal offence is punishable by fine and imprisonment of 2 to 10 years.

It is being taken into consideration the level of engagement, the number of smuggled individuals (2), 1 each of the 2 concurrent occasions, the direct intent in the commission of the criminal offences, and despite the fact it is not the first time he is in contact with the criminal system, it will not have an aggravating value here, as it was not possible to determine whether he was convicted before or after the facts in this case took place.

He works in a restaurant with the salary of 800 Euros and has 1 child. This sentence is necessary considering his personality as shown by the facts, to deter others from committing the criminal offence and also because he showed no regret, which increases the risk of committing it again and therefore a sanction to deter him from doing so is needed.

For the 2 concurrent criminal offences of engaging in smuggling of migrants, considered as 1 in continuation, pursuant Article 81 C.C.R.K., the court applies the punishment of imprisonment of 2 years and 400 Euros of fine.

Having said this: For the 2 criminal offences of engaging in the smuggling of migrants, in co-perpetration and in continuation, in the said form, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 73, and 81 C.C.R.K., is convicted to the punishment of 2 years of imprisonment and to pay a fine of 400 Euros.

Credit of the period of time spent in detention on remand

Pursuant to Article 73, par. 1, P.C.C.K. or Article 83, par. 1, C.C.R.K., the period of time spent in detention on remand will be credited in the execution of the punishments of imprisonment.

Period to pay the fines

Pursuant to Article 365, par. 2, C.P.C.K. and Article 46, par. 2, C.C.R.K., the defendant A.G. has to pay the fine in the period of 1 month and the defendant T.Y. in the period of 3 months. In the event the fines have to be substituted, the manner will be in accordance with the rules set in Article 46, pars. 3 to 5, C.C.R.K.

Suspension of the sentences of the defendants A.G. and T.Y.

The court, be it the case, may suspend a sentence in cases it is deemed that the reprimand with the threat of punishment is sufficient to prevent the perpetrator from committing a criminal offence.

Of all defendants, the only two that meet the requirements are the A.G. and T.Y., as their punishments do not exceed 2 years of imprisonment and the criminal offences they are being punished are punishable with 10 years of imprisonment as maximum. As the two of them were punished by the C.C.R.K., pursuant to Article 3, it is also in this code that the said requirements have to be confirmed.

In the current Criminal Code of the Republic of Kosovo, a sentence of imprisonment may be suspended pursuant to Articles 50 to 52 C.C.R.K.; "the purpose of a suspended sentence is to not impose a punishment for a criminal offense that is not severe when a reprimand with the threat of punishment is sufficient to prevent the perpetrator from committing a criminal offense". The requirements for suspending a sentence of imprisonment are set in Articles 51 and 52, "the court may impose a suspended sentence on the perpetrator in accordance with the provisions of this Code", namely, "in imposing a suspended sentence, the court shall determine a punishment for the perpetrator of the criminal offense and at the same time order that this punishment shall not be executed if the convicted person does not commit another criminal offense for the verification time determined by the court. The verification period cannot be less than one (1) year or more than five (5) years" (Article 51, par.2, C.C.R.K.) and "a suspended sentence may be imposed on a perpetrator of a criminal offense for which the punishment of imprisonment of up to five (5) years is provided for by the law. A suspended sentence may be imposed on a perpetrator of a criminal offence for which the punishment of imprisonment of up to ten (10) years is provided by for the law if the provisions of mitigation are applied" and "a suspended sentence may be imposed on a perpetrator as foreseen in paragraph 1 and 2 of this Article when the court imposes a punishment of a fine or of imprisonment of up to two (2) years, either for a single offense or concurrent offenses" (Article 52, pars. 1 to 3, C.C.R.K.) and "when determining whether to impose a suspended sentence, the court shall consider, in particular, the purpose of a suspended sentence, the past conduct of the perpetrator, his or her behaviour after the commission of the criminal offense, the degree of criminal liability and other circumstances under which the criminal offense was committed" (Article 52, par. 4, C.C.R.K.).

As we see, all the requirements, in relation to the said two defendants, are met. The court also decides to suspend only the punishments of imprisonment, not the punishments of fine, pursuant to Articles 51, par. 4, and 52, par. 5, C.C.R.K.

The court, therefore, decides, pursuant to Articles 3, 50, 51, pars. 1, 2, 4, and 52, pars. 2 (this one read together with 170. par. 1), 3 to 5, C.C.R.K. to suspend the execution of the punishment of imprisonment of A.G. if he does not commit another criminal offence for the verification period of 2 years and of T.Y. if he does not commit another criminal offence for the verification period of 3 years. The punishments of fine are not suspended.

Pursuant to Articles 52, par. 3, and 59 C.C.R.K, the suspension also includes the obligation of refraining from changing residence without informing the probation service.

The court not applying Article 82 C.C.R.K.

According to Article 82 C.C.R.K., "if a convicted person is tried for a criminal offence he or she committed before serving a punishment imposed under an earlier conviction (…), the court shall impose an aggregate punishment (Article 80 of this Code), taking into consideration the previously imposed punishment. The punishment or part of the punishment which the convicted person has already served shall be included in the aggregate punishment".

The court decides not to apply at this moment such provision as, among others factors, there are no sufficient data regarding the stage of the execution of the punishment of imprisonment imposed to the defendant I.P. in the proceedings of the Basic Court of Gjilan number, PKR. no. 56/2013 and Court of Appeals (PAKR 259/14), dated 22 May 2015, by which he was sentenced for "attempted smuggling of migrants", in accordance with article 170, paragraph 1, article 28, paragraph 3 and article 76, paragraph 1, sub paragraph 4, of C.C.R.K, with 1 (one) year and 6 (six) months imprisonment and a fine in the amount of 200 € (two hundred Euros).

Accessory punishment(s)

In relation to an accessory punishment to the defendants, the court decides to apply to the foreign citizens with no direct family ties to Kosovo (A.Ç and A.B.) the accessory punishment of "expulsion from the territory of the Republic of Kosovo" foreseen in Article 62, par. 2.9, read together with Articles 3, 71, par. 1, C.C.R.K, for the period of 7 years to A.Ç and 4 years to A.B. commencing from the day this decision becomes final (Article 71, par. 4, C.C.R.K.); in relation to A.B., being punished by the code in force at the time, the applicable provisions are Article 54, par. 2.9, and Article 62 P.C.C.K. Also, the court notes in this regards that A.Ç's permanence in Kosovo is not in accordance with the applicable law on foreigners.

In the case of the two other foreign citizens, the defendants M.A. and T.Y., the first is a partner of a Kosovo citizen and has a child born in this country, who is also a citizen of Kosovo, and the second (T.Y.) has become a citizen also of the Republic of Kosovo in 2010 (he is bearer of the Kosovo [passport no.]), and such facts related to these 2 defendants are being considered pursuant to Article 71, par. 2, C.C.R.K., "(…) the perpetrator's attachment to the Republic of Kosovo") and, accordingly, these defendants are not being subject to expulsion from the country (also because in the case of the defendant T.Y., due to his dual citizenship, also Kosovar, it could not be applied).

Confiscation of objects:

The objects listed in the indictment proposed to be subject to forfeiture are declared forfeited[173] if not yet subject to identical decision in any other proceedings[174] as they were used in the commission of acts constituent of criminal offences, pursuant to Articles 60 P.C.C.K. or 69 C.C.R.K.:

From **A.Ç.**:

1 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217 with SIM card, IPKO, [Tel. No.];

2 - Mobile telephone, Nokia, model 6230i, IMEI No. 353233/01421796/2 with SIM card MTS, [Tel. No.];

3 - SIM card, IPKO No. 109011298946;

4 - SIM card, VALA, No. 8937701010020489791;

5 - SIM card, IPKO No. 109011301108;

6 - SIM card, djuice, No. 38269621088;

7 - Mobile telephone, Nokia, model 2310, IMEI No. 354819/01/015797/7;

8 - SIM card, VIP, No. 8938105209070703180;

9 - SIM carda, IPKO, No. 108010741091;

10 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217, IMEI: 358051012922556;

11 - SIM card, IPKO, No. 109011867774, [Tel. No.];

12 - SIM card, IPKO, 109011389055;

13 - SIM card, Mobi, [Tel. No.];

14 - SIM card, Mobi, [Tel. No.];

From **M.B.**:

1 - Desktop computer, HP COMPAQ, HP DC7600, MT, CEL 3066/512/40, series no. 1059262;

[173] As already said, for the reason the proceedings were severed in relation to S.S., the objects referred to him will not be mentioned here.

[174] As already said, given that, for example, in the case of the defendant M.B. in this case only the phone with [Tel. number] was used but the remaining are seized following an order issued in other criminal proceedings.

2 - Mobile telephone, Vodafone, GSM 900/1800 Mhz, IMEI No. 868955000980611, with SIM card [Tel. no.];

3 - SIM card, IPKO, No. 109011727207 [Tel. no.]

4 - Mobile telephone, NOKIA, model 2310, type RM-189, IMEI No. 358960/01/546112/5 with SIM card [Tel. No.] series number 0553626;

5 - SIM card, Z-mobile, No. 101005288898 [Tel. no.];

From **A.M.**:

1 - Mobile telephone, SAMSUNG, model GT-E1170, IMEI No. 358688/03/348592/3, with SIM card, IPKO, No. 109011732744 [Tel. No.];

2 - SIM card, VALA, No. 8937701010013414525;

3 - Mobile telephone, NOKIA, model 1650, type RM 305, IMEI No. 359565/01/710615/3;

4 - Mobile telephone, SIEMENS C35i, No. 449191546517141;

5 - Mobile telephone, SAMSUNG, model GT-E1080W, IMEI No. 359779/04/506133/6;

6 - DELL laptop, LBL P/N W1495 A00;

7 - Mobile telephone, NOKIA, model N73-1, type RM-133, IMEI No. 359568019767451;

8 - Mobile telephone, NOKIA, model 6230i, type RM-72, IMEI No. 357097/00/936104/4;

9 - San Disk Micro Chip, Micro SD;

From **M.A.**:

1 - SIM card, IPKO, No. 108010802656;

2 - Samsung mobile phone, model SGH-C130, IMEi: 359345/00/290793/5;

From **A.B.**:

1 - NOKIA telephone 1112, series no. IMEI 358067/01/197640/1;

2 - IPKO SIM card, with series no. 109011863241;

3 - SAMSUNG telephone SGH D900I, with IMEI no. 354890/01/275088/7;

4 - T-Mobile SIM card, no. 893890109022551969732.GI;

From **I.P.**:

1 - Mobile telephone, NOKIA, model 101, type RM-769, with two SIM cards and IMEI No. 359739/04/689510/8 and IMEI No. 359739/04/689511/8;

2 - SIM card, VALA, [Tel. No.];

3 - SIM card, IPKO, [Tel. No.];

From **A.G.**:

1 - Mobile telephone, NOKIA, model 6300, IMEI No. 353933/01/340506/8;

2 - Mobile telephone, Samsung, model SGH-E900, IMEI No. 356030/01/325515/0;

3 - Mobile telephone, Samsung, model GT- C 3010, IMEI No. 353373/03/898337/9;

4 - Mobile telephone, Samsung, model GT-E 1170, IMEI No. 355049/04/406513/2;

5 - Mobile telephone, Samsung, model SGH-C 260, IMEI No. 358210/01/064416/2;

6 - Mobile telephone, Samsung, model C 3050, IMEI No. 358553/03/840340/4;

7 - SIM card, VALA, No. 8937701010016818185;

From **T.Y.**:

1 - Mobile telephone, NOKIA, model 6303ci, type RM-638, IMEI No. 352682/04/167543/9;

2 - SIM card, VALA, No. 8937701010016959260 [Tel. no.], pin code:0000;

3 - SIM card, VALA, No. 8937701010007220789;

4 - Desktop computer COMPAQ, 8110FR4Z1957.

Property claim:

There is no property claim.

The costs of the proceedings:

In accordance with Article 450 C.P.C.K. the costs of the proceedings shall be paid by the defendants. Pursuant to Article 450, par. 2.6, the scheduled amounts are 200 Euros to each of the defendants, in the total amount of 1600 Euros.

In accordance with Article 450, paragraphs 5 to 7, C.P.C.K., costs with interpretation into languages of the defendants and remuneration and necessary expenses with the defence counsels appointed, are not being included.

Final:

The court, *ex officio*, sees no need of announcement of this judgment (enacting clause) in the press or radio or television, Article 365, par. 1.1.6, C.P.C.K, to protect the values of Justice and Public Interest

Until the final conclusion of the proceedings, any change in the address of any participant has to be reported to the court, in accordance with Article 368, par. 3, C.P.C.K.

Proceed in accordance with the procedure provided for in Articles 474, par. 3, and 369, pars. 3 and 4, C.P.C.K.

Legal remedy:

Pursuant to Articles 374, par. 1.1, and 380, par. 1, an appeal against this judgment may be filed within 15 days of the day its copy has been served to the parties. The appeal should be addressed to the

Court of Appeals through the Basic Court of Prizren.

Done in English (authorised language), in Prizren on the 14th April 2016,

The Presiding Judge

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(EULEX Judge Jorge Martins Ribeiro)

Venera Hadri – Mollakuqe

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Court recorder