

Basic Court of Prishtinë/Priština
PKR.nr. 237/13
Prishtinë/Priština, 29 November 2013

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

In the name of the people

The Basic Court of Prishtinë/Priština in the trial panel composed of EULEX Judge Vladimir Mikula, as presiding Judge and, local Judges Florent Latifaj and Aferdita Bytyqi, as panel members, assisted by the recording officer Vlora Johnston and the interpreter Anila Shehu, in the criminal case against

Y.J.

Charged with Five (5) criminal offences of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, par. 1, 2, 3 and 4 of CCK related to Article 23 CCK;

one (1) criminal offence of unauthorized ownership, control, possession or use of weapons in violation of Article 328, par. 2 of CCK and,

the criminal offence of Organized crime in violation of Article 274, par. 1, 2 and 3 CCK

After the public main trial sessions held on 16, 18, 22, 23, and 24 July 2013; 1 and 7 August 2013; 4, 10, 11 and 25 September 2013; 22 October 2013; 13, 21 November 2013, and after hearing closing statements of the SPRK Prosecutor, Andrew Carney, the Defense Counsel Z.J. and R.G., and the defendant Y. J. on 27 November 2013

After the deliberation and voting session held on 27 November 2013, pursuant to Articles 359, 361, 365 and 366 of the Criminal Procedural Code of Kosovo (CPCK), the Main Trial Panel on 29 November 2013, publicly announces the following;

JUDGMENT

The defendant Y.J. formerly V., Kosovo, Kosovar Albanian,

Is guilty

Because

- Between 27 August 2010 and 12 October 2010, on the territory of Kosovo instructed, controlled and communicated by phone with the group of people comprising M.G., F.Z., S.A. and J.B. about the purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other countries in Europe of a shipment of 4.56 kg (net weight) of heroin, these narcotics being contained within 9 packages seized from the front tyre cap of a Mercedes Benz C class vehicle, with Slovenian registration plate XXX, in Munich, Germany on 11 October 2010, and every person in this group of people had specific roles in respect of this transaction.
- Between 13 August 2010 and 14 September 2010, Y.J. on the territory of Kosovo instructed, controlled and communicated by phone with the group of people comprising Y.V. M.D. and F.Z. about the purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other countries in Europe of a shipment of heroin weighing 418 grams which was seized from the apartment of M.D. in Munich, Germany on 14 September 2010 and every person in the group had specific roles in respect of this transaction.
- Between 2 January 2011 and 12 January 2011, Y. J. on the territory of Kosovo instructed, controlled and communicated by phone with the group of people comprising M.O. and A.M. about the purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other countries in Europe of a shipment of 1.992 kg (net weight) of heroin and which was seized from a Mercedes Benz vehicle, with registration plate M-BH 3997 in Munich, Germany on 11 January 2011 the heroin being wrapped within 4 packages each weighing approximately 0.497 kg
- On 2 October 2012, Y. J. on the territory of Kosovo, at street XXX, Pristina, possessed without authorization and with the intent to sell a mixture of heroin and paracetamol weighing 11.66 grams contained within a plastic bag seized by the Police from behind the bathroom toilet in the apartment of Y. J. Kosovo on 2 October 2012.
- On 2 October 2012, Y. J. on the territory of Kosovo on the ground floor of the house occupied by Y. J. in X, X, Kosovo possessed without authorization and with the intent to

sell 3.38 grams of cannabis sativa these narcotics being seized by the Police on 2 October 2012.

Thus,

Ad1)

The Defendant Y. J. without authorization purchased, possessed with the intent to sell, distribute, offer for sale substances which have been declared to be dangerous narcotic drugs.

Thereby,

The defendant Y.J. committed the criminal offence unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances in violation of Article 229, par. 1, 2, 3 of the Criminal Code of Kosovo (old Criminal Code valid until 31/12/2012),

Pursuant to Articles 34, 38, 64, 73 and 229, par. 3 of the Criminal Code of Kosovo valid until 31st December 2012, **is sentenced** to the punishment of 6 (six) years imprisonment.

Pursuant to Article 54, paragraphs 1, 2, subparagraph 7, Article 60 and Article 229 paragraph 5 of the Criminal Code of Kosovo (valid until 31st December 2012), the 11.66 grams mixture of heroin and paracetamol and the 3.38 grams of cannabis sativa both seized on 2 October 2012 are **confiscated**.

And,

Ad2)

Thus,

The Defendant Y. J. supervised and managed the activities of an organized criminal group,

Thereby he committed the criminal offence of Organized crime pursuant to Article 274 paragraph 3 of the Criminal Code of Kosovo (valid until 31st December 2012).

Pursuant to Articles 34, 38, 39, 64, 73 and 229, par. 3 of the Criminal Code of Kosovo (valid until 31st December 2012), **is sentenced** to the punishment of 8 (eight) years imprisonment and a fine in the amount of 25 000 EUR payable within one month from the date when this judgment will become final.

If the defendant Y. J. will be unwilling to pay the fine and will not consent to the replacement of the fine with an order for community service work the fine will be replaced with a day of imprisonment for each 15 EUR, however the term of imprisonment will not exceed six months.

Pursuant to Article 71 of CCK, the Court imposes an aggregate punishment of 11 years of imprisonment and fine in the amount of 25 000 EUR payable within one month from the date when this judgment will become final.

If the defendant Y. J. will be unwilling to pay the fine and will not consent to the replacement of the fine with an order for community service work the fine will be replaced with a day of imprisonment for each 15 EUR, however the term of imprisonment will not exceed six months.

Pursuant to Article 54, paragraphs 1, 2, subparagraph 7, Article 60 and Article 229 paragraph 5 of the Criminal Code of Kosovo (valid until 31st December 2012), the 11.66 grams mixture of heroin and paracetamol and the 3.38 grams of cannabis sativa both seized on 2 October 2012 are **confiscated**.

In addition

The charge with the following description against defendant Y. J. (formerly V.), with the personal data as mentioned above,

Pursuant to Article 363, paragraph 1, subparagraph 1.3 of the CPC is **rejected**.

COUNT 5

Unauthorised Ownership, Control, Possession or Use of Weapons, in violation of Article 328 paragraph 2 of the CCK and punishable by a fine of up to 7.500 EUR or by imprisonment of one to eight years.

Because

On 2nd October 2012, Y. J. on the territory of Kosovo committed the offence of unauthorised ownership, control or possession of weapons in that he owned, had control of or possessed three weapons, namely, a Kratay Magnum pump-action hunting rifle serial number XX plus ammunition, a gas pistol Ekol Tuna serial number ET-XX plus ammunition, and a gas pistol Ekol Special-99 serial number XX plus ammunition.

Because this act is covered by the Law on Amnesty No. 04/L-209.

Detention on remand in relation to Y.J. is hereby extended until the Judgment becomes final, because the risk of flight still exists as foreseen by Article 187, paragraph 1, subparagraphs 1.1, 1.2 and 1.2.1 of the CPCK, but no longer than the expiry of the term of punishment imposed in

the Judgment. The time spent by Y. J. in detention on remand as of 02.10.2012 onwards shall be credited against the punishment of imprisonment pursuant to Article 365 paragraph 1.5

The defendant is obliged to pay the costs of the criminal proceedings as follow:

The amount of 2.500 EUR for the Voice Expertise, the amount of 449 EUR for the Panel of Experts and, the lump sum in the amount of 1.000 EUR, pursuant to Article 365 paragraph 1, subparagraph 1.6 of the CPCK.

REASONING

I. Procedural Background

The indictment

On 11.04.2013 the Special Prosecution Office of The Republic of Kosovo (SPRK) filed Indictment PPS no. 42/2012, dated 09.04.2013, against the defendant Y.J. accusing him for five (5) criminal offences of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, par. 1, 2, 3 and 4 of CCK related to with Article 23 CCK; one (1) criminal offence of unauthorized ownership, control, possession or use of weapons in violation of Article 328, par. 2 of CCK and the criminal offence of Organized crime in violation of Article 274, par. 1, 2 and 3 CCK.

On 23 May 2013 first initial hearing took place in accordance with Article 245 and 246 of the CPCK. The defendant did not plead guilty to any of the counts of the Indictment. The second hearing took place on 26 June 2013 where the Presiding Judge scheduled the main trial since there were no pending objections under Article 249 and Article 250 of the CPCK. None of the parties objected the composition of the main trial panel.

In his closing statement¹ the SPRK Prosecutor asked the Court to find defendant Y. J. guilty on all drug related offences and organized crime, and proposed to sentence him in accordance with the law, because it was proven that the defendant was involved in the commission of the criminal offences accused. In this regard, case prosecutor submitted that during the relevant period, May 2010 to January 2011, defendant Y. J. was the organiser of the supply of 22.5 kg of powder containing heroin to all those other individuals named as co-perpetrators. It was also said that defendant Y.J. as the distributor, was higher up the chain of command than all of the others. It was stressed that there were used two telephones numbers XXX and XXX by defendant Y.J. to organize the supply of drugs, and that this is confirmed with the intercepted conversations and SMS messages because they all related to narcotics. That due to interception of conversations, M.G. and the two couriers S.A. and J.B., driving a Mercedes car, on 11 October 2010 was arrested in possession of nine packages of heroin powder weighing 4.56 kg. And that on 11 January 2011, M.O., A.M. and F.Z. were arrested after 1.9 kg of heroin were discovered in a second vehicle. That the voice expertise² proved it was the defendant who was speaking on the intercepted lines which were compared with voice sample taken from defendant Y.J.³. Further to this, case prosecutor submitted that the Panel of Experts⁴ confirmed that defendant

¹ Attached to the minutes of main trial dated, 27 November 2013, pages 2-5

² The Voice Expertise was conducted by Professor L.R. based on the Court's Decision dated 26 July 2013.

³ Voice sample were taken on 7 August 2013, in the presence of the Presiding Judge, case prosecutor and defendant's defence counsel.

⁴ The Panel of Experts was appointed based on the Court's Decision 26 September 2013, which was comprised of Prof. Dr. Z.H., Neuropsychiatric, Dr. N.I.M., Psychiatric and EULEX Psychologist Mgr. H.K. Ph.D.

Y.J. was an intelligent man and not the drug-wrecked individual of low intelligence that he tried to pretend that he was to the court.

With regard to the criminal offence of Unauthorised Ownership, Control, Possession or Use of Weapons, in violation of Article 328 paragraph 2 of the CCK, the prosecutor withdrew this count because this act is covered by the Law on Amnesty, Law. No. 04/L-209.

In his closing statement the Defense Counsel, Z.J., submitted that the indictment was not supported with by valid evidence. Reference was made to the interpreted telecommunications by denying it was defendant Y.J. who was speaking on those lines. Furthermore, it was stated that even the Voice Expertise did not prove this because the findings were at the level of probability or proximity. The Defence Counsel Z.J. questioned the methods used by Professor R. stating none of the methods were ever confirmed by any relevant institution in the world. Reference was also made as to the findings of the Panel of Experts in relation to the state of mind of the Defendant. In this regard the Defence Counsel, Z.J., said to have not claimed that his client is not accountable person however stressed out that defendant's brain is permanently affected since he was abusing with narcotics from the age of 13 (thirteen), and that no expert can convince him that long-term use of narcotics will not leave any damage on a person's brain. It was also submitted that the prosecutor's allegation that defendant was leader of the group do not stand because the addicted persons cannot be leader of any group and let alone his client. Defence Counsel Z.J. concluded his statement that the indictment was not proven thus asked the Court to acquit his client.

In his closing statement the Defence Counsel, R.G. raised the issue of admissibility of the evidence. According to Lawyer R.G. the evidence were not obtained in accordance with the provisions of the Criminal Procedure Code of Kosovo. The defence also considered of importance to hear the other defendants, who have been tried in Germany. It was also stated that the prosecutor failed to prove that the apartment/s where Y.J. used to live, as well as the confiscated property belonged to the Defendant and that those properties were bought with the money generated by the money earned by the illegal activities of the defendant. Defence Counsel R.G. concluded his statement asking the Court to return the confiscated items and to acquit defendant Y. J.

The defendant Y.J. did not plead guilty and supported statements of his defence counsels.

II. The evidence

At the main trial hearings the following evidence proposed by the SPRK Prosecutor and the defence counsel were administered and evaluated:

- Interception of telecommunication;
- Statements of the following Witnesses:

- A.K.S., EULEX Police Officer, Organized Crime Investigation Unit, who gave detailed answers in relation to house search and the Reports resulting from the searches
- A.O., Kosovo Police officer, investigator, Financial Investigations Unit
- M.L. who also gave explanation in relation to house searches and the Report resulting from the searches and,
- TH.A., Chief Criminal Commissar, Police Force, Munich
- Report of Voice Expertise
- Report of Panel of Experts in relation to state of mind of defendant Y. J.

The List of **intercepted communication** – as per Schedule presented by SPRK Prosecutor was listened in the session of 16 July 2014:

Y.V./J., M.G., F.Z. (alias 'B.'), S.A. and J. B., May – October 2010

- (1) 14.08.2010 at 18:05:57 Y. V. +386 (0)XX called M.G. +49 (0) XX ID 1.488.368 (Binder IX, pp. 28-33).
- (2) 16.08.2010 at 18:32:18 Y. V. +386 (0)XX called M.G. +49 (0) XX ID 1.489.840 (Binder IX, pp. 43-46).
- (3) 16.08.2010 at 18:35:56 and 19:04:24 Y. V. +386 (0) XX called an unknown male believed to be the courier +49 (0) XX ID 1.489.843 and ID 1.489.954 (Binder IX, pp. 47-51).
- (4) 16.08.2010 at 19:16:37 Y.V. +386 (0) XX called M.G. +49 (0) XX ID 1.489.966 (Binder IX, pp. 52-54).
- (5) 16.08.2010 at 19:44:50 Unknown male courier/M.G. +381 (0) XX called Y.V.+386 (0)49-XX ID 1.490.011 (Binder IX, pp. 67-71).
- (6) 16.08.2010 at 19:56:08 M.G. +381 (0) XX called Y.V.+386 (0)XX ID 1.490.034 (Binder IX, pp. 75-77).
- (7) 19.08.2010 at 12:54:03 B.K. +386 (0) XX called F.Z. +49 (0) XX ID 1.492.873 (Binder IX, pp. 90-96).
- (8) 22.08.2010 at 19:47:02 M.G. +381 (0) XX called Y.V.+386 (0) XX ID 1.494.686 (Binder IX, pp. 129-131).

- (9) 27.08.2010 at 10:47:55 Y.V.+386 (0)49-XX called M.G. +381 (0) XX ID 1.508.903 (Binder IX, pp. 187-188).
- (10) 27.08.2010 at 12:08:58 M.G. +381 (0) XX called Y.V.+386 (0) XX ID 1.508.987 (Binder IX, pp. 189-191).
- (11) 27.08.2010 at 20:31:28 F.Z. (B.) +49 (0) XX sent an SMS to B. K. +386 (0) XXX ID 1.509.616 (Binder IX, pp. 196-197).
- (12) 06.09.2010 at 17:23:03 +386 (0)49- XXY.V. called M.G. +381 (0)XX ID 1.647.114 (Binder IX, pp. 421-424).
- (13) 11.09.2010 at 10:35:44 M.G. +381 (0) XX called Y.V.+386 (0) XX ID 1.650.798 (Binder IX, pp. 443-446).
- (14) 11.09.2010 at 10:38:14 Y.V. +386 (0)49- XX called F.Z. +49 (0) XX ID 1.650.801 (Binder IX, pp. 447-449).
- (15) 11.09.2010 at 10:39:05 +381 (0) XX G. called Y.V.+386 (0)49-XX ID 1.650.804 (Binder IX, pp. 450-452).
- (16) 11.09.2010 at 10:39:49 M.G. +381 (0) XX called Y.V.+386 (0) XX ID 1.650.805 (Binder IX, pp. 453-455).
- (17) 11.09.2010 at 12:24:03 M.G. +381 (0) XX called Y.V.+386 (0)49-XX ID 1.650.858 (Binder IX, pp. 456-458).
- (18) 12.09.2010 at 20:16:30 +49 (0) XX SMS from F.Z. to another +386 (0)XX ID 1.651.931 (Binder IX, pp. 459-460).
- (19) 14.09.2010 at 19:05:01 Y.V.+386 (0)XX. called F.Z. +49 (0) 176-28133696 ID 1.653.797 (Binder IX, pp. 498-502).
- (20) 20.09.2010 at 14:06:05 Y.V.+386 (0)XX called M.G. +381 (0) XX ID 1.660.647 (Binder IX, pp. 534-537).
- (21) 21.09.2010 at 14:00:49 +386 (0) XX SMS from Y.V.to M.G. +381 (0) XX ID 1.662.376 (Binder IX, pp. 542-543).
- (22) 22.09.2010 at 20:41:24 M.G. +381 (0) XX called Y.V. +386 (0) XX ID 1.664.147 (Binder IX, pp. 544-554).

- (23) 01.10.2010 at 17:20:55 M.G. +381 (0) XX called Y.V. +386 (0) XX ID 1.682.208 (Binder X, pp. 573-576).
- (24) 01.10.2010 at 17:22:32 +386 (0)49-XX Y.V. called F.Z. +381 (0) XX ID 1.682.213 (Binder X, pp. 577-578).
- (25) 01.10.2010 at 19:37:21 +381 (0) XX M.G. called Y.V. +386 (0) XX ID 1.682.360 (Binder X, pp. 582-585).
- (26) 04.10.2010 at 19:40:58 +381 (0) XX M.G. called Y.V. +386 (0) XX ID 1.685.273 (Binder X, pp. 592-596).
- (27) 07.10.2010 at 14:53:49 M.G. +49 (0) XX (a public phone booth) called Y.V. +386 (0) XX ID 1.888.439 (Binder X, pp. 621-629).
- (28) 11.10.2010 at 11:26:26 Y.V. +386 (0) XX called M.G. 0EB02D0911770962708 ID 1.692.520 (Binder X, pp. 641-644).
- (29) 11.10.2010 at 14:09:01 Y.V.+386 (0) XX called M.G. +381 (0) XX ID 1.693.768 (Binder X, pp. 645-647).
- (30) 11.10.2010 at 14:15:04 Y.V.+386 (0) XX called M.G. +381 (0) XX ID 1.693.866 (Binder X, pp. 648-651).
- (31) 11.10.2010 at 14:35:19 Y.V.+386 (0) XX called M.G. +381 (0) XX ID 1.694.161 (Binder X, pp. 652-654).
- (32) 11.10.2010 at 15:34:50 Y.V.+386 (0) XX called M.G. +381 (0) XX ID 1.694.062 (Binder X, pp. 655-657).
- (33) 11.10.2010 at 16:07:56, 16:08:12, 16:23:28, 16:56:01, 17:24:25 Y.V.+386 (0) - XX attempted to call M.G. +381 (0) XXX (Binder X, pp. 666-676).

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- (34) 13.08.2010 at 13:34:40 Y.V. +381 (0) XX called Y.V. +386 (0) XX ID 1.487.445 (Binder IX, pp. 1-7).

- (35) 13.08.2010 at 14:46:22 S.F.+381 (0) 654-628818 called Y.V.+386 (0) XX ID 1.487.508 (Binder IX, pp. 8-11).
- (36) 14.08.2010 at 13.08.15 S.F.+381 (0) 654-628818 called Y.V.+386 (0)XX. ID 1.488.149 (Binder IX, pp. 18-21).
- (37) 16.08.2010 at 02:25:09 F.Z. +49 (0) XX SMS to another in Kosovo +386 (0)XX ID 1.489.130 (Binder IX, pp. 37-38).
- (38) 17.08.2010 at 18.01.16 S.F.+381 (0) XX called Y.V.+386 (0) XX. ID 1.491.057 (Binder IX, pp. 78-81).
- (39) 20.08.2010 at 14:58:07 +49(0) XX M.D. sent an SMS to S.F.+49(0) XX ID 1.493.672 (Binder IX, pp. 97-98).
- (40) 23.08.2010 at 21:32:38 S.F.+49(0) XX called Y.V.+386 (0)XX. ID 1.495.701 (Binder IX, pp. 144-146).
- (41) 23.08.2010 at 22:31:22 a male believed to be Y.V.+386 (0)49309887 called F.Z. +49 (0) 176-2813369 ID 1.495.743 (Binder IX, pp.157-159).
- (42) 23.08.2010 at 22:34:27 Y.V.+386 (0)XX. called S.F.+49(0) XX ID 1.495.745 (Binder IX, pp.160-163).
- (43) 23.08.2010 at 22:55:41 Y.V.+386 (0)XX. called S.F.+49(0) XX ID 1.495.761 (Binder IX, pp.164-167).
- (44) 24.08.2010 at 11:07:06 F.Z. (B.) +49 (0) XX SMS to another in Kosovo +386 (0) XX ID 1.495.931 (Binder IX, pp. 170--171).
- (45) 24.08.2010 at 11:49:40 call from an unknown male speaking on a Kosovo number +386 (0) XX to F.Z. +49 (0) XX ID 1.495.958 (Binder IX, pp. 175--177).
- (46) 13.09.2010 at 15.13.28 S.F.+49 (0) XX called M.D.+49 (0) XX ID 1.652.531 (Binder IX, pp. 469-470).
- (47) 13.09.2010 at 21:25:24 S.F.+49(0) XX (public telephone booth) called Y.V.+386 (0)XX. ID 1.652.903 (Binder IX, pp. 473-478).

- (48) 13.09.2010 at 21:26:57 Y.V.+386 (0)XX. called F.Z. +49 (0) XX ID 1.652.904 (Binder IX, pp. 479-480).
- (49) 13.09.2010 at 22:59:37 S.F.(public telephone booth) called Y.V.+386 (0)XX. ID 1.652.954 (Binder IX, pp. 481-484).
- (50) 14.09.2010 at 09:57:41 SMS from F.Z. +49 (0) XX to another in Kosovo +386 (0)XX ID 1.652.162 (Binder IX, pp. 485-486).

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- (51) 02.12.2010 at 21:14:04 Y.V.+386 (0) XX called M.O.+49 (0) XX ID 1.764.307 (Binder X, pp. 724-728).
- (52) 03.12.2010 at 13:27:33 M.O.+49 (0) XX called Y.V.+386 (0) XX ID 1.764.694 (Binder X, pp. 746-749).
- (53) 10.12.2010 at 18:01:30 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.775.143 (Binder X, pp. 781-783).
- (54) 24.12.2010 at 17:51:19 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.782.566 (Binder X, pp. 797-798).
- (55) 02.01.2011 at 18:06:44 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.799.471 (Binder X, pp. 811-812).
- (56) 02.01.2011 at 20:40:23 M.O.+49 (0)157-84456383 sent an SMS to Y.V.+386 (0)49-346884 ID 1.799.542 (Binder X, pp. 813-814).
- (57) 02.01.2011 at 20:44:56 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.799.526 (Binder X, pp. 815-816).
- (58) 07.01.2011 at 20:47:51 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.801.438 (Binder X, pp. 825-826).
- (59) 10.12.2010 at 13:42:59 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XXX ID 1.800.208 (Binder X, pp. 829-830).

- (60) 10.01.2011 at 18:25:20 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0) XX ID 1.802.340 (Binder X, pp. 833-834).
- (61) 10.01.2011 at 18:27:08 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.801.342 (Binder X, pp. 835-836).
- (62) 10.01.2011 at 18:29:15 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0) XX ID 1.802.344 (Binder X, pp. 837-838).
- (63) 10.01.2011 at 18:30:05 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.802.345 (Binder X, pp. 839-840).
- (64) 10.01.2011 at 18:33:08 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.352 (Binder X, pp. 841-842).
- (65) 10.01.2011 at 18:34:59 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0)XX ID 1.802.354 (Binder X, pp. 843-844).
- (66) 10.01.2011 at 18:37:07 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0) XX ID 1.802.360 (Binder X, pp. 845-846).
- (67) 10.01.2011 at 18:38:18 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.802.361 (Binder X, pp. 848-849).
- (68) 10.01.2011 at 18:42:36 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.364 (Binder X, pp. 850-851).
- (69) 10.01.2011 at 18:44:24 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.802.366 (Binder X, pp. 852-853).
- (70) 11.01.2011 at 08:46:14 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XXX ID 1.802.502 (Binder X, pp. 854-855).
- (71) 11.01.2011 at 12:22:04 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.622 (Binder X, pp. 862-863).
- (72) 11.01.2011 at 12:28:41 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX X ID 1.802.625 (Binder X, pp. 864-865).

- (73) 11.01.2011 at 12:49:35 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.802.664 (Binder X, pp. 870-871).
- (74) 11.01.2011 at 12:51:18 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.672 (Binder X, pp. 872-873).
- (75) 11.01.2011 at 14:17:28 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.836 (Binder X, pp. 878-879).
- (76) 11.01.2011 at 14:21:08 M.O.+49 (0)157-84456383 sent an SMS to Y.V.+386 (0) XX ID 1.802.805 (Binder X, pp. 880-881).
- (77) 11.01.2011 at 14:25:13 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)X X ID 1.802.868 (Binder X, pp. 882-883).
- (78) 11.01.2011 at 14:29:27 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.802.880 (Binder X, pp. 884-885).
- (79) 11.01.2011 at 14:34:31 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0)XX ID 1.802.899 (Binder X, pp. 886-887).
- (80) 11.01.2011 at 14:29:27 Y.V.+386 (0) XX called M.O.+49 (0) XX ID 1.802.961 (Binder X, pp. 888-890).
- (81) 11.01.2011 at 15:02:13 Y.V.+386 (0) XX called M.O.+49 (0) XX ID 1.802.984 (Binder X, pp. 891-894).
- (82) 11.01.2011 at 15:11:35 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0) XX ID 1.803.014 (Binder X, pp. 895-896).
- (83) 11.01.2011 at 18:37:47 to 19:00:02 Y.V.+386 (0) XX made 9 missed calls to M.O.+49 (0) XX (Binder X, pp. 897-906, 909-914).
- (84) 11.01.2011 at 18:41:23 Y.V.+386 (0) XX sent an SMS to M.O.+49 (0)XX ID 1.803.385 (Binder X, pp. 907--908).

Y. V./J., S.F. and an unknown courier. 30 August 2010

- (85) 30.08.2010 at 14:56:16 Y.V.+386 (0)XX. called S.F.+381 (0) 654-628818 ID 1.512.128 (Binder IX, pp. 218-221).
- (86) 30.08.2010 at 16:39:59 Y.V.+386 (0)XX. called S.F.+381 (0) XX ID 1.512.236 (Binder IX, pp. 222-224).
- (87) 30.08.2010 at 17:00:42 Y. V. +386 (0) XX. called S.F.+381 (0) XX ID 1.512.258 (Binder IX, pp. 227-229).
- (88) 30.08.2010 at 17:25:00 Y.V.+386 (0) XX. called S.F.+381 (0) XX ID 1.512.275 (Binder IX, pp. 245-247).
- (89) 30.08.2010 at 17:45:51 Y.V.+386 (0) XX. called S.F.+381 (0) XX ID 1.512.286 and ID 1.512.285 (Binder IX, pp. 252-256).

Y. J., S.F. and M.O.31 August – 2 September 2010

- (90) 31.08.2010 at 14:10:00 Y.V.+386 (0) XX. called S.F.+381 (0) XX ID 1.564.806 and ID 1.564.807 (Binder IX, pp. 313-315).
- (91) 31.08.2010 at 16.32.01 S.F.+381 (0) XX called Y.V.+386 (0)XX. ID 1.564.954 (Binder IX, pp. 324-328).
- (92) 31.08.2010 at 16:38:22 M.O.+49 (0) XX sent an SMS to Y.V.+386 (0)XX. ID 1.646.305 (Binder IX, pp. 334-335).
- (93) 31.08.2010 at 17.07.20 S.F.+381 (0) XX called Y.V.+386 (0)XX. ID 1.565.010 (Binder IX, pp. 343-346).
- (94) 31.08.2010 between 18:36:15 and 23:13:15 there are 10 unrecoverable SMS between M.O.+49 (0) XX and Y.V.+386 (0)XX. (Binder IX, pp. 353-372).

Y. J., F.Z. (alias 'B.') and A.M. (alias 'D.')

- (95) 05.10.2010 at 14:51:29 A.M. +49 (0) XX called Y.V.+386 (0) XX ID 1.686.086 (Binder X, pp. 597-607).
- (96) 05.10.2010 at 15:53:36 A.M. +49 (0) XX called F.Z. +49 (0) XX ID 1.686.198 (Binder X, pp. 608-611).

- (97) 05.10.2010 at 16:21:17 A.M. +49 (0) XX called Y.V.+386 (0) XX ID 1.686.249 (Binder X, pp. 612-618).
- (98) 14.10.2010 at 16:45:32 A.M. +49 (0) XX called F.Z. (B.) +49 (0) XX ID 1.698.837 (Binder X, pp. 677-680).
- (99) 14.10.2010 at 17:17:48 F.Z. (B.) +49 (0) XX sent an SMS to an unknown person +386 (0) XX ID 1.698.903 (Binder X, pp. 681-682).
- (100) 14.10.2010 at 20:41:36 F.Z. (B.) +49 (0) XX sent an SMS to B.K. +386 (0) XX ID 1.699.109 (Binder X, pp. 683-684).
- (101) 20.10.2010 at 19:25:34 Y.V.+386 (0) XX called F.Z. +49 (0) XX ID 1.702.536 (Binder X, pp. 692-696).

The following **documents** were summarized during the main trial session of 18 July 2013:

Documents and reports from Binder number 6⁵:

- Item number 1, Court Decision to approve the transfer of the criminal proceedings of SPRK from 22nd August 2012;
- Item 2, the investigative report of Bavarian state criminal services, dated 11/04/11;
- Item 3, the analysis of the items seized concerning M.G. from 19th October 2010;
- Item number 4, Research under the code of narcotics investigation process against M.B., done by Science Education centre of the Federal Administration for Finances Section of Science and Technician official Headquarters in Munich;
- Item number 5, Criminal report Bavarian state criminal services, customs 11 October 2010;
- Item number 6, Search records of the premises, dated 11th October 2011;
- Item number 8⁶, Investigation report against the Defendant M.O., issued by Bavarian regional Directorate for Criminality dated 11th January 2011;
- Item number 9, list and photo album of M.O., dated 11th January 2011; photos of vehicle Mercedes Benz; Packages marked with heroin etc.;

⁵ Binder no. 1 is German original version of the documents/reports in Binder no. 6.

⁶ Item no 7 was not read because it had contained witnesses statements

- Item number 11⁷, the Investigative report⁸ related to A.M. and P.F., prepared by T. A., Chief Commissioner;
- Item 12, Forensic report-analysis of narcotics, dated 4th April 2011, issued by Educational and Scientific Centre of the Federal Financial Management scientific centre of Munchen, analysis of narcotics;
- Item number 13, Record of search of property of M.O., form 11th January 2011, signed by Inspector R.;
- Item number 14, Record of search of vehicle DBM regarding M.O., from 11th January 2011, prepared by officer B.;
- Item number 16, police report and search report from 11th January 2011 regarding F.Z.'s apartment in S. street in Munich together with the a list of seized Items e.g. cash in the amount of 64.645 euros, passport, laptop etc.

Documents and reports from Binder number 7⁹

- Item number 17, Police record of the search regarding A.M., from 11th January 2011, made by Mr G., Joint Unit for Drug Investigation, South Bavaria;
- Item number 18, Forensic report analysis of narcotics of A.M., concerning the process against A.M. from 4th April 2011, Institution of Educational and Scientific Centre of the Federal Financial Management Science and Technical Section;
- Item number 19, Document related to charge of concerning Y. J., dated 19th April 2012, the exchange of information in between EULEX and Bavarian state Directory for Criminal Customs.
- Item number 20, its forensic report analysis of narcotics concerning SH.F. from 4th April 2011 done by D.F., Educational and Scientific Centre of the Federal Financial Management Science and Technical Section;
- Item 21, Investigative report, dated 21st July 2011, issued by Bavarian state Criminal Services joint Unit for Drug Investigation against A.M.;
- Item 22, The report of the examination of the seized mobile phones, from 13th December 2012;
- Item 23, Verdict of District Court of Munich, (roman one) I, sentences of G.- 10 years and 4 months, A. - 6 years, B. - 4 years and 10 months. In the Reasoning the court speaks about Y. V. The Verdict was for drug related criminal offences;
- Item 24, Verdict of District Court of Munich, (roman one) I, which is a drug related Verdict by which, F. received punishment of 10 years and 10 months of punishment and O. 8 years. Reasoning of this Verdict mentions Y. J. many times;

⁷ Item number 10 was not read because it had the interview of M.O.

⁸ The report had no date.

⁹ Binder no. 2 is German original version of the documents/reports in Binder no. 7

- Item number 25, Verdict of District Court of Munich, (roman one) I, against F.Z., who was sentenced to 6 years and 6 months imprisonment fined 20.000 euros, for criminal offences/offence related to narcotics. In the Reasoning name of Y. J. is mentioned many times.
- Item number 26, Verdict of District Court of Munich, (roman one) I, against A.M. for drug related offences, who was sentenced to 6 years imprisonment. Name of Y. V. is mentioned many times in the reasoning of the Verdict;
- Item 27, letter of W. which just identifies that the most informed person is TH.A.;
- Item 28, Arrest warrant against Y. V., issued in Munich, on 15th December 2011, by judge of the local court;

Documents from Binder number 8-Reports on interceptions ordered by German authorities¹⁰.

Statements of Witnesses

On 22 July 2013, witness *A.S., EULEX Police*, was heard as witness in front of the main trial panel. He was stated to have been in charge of the operation to arrest defendant Y. J. and gave information about the process of the Search at defendant's premises in X Area. Witness S. stated that the Defendant was fully informed about his rights and, that initially he did not want to have any lawyer present, however after a while he decided to call Lawyer R.G. Witness S. stated that the house in X area looked to be occupied and not a temporary place to live, that some items belonged to a male and a child and there was jewelry inside. That the kitchen was fully equipped thus it was obvious they were living there¹¹ and that there was a children's playing room on the ground floor, and a children room on the second floor¹². That the seized green dry grass¹³ was delivered to the Forensic Unit for examination which, resulted to be Marijuana. Further to this, witness S. gave information about the other search of defendant's property, a flat on XX, Pristine. There they found 10 different telephones and 11 SIM cards etc¹⁴, and that they also found a powder which was packed and, there they also found an electronic scale¹⁵ and that after sending the powder to the Forensic Unit for examination it was proven to be heroin.

The witness also gave explanation that defendant was not asked to lead the Police to the flat on XX street, because there was a Court order to search it¹⁶ and that apart from two firearms and one shotgun, 14 grams of heroin and some amount of marijuana no other items or goods that

¹⁰ Binder no. 3 is German original version of the documents/reports in Binder no.8

¹¹ Minutes of Main trial, dated 22 July 2013, p. 7, second answer to prosecutor's question.

¹² Minutes of main trial, dated 22 July 2013, p. 7, third answer to prosecutor's question.

¹³ It was also seized a Rolex Watch, Audi A4, 2011 Model, and a Golf 6, 2011 Model

¹⁴ Minutes of main trial dated, 22 July 2013, p. 11, fifth answer to prosecutor's question.

¹⁵ Minutes of main trial, dated 22 July 2013, p. 11, ninth answer to prosecutor's question

¹⁶ Minutes of main trial dated, 22 July 2013, p. 13, second answer to the question of defendant's leading counsel, Mr. J.

under normal circumstances a person should not possess were found¹⁷. Witness S. also stated he have sent the seized telephones and SIM cards to IT forensic for examination and he did not have information about the outcome of examinations, and that he has not been involved in the investigation against the Defendant in Kosovo because all the searches depended on the International Legal Assistance documents from Germany¹⁸.

Witness S. answered to the questions of Lawyer R.G., the second Lawyer of defendant Y. J. which some of them were in relation to the Rolex Watch and the vehicles that were seized during the search operation. Witness S. remembered the Defendant saying that he has a house in XX and, that he personally did not ask as to who the owner of the house in X was¹⁹. Witness S. also stated that the Police did not know which door was but they did not ask the Defendant about the address of the Flat located in 'XXX Street, because the exact address was provided with the Search order²⁰.

To the Defendant's question the witness S. stated to have seen the Defendant reading or pretending to read the documents presented but also remembers to have heard him saying that he is better in German. Further to this, witness S. said that the Defendant did not want a lawyer to be present during the search and, that it is not true that the Defendant was told it was going to take a long time to wait for the lawyer to arrive so he would be present to the search²¹. Witness S. also stated to have heard that defendant said that the house in XX belonged to his parents however all stuff found there indicated that the house was occupied by defendant²². When asked, witness S. stated observed that the Defendant was not facing any health difficulties²³. With regard to the question that defendant did not want to sign any document the Witness answered that the Defendant made it clear that he is not going to sign any document.

To the questions of the presiding judge the witness confirmed that defendant was present when the police found narcotic substances and added that defendant became red in the face and started smoking after this²⁴.

Witness A.O., Kosovo police officer, stated to have compiled a report in relation to financial data of defendant. The report contained analyses of bank transactions of defendant. Witness O.

¹⁷ Minutes of main trial dated, 22 July 2013, p. 13, fifth and sixth answers to the questions of defendant's leading counsel, Mr. J.

¹⁸ Minutes of main trial dated, 22 July 2013, p. 13, eighth and ninth answers to the questions of defendant's leading counsel, Mr. J.

¹⁹ Minutes of main trial dated, 22 July 2013, p. 14, first, answer to the questions of defendant's second lawyer, Mr. R. G.

²⁰ Minutes of main trial dated, 22 July 2013, p. 14, second, third, fourth and fifth answer to the questions of defendant's second lawyer, Mr. R. G.

²¹ Minutes of main trial dated, 22 July 2013, p. 16, second, third, fourth and fifth answer to the questions of the Defendant.

²² Minutes of main trial dated, 22 July 2013, p. 16, sixth answer to the questions of the Defendant.

²³ Minutes of main trial dated, 22 July 2013, p. 17.

²⁴ Minutes of the main trial dated, 22 July 2013, p. 19.

explained that there were some suspicious transactions because it is not known where the money did end up since large amounts of money were withdrawn²⁵.

Following the request for international legal assistance sent to the German authorities, *witness TH.A., German police officer*, was heard, through video-link, in capacity of witness.

To the Prosecutor's questions, witness A. stated to have started an operation which resulted with the arrest of a person named Z. in April 2010 and the seizure of 5kg of heroin. After this, in July 2010, the Bavarian Regional Investigation Unit and he as the team leader of the group started investigation regarding the people residing in Kosovo and shortly after, based on interceptions of telecommunications, the investigation unit established that a group of people was involved in criminal activities and that Y. J. was identified as the provider of the drug. That the Bavarian Unit identified also the buyers of the drug in Munich and surroundings, precisely, a person called M.G., in Essen Bach Landshut, P.F., from Augsburg, M.O., and M.D. in Munich. That they also identified a Kosovo citizen called F.Z. whose role was to collect the money from the buyers and transfer that money to Kosovo to a person B.K., and he then further transferred it to Y. J. Witness A. stated that this was the structure of the organised criminal group and that the Bavarian Unit established this based on interception of the telecommunications.

Witness A. also described the arrest of a person from Kosovo who was supposed to deliver heroin to M.G. and, that there were several intercepted conversations held between Y. J. and G. that indicated this. That the arrest occurred on 11 October 2011 where the police searched a red Mercedes inside which were Mr B. and Mr A. who also were arrested and, that they found 4.5 kg of heroin in the front left side of the car. Witness A. also told the Court that in the apartment of M.G. were seized a left over amount of 50 (fifty) grams of heroin from the previous delivery, 5,000 (five thousand) € in cash, which had been prepared for the couriers as this had already been agreed between Y. J. and G. and the couriers had been informed about it. That there were also seized the used mobile telephones of M.G. and they had IPKO SIM cards. Witness A. also stated to have found G. passport and found a stamp dated 28th May 2010, from Kosovo and that also found a calendar of M.G. where he had noted the name of V. with two telephone numbers which belonged to J. family, who live in A., close to Munich.

With regard to B. and A. role, witness A. stated that they both were employed as drug deliverers from Y. J. who had to bring the drugs from Kosovo to Essen Bach, close to Munich.

Witness A. stated that on 11th January 2011, M.O. was arrested together with P.F. in the XX Street, Munich. That prior to the arrest they were observing how M. got in the car²⁶ of Mr O. and gave him 2 kg of heroin, and in return he paid him 37,000€ (thirty seven thousand) and, that

²⁵ For more details see minutes of Main trial dated 11 September 2013.

²⁶ Mercedes M Class, with Munich Plates.

the arrest took place at the Fuel station Esso about 2 km away from the spot where this hand over had taken place. That the heroin which, was proved to be low purity, was under the driver's seat in a plastic bag, in four separate packages, each of 500 grams. That what had led them to be observing M.O. was a very frequent telephone contact between M.O. and Y. J. previously, and that M.O. ordered via SMS with Y. J. 3 kg of heroin but J. in return only offered him 2kg for 37,000€.

That shortly after the arrest of M.O. they continued surveying Mr M. who was in contact with F.Z. in Munich in order to hand over the money to Z.R. That they arrested Mr. M. after the hand-over of the money in the restaurant or bar of Mr Z., in Munich, XXX, in Munich. That Mr R. later on made a witness statement in which he stated he had given the money to F.Z. who took the money to his home in XX street, and that after conducting house search they found 64,600 € and including in the 37,000€ previously mentioned. The police conducted the house search of M. and they found 320 grams of heroin.

That in the course of investigation into M.O. several phones were seized from him²⁷ and after analysing them, the police found out that he had saved the contact data of Y. J. under the name 'Oma'. In this regard witness A. stated to have prepared a report on the analyses of all the phones received in the course of the investigation²⁸.

Witness A. also gave information on the modus operandi of M.G. and M.O. That G. communicated directly with defendant, and that M.O. depended on Mr M. That there was a difference on how the money was received and sent back because M.O. was allowed to directly order from J. in Kosovo, but he was not allowed to hand the money over directly to Mr Z. because it had to go through F. (as a distributor of J.) who then had to give it to Mr Z. F.Z. in the period between July 2010 and January 2011 had been involved in all the deliveries to Y. J. Apart from G., O., F., C., there was another person, A.M., in Munich, who had received 3kg of heroin from Y. J. That based on the investigation and other material Y. J. did supply a large quantity of heroin and that all the deliveries in the period of investigation, was about 22.5 kg of heroin. Witness A. did give information separately on the quantity of the drug supplied to all persons involved such as; to Ms Z., from April 2010 it was 2.5 kg of heroin, to M.G., according to his own statement, he received 500 g of heroin in June 2010, and then on 16th August 2010 5kg, plus the 4.5 kg from the seizure mentioned before (all together: 10 kg); S.F. received on 30th August 2010 5kg of heroin. That out of those mentioned 5kg from F., O. received 3kg, and that in addition to that he had the 2kg from 11th January 2011. Ms M.D.²⁹ received 400g of heroin, out of those 5kg from Mr F. That though it must have been before July 2010 the exact point of time

²⁷ They had been seized in different locations; one he had on himself and the others were at his house.

²⁸ This report was sent to the Republic of Kosovo based on ILA request on the transfer of criminal proceedings from Federal Republic of Germany.

²⁹ She had been arrested in September 2011 and, the 400 g seized from her had no relation to the investigation the witness was talking about but it was proven that those 400 g had been part of the 5 kg from F.

is unknown but it they found out that A.M. received 3kg of heroin from J. That the street value of 1gram of heroin in the quality of 10% would be about 50€ and that in the period of investigation, 271,000€ were paid to J.

Witness A. also gave information about the trial held in Germany. That the trial took place at the District Court in Munich in July 2010 where witness A. testified and presented the telephone interceptions. Witness A. also confirmed that in his statement dated 12th June 2013, he listed a number of interceptions and that M.G. had confirmed that those conversations had taken place between himself and J. and, that those intercepts were the ones he played to M.G. in court in Germany.

To the questions of Attorney, Z.J., witness A. stated the identification of Y.J. was done based on several points. That it was made based M.G. statement who said to have had a trading partner called J.V. and, through the photo line-up identification procedure when the statement of A.M. was taken in which the latter did recognize Y.V. J. That also during the German investigations the deliveries continued although some people had been arrested and that defendant J. changed his telephone number and that the deliveries continued and the business had been taken over by F.B.

To the questions of Attorney, R.G., witness A. stated to have not been in Kosovo and to have never been in touch with Y. J. in relation to this matter. That there were Court Orders for interceptions against Y. J. in the area of Germany. That no vehicle belonging to J. has ever been stopped or drugs found in it. That Y. J. used to live in Munich and surroundings in 2004 and that there have been several trials and convictions of Y.J. for trading in heroin. Witness A. also stated to have no information about the bank accounts of defendant J. because all the money transfers were effectuated by handing over the money to Mr Z. That all plastic bags had been analysed for any DNA and fingerprint analysis but it did not give any results.

To the questions of the Presiding Judge, witness A. stated to have not undertaken any investigations against the mother or father of defendant J. That later an investigation was started against A.V., who is the brother of defendant, and a Mr K., who is his brother in law. Witness A. also explained how the photo line-up was conducted when A.M. was interrogated and, also told the Court that the latter was found guilty and sentenced to 7.5 years of imprisonment. That apart from A.M. also M.O. had identified Y. J. as the one being involved in the trade of heroin though did not know the name of his deliverer, but he knew Y.V. from previous times because they used to live in the same area in Munich.

M.L. statements dated

To the prosecutor's questions, witness M.L., German Police officer, stated to have worked 2 years with the Kosovo Mission as a team leader in the organised crime investigation unit. That he led the International Legal Assistance that was sent from Germany in relation to the investigation against Y. J. that was initiated by the Bavarian Criminal Police. That he was not involved directly in the case against Y. J. in Germany and that he had direct contact with the leading investigator of this case in Germany. With regard to M. operation, witness L. told the Court that this operation started in 2009 and continued until 2010-2011 and it was concerned to Y. J., drug dealing and trafficking from Kosovo to The Munich area. That the case was on-going for several months and, there were also covert measures undertaken including interceptions which led to several arrests and seizures of large amounts of heroin. Witness L. stated that the Land State Criminal Police was investigating directly Y. J. as a main suspect and he was known as the head leader of heroin trafficking in this group. That due to the investigation that was on-going, the Prosecutor's office issued an international arrest warrant against Y. J. That according to the evidence found after the issue of the International Legal Assistance, a national arrest warrant and a search order against Y. J. was ordered by the Pre-trial Judge of the Basic Court of Prishtine/a. With regard to the search operation, witness L. stated that on the day of the house search in X he was the one who afterwards entered and explained the rights to Y. J. as to the arrest warrant and put handcuffs on Y. J. That he handed over the search warrant to Y. J. as soon as they entered the living room and explained this in German and in particular he was advised he had the right to a Defence Counsel and that he could have one appointed, but he refused.

That after finishing the search of the house in X area he and his colleagues drove to XX Street where the second flat of the defendant was located in order to conduct the search of this flat based on the search order issued by the court in Pristina. That they searched for two witnesses and during the search an amount of powder was discovered in the bathroom because it is common that a secret hiding place of drugs is the flush cistern of the toilet. That he took away the plastic cover that was on the wall, and found this small plastic bag with brown powder which according to the smell was suspected to be heroin. That according to the case files of M. case Y. J. is mentioned as the leader and organiser of the drug trafficking.

That M.G. was one of the main receivers of the drugs from Y. J. and he was sentenced to 10 years and six months in prison and that he had no information as to why M.G. refused to give a statement to him and his colleague A. That M.O. is also sentenced too many years of imprisonment because he is also involved with receiving drugs from Mr J.

To the questions of Defence Counsel, Z.J., witness L. stated to have seen the chart in the case files in Germany and according to that chart Y.J. was placed on the top and that he was mentioned as the organiser. That the defendant was cooperative throughout the search procedure

but his assistance or his help was not necessary apart from the key to enter the apartment in XX Street.

To the questions of Defence Counsel, R.G., witness L. stated to have received the answer from the Defendant that the house in XX area belongs to his parents and, that he did not remember whether there was any response from the Cadastral office with regard to ownership of that house. That all the items that were confiscated except the shot-gun were on his possession, because the defendant did not dispute this. That two vehicles were found in front of the house, the Audi A6, the newest model, was driven by the defendant himself and the Golf Model 6 was driven by his wife. That the vehicle registration document showed that the vehicle Golf 6 belongs to his wife and A6 belongs to another person but was not sure since he did not have the documents in front him. The witness was not able to remember the telephone numbers used by defendant Y. J. That apart for the request to make a phone call to his wife which, was facilitated no specific request was made by defendant Y. J., and that a doctor visited him during the detention hearing because they noticed that the Defendant had problems with addiction. That the family of the Defendant have a gardening shop or property close to Munich.

To the questions of the Presiding Judge, witness L. stated to have no information about the origin of the drug and that the quality of heroin was middle to low, and it was 10-12%. That the heroin seized in Germany was of 12% base substance and it was very bad quality. That the heroin can get you addicted in a very short period of time, and with regard to the amount found in J. house he stated that since defendant J. can afford to buy this amount it can be said that this amount was for personal use. That with regard to the price it all depends on the city because the situation and price varies even in Germany, and for this low quality 12%, the approximate price is 100-140 euros per gram.

Expertise and expert witnesses

Voice expertise

On 10 October 2013, the Court received the Technical Expert Report prepared by the Expert L.R. Professor R. did have in his possession 2 CDs: One (1) CD (Original A)-voice sample taken from defendant Y. J. on 7 August 2013 and One (1) CD – intercepted conversations – Y.J.

The following List of Telephone interceptions (CD intercepted conversations) were proposed to be compared with the Voice samples taken from the Defendant on 7 August 2013:

ID 1.488.368; ID 1.489.840; ID 1.489.954; ID 1.489.966; ID 1.490.011; ID 1.490.034;

ID 1.508.903; ID 1.508.987; ID 1.647.114; ID 1.650.798; ID 1.650.804; ID 1.650.805;

ID 1.650.858; ID 1.653.797; ID 1.664.147; ID 1.682.208; ID 1.682.360; ID 1.692.520;

ID 1.693.768; ID 1.693.866; ID 1.694.161; ID 1.694.062?; ID 1.764.307; ID 1.764.694;

ID 1.802.961; ID 1.802.984; ID 1.686.086; ID 1.686.249.

The CD-intercepted conversation contained conversation mostly in German but there were some in Albanian as well.

The CD-voice samples taken from defendant Y. J. contained the voice of defendant in which he was asked to speak both in German and Albanian language.

The expert had to make comparison of the intercepted conversation ‘German voices’ with the voice sample where the defendant was asked to speak in German, and the intercepted conversations ‘Albanian voices’ with the voice sample where the Defendant was asked to speak in Albanian.

For the purpose of his expertise, Professor R. labelled the Known Voice³⁰ as audio000003-conversations into German language, and audio000002-conversations into Albanian language³¹. Further to this, the report indicates that the original IDs were translated with the Labels e.g. Original ID 1.488.368 as Label/Progressive 368 and so on, and that this was done in order to simplify its reading³².

In his report professor R. stresses that he had not taken into account some of the conversation because they did not fulfil the requirements in terms of duration³³. In other words, those conversations did not meet the time frame to analyze them as they were not long enough. The report also gives information as to the method applied in the Technical Expert Report³⁴.

Professor R. in his conclusion finds that based on comparison between the known voice of Y. J. and the anonymous voice³⁵ defendant Y. J. was identified to have been speaking in eight (8) conversations; six (6) in German language and 2 in Albanian³⁶. The findings were supported as follow:

Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as A_368 belong to the same speaker.

Moderately Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as A_114 belong to the same speaker.

³⁰ Known voice is the CD containing Voice samples taken in the session of 7 August 2013,

³¹ Explanation given at the bottom page 11 and the Chart table at page 12.

³² Page 11 of the report – Chart table

³³ At the bottom of page 15 and top of page 16 of the Technical Expert Report

³⁴ Pages 8-10 of the Report, B1.1-Method applied in the present report

³⁵ Anonymous voice is the List of the telephone conversations from CD –intercepted conversation for use by Voice Expert

³⁶ Page 54-55 of the Report

Moderately Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as A_208 belong to the same speaker.

Moderately Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as A_520 belong to the same speaker.

Very Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as B_307 belong to the same speaker.

Strong evidence that the known voice of Y. J. labelled as audio000003 and the anonymous voice labelled as A_694 belong to the same speaker.

Moderately Strong evidence that the known voice of Y. J. labelled as audio000002 and the anonymous voice labelled as A_086 belong to the same speaker.

Moderately Strong evidence that the known voice of Y. J. labelled as audio000002 and the anonymous voice labelled as A_249 belong to the same speaker.

Pages 122 – 150 of the Report contain transcripts of eight aforementioned conversations.

The defendant's State of mind –psychological-psychiatric expertise

Based on the Court Decision the Panel of Experts conducted clinical psychiatric and psychological interview with defendant Y.J. at the premises of the Detention Center in Prishtina on 03.10.2013 between 14.30hrs and 15.00 hrs. Additional interviews took place at the premises of the Psychiatric Clinic in Prishtine, on 11.10.2013 from 10 until 12 hrs, and on 17.10.2013, from 10.00 hrs until 11.30 hrs.

In this regard, the Court received a Report and, also some additional answers put to questions by Defence Counsel, R.G. In addition to this, the Panel of experts was heard in the session of 13 November 2013³⁷. The Experts explained they conducted examinations several times and ran the mini cognitive test. Also that was conducted the examination which is called coherent and non-coherent test, also defendant's reasoning processes, which are part of the thinking abilities. It was stated that regarding the cognitive processes, respectively defendant's thinking, his way of thinking was logical, and that the Experts did not find any pathologic processes in the content of his thoughts. It was also said they did not find any disorder in relation to his, no disorder in his perception, such as illusion or hallucinations, his emotional state was under control, and other processes of intelligence such as calculation and others were normal. Therefore, it was concluded that his mental state is fully normal. Prof Dr. Z.H. added that "Science tell us, and based on my long experience, that some persons who have been long term users of drugs, these persons indicate cognitive differences, however, this is an issue of inheritance and this depends

³⁷ EULEX psychologist, H.K., was heard first, followed by Prof. Dr. Z.H. and the last one was Dr. N.I. – M.

on the vulnerability of the main central nervous system. I conclude that following many examinations we did not find any pathological in the psychiatric status of the defendant”.

III. Rejected evidentiary proposals

The following Proposals were rejected by the trial panel:

- Case prosecutor’s motion to admit and read as evidence statement of M.G. and M. O. The trial panel concluded that these statements cannot be used in this trial because they both were interrogated in capacity of suspects/defendants.
- Motion of defense counsel, R.G., to hear as witness all other defendants and a number of other persons. The trial panel decided so because lawyer G. did not give precise names of the individuals but only said ‘all people involved in this case’ and that did not give any reasonable explanation as to what all those people are going to testify and prove in this trial.

Witnesses who refused to testify via video-link:

On 16 July 2013, the Court did send an ILA request to German authorities seeking assistance to summon M.G. and M.O. for testifying in the trial. The Court received information that none of them was willing to testify and that according to German law they could not be forced to testify. The Court did not obtain their statements because of their unwillingness and also redundancy.

IV. Rejected charge Unauthorised Ownership, Control, Possession or Use of Weapons, in violation of Article 328 paragraph 2 of the CCK

Y. J. was charged that on 2nd October 2012, Y. J. on the territory of Kosovo committed the offence of unauthorised ownership, control or possession of weapons in that he owned, had control of or possessed three weapons, namely, a Kratay Magnum pump-action hunting rifle serial number XXX plus ammunition, a gas pistol Ekol Tuna serial number XX plus ammunition, and a gas pistol Ekol Special-99 serial number XXX plus ammunition. This act is covered by the Law on Amnesty No. 04/L-2090, Article 3, paragraph 1, subparagraph 1.1.10 .

V. Factual findings

The trial Panel, after conducting main trial session and administering the aforementioned evidence found beyond reasonable doubts that defendant Y. J. was involved in the commission of criminal offence of unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances in violation of Article 229, par. 1, 2, 3 of the Criminal Code of Kosovo (old Criminal Code valid until 31/12/2012) and, the criminal offence

of organized crime pursuant to Article 274 paragraph 3 of the Criminal Code of Kosovo (valid until 31st December 2012).

Criminal liability

The suggestion to the Court by the defense that the defendant as an addicted in narcotics was not able to control his actions was incorrect and not proven. The report of the Panel of Experts indicated that his personality is not affected by narcotics and that there was not lack of criminal liability. That his mental functioning was on such level that he understood and controlled his actions very well.

Interceptions are attributed to Y. J.

Also, the court did not trust the defense presented by the Defendant's defense the he was not the speaker on those lawfully intercepted telecommunications by German authorities. Though it was obvious and could have been established even by an objective observer that it was defendant's voice indeed, however the Court, in order not to leave any room for different opinions, engaged an experienced expert to give an answer in relation to this matter. The Expertise confirmed that it was defendant Y.J. speaking in eight conversations. Moreover, the content of those conversations was clearly drug related. The Court notes that the Voice Expert did not analyze most of the conversations contained in CD – intercepted conversations because they were not long enough (i.e. did not reach the minimum for evaluation) however, it does undermine its findings. When the voice from some telephone number was attributed to defendant on the other conversations to/from this number, Y. J. was considered by the Court as the participant. The content of the conversation and the statement of police officer TH.A. who presented the results of investigation in Germany support such a conclusion.

Corroboration of the evidence regarding the individual shipments

Period of Between 27 August 2010 and 12 October 2010 G. connection

As it was proven from the police report of German police and also the statement of the witness TH.A., the German police after preparation of action seized 4.56 kg (net weight) of heroin, contained within 9 packages from the front tyre cap of a Mercedes Benz C class vehicle, with Slovenian registration plate XX, in Munich, Germany on 11 October 2010. This action was prepared on bases of interception of M.G. phone(s). Y. J. described G. ((32) on 11.10.2010 at 15:34:50 from the number +386 (0)XX. to number +381 (0) XX ID 1.694.062 (Binder X, pp. 655-657)) the red colour of Mercedes Benz of his connection. Immediately the narcotics were sequestrated in this car by German police and couriers were (S.A. and J.B.). The conversation before the police action shows that shipment was coordinated between G. and J. This telephone number was used by Y. J. It was proven by expertize of L.R., professor (see evaluation of the expertise). The witness TH.A. stated that M.G. –participant of the group, during his trial being confronted with these interceptions confirmed that the person was Y. J. who spoke with him.

The engagement of F.Z. as courier is proved not only by his arrest but it can be logically deducted from the intercepted conversations. This intercepted conversation is definitely regarding the narcotics. The conversation shows that there was another shipment which was not interrupted by German police in this period. The interceptions shows how worked the “share system” in the group.

J. was heard arranging the hand-over of money between G. and F.Z. at a branch of a bank at 11:30 and, at 12:08:58 hrs, G. told J. that he has met “him” (F.Z.), to which J. asked “what was it?” and G. replied “26”. On the same day, at 20:31:28 hrs, F.Z. sent a SMS text message to B.K. with the content “Y. 25000”. This series of conversations can be only interpreted as G. having paid the sum of €26,000 to Z. in exchange for heroin and thereafter Z. indicating to J. the sum that is coming to J.(€25,000) minus Z. fee (such amount relates to Z. position in the Group).

On the morning of 11.09.2010, there was further phone contact between G. and J.at 10:35:44 hrs with G. stating to J. that he (G.) could meet up with another manZ.as this other person only lives in XX, four stations away (the apartment of F.Z. was located in XX). G. discussed with J. meeting at 11.00 that morning at the Aral Fuel Station. Thereafter J. contacted F.Z. at 10:38:14 hrs whereby an arrangement was made for G. to meet Z. at 11.15 that morning. In two further phone calls, J. and G. clarify that G. will meet up with Z. outside the bank “as usual”. At 12:24:03 hrs, G. said to J..”26 to give..” This is interpreted as G. having paid Z. a further €26,000 in exchange for heroin. On 12.09.2010, Z. sent an SMS text message to B.K. saying “...Y. 24900..” As per the previous transaction on 27.08.2010, this is confirmation from Z. to J. of Z. having paid to J. 24,900 euros (the modus operandi of the shipments and following sharing is repeated more times)

Phone traffic between F.Z. and J. took place on 14/09/2010. At 19:05:01 hrs, J. asks “..you got 16 more today but you didn’t send anything.” Z. responded that “the Albanian gave me 11” and that “the other one 12”. There is a dispute with J. irritated that Z. had not sent him the higher sums that he J. had expected. (There is no other explanation that the conversation was related to narcotics from the other evidence (Police reports, TH.A. statement, and seized narcotics.))

A lengthy conversation took place between G. and J. on 22.09.2010 at 20:41:24 hrs whereby they discussed the sums that J. had received so far from G. , this being €54,000 (“54”). There is no other explanation that they spoke about money for narcotics.

At 17:20:55 hrs, G. asked J. to set up a meeting between G. and Z. for 18:30 hrs that evening. Thereafter, J. immediately called Z. (B.) at 17:22:32 hrs and asked him to be “in front of the bank....at 18:30”.

At 19:37:21 hrs, J. called G. and G. stated “..it is done” and that he had given him [Z.] “22”. Clearly, a further exchange of narcotics was to take place facilitated by J. with G. paying Z. the sum of €22,000 to do his part.

Thereafter, on Monday 11.10.2010 at 11:26:26 hrs, J. told G. to go home as soon as possible and “wait for him at the place there.” At 14:09:01 hrs, J. called G. and asked him if he G. was there which G. confirmed and J. responded saying “..in 10 minutes he will be there.” J. called back G. again at 14:15:04 hrs and asked “..can you give him anything?” to which G. asked “how much should I give to him?” and J. answered “well 4 or 5”. They agreed that G. would give him 5 and G. agreed to call J. back when he G. saw “him.” In fact, after G. was arrested later in the day and his flat at XX 2, XX had been searched, €5,000 in cash was seized. (see Police Report of German Police)

At 14:35:19 hrs, J. furiously called G. and told him to go home because “the idiot went to Ausburg to another address” At 15:34:50 hrs, J. told G. “I will tell you what type of car he’s got with a red Mercedes.”

At 15:41 hrs, A. and B., the couriers, were arrested whilst driving a red Mercedes Benz C class with Slovenian number plates XX outside G.’s property and before the handover could take place. G. was arrested at 15:44 hrs in front of the residence. In fact, on a mobile phone seized from B. was an SMS timed and dated 14:40 hrs 11.10.2010 with the address in it of “XXXX” from a Serb mobile number and a further SMS at 14:43 hrs 11.10.2010 from a Slovenian number reading “you’ll get 5 thousand.” Between 16:07 and 17:24 hrs and after the arrest of G., J. called G.’s number eight times panicking that G. had not contacted him to confirm the exchange.

The packages of heroin were seized and analyzed as were other exhibits that were seized from G.’s home address. When the vehicle was searched, 9 packs of powder weighing 4.56 kg were found hidden in the front tire cap containing 1.27 kg of pure heroin.

A. and B. were couriers. They were connection between G. and J., they had same position as F.Z.

During the search of G.’s property, a number of incriminating items were recovered. In particular, a number of mobile telephones; a return airline ticket from Munich to Pristina (1-15.12.2007); a number of IPKO Kosovo SIM cards; a calendar (on one page, handwritten, is the word ‘V.’ above a German landline phone number 08121/253978 – this was later traced to be the line registered to S.V. of XXX, who is the mother of Y. J.; a passport issued in the name of G. with a Kosovo entry stamp dated 28.05.2010; and €5,000 in cash.

The sum of €5,000 recovered from the property exactly accords with the conversation that G. had with J. at 14:15:04 hrs that day when J. had told G. to give the courier “5.”

All conversations are related to shipments of the narcotics. As a result the seized narcotics and previous telecommunication which do not give rise to another explanation. The time frame is established by the time of conversation. The connection Kosovo - Germany is established by the following facts: Y. J. and couriers (Z., A., B.) are Kosovars, the connection in Germany (G.) had the aim to distribute the heroin in the area of Munich (TH.A. statement). There are items found during the search of G.’s property which indirectly prove the connection of G. to Kosovo. The

subject of criminal offences –heroin -, its weight and quality were proved by expert report issued by police laboratory in Germany. The evidence corroborates each other, mutually supports each other and creates findings described in the enacting clause. Material evidence - seized heroin in G.'s flat, rich lifestyle of J. and TH.A. statement provides the key for intercepted conversations

Purchases with Y.V., M.D. and F.Z., period Between 13 August 2010 and 14 September 2010, Y.J. (F. connection)

The basic piece of evidence is the seized 418 grams of heroin which were found out in the apartment of M.D. The connection between seized heroin and Y. J. and heroin is proved by the intercepted conversation between the holder of the heroin M.D. and S.F. and conversation between F. with Z. and J. Z. is designated as the courier also in this shipment. The person F.Z. is crucial, because he was the connection – the courier between Germany (O. and G.) Kosovo (J.). (Witness TH.A. also confirmed Z.'s position to court that in the flat of F.Z. the Germany Police seized money in the amount of 64,400 Euros)

On 13.08.2010, F. contacted J.at 13:34:40 hrs during which they discussed F. putting himself in contact with D. F. later contacted J. again at 14:46:22 hrs when they further discussed. D. and F. told J. that he would tell her “to move her ass.” The following day on 14.08.2010 at 11:57:22 hrs, J. contacted Z. and asked him if he “could ..be there at half two...in front of the bank.” At 13:08:15 hrs F. and J. further discuss a D. arrival in which one of them states “let us call again later on...then after you can tell me what she bought.” At 14:25 hrs on 14.08.2010, F. called J. and J. told him that there were “14”. This relates to the money that D. had paid over, the overwhelming inference being that she paid €14,000 to Z. for heroin. Further evidence for this transaction having taken place is that on 16.08.2010 at 02:25:09 hrs, Z. sent a text to a contact in Kosovo “Y. 13300.” In line with their established practice, Z. had deducted his fee from the 14,000 for this drugs transaction, the remainder being for Y. J.

On 23.08.2010, F. made a payment of €9,900 to Z., money that had originally come from D. The build-up to this is that on 17.08.2010 at 18:01:16 hrs, F. contacted J. indicating that “she [D.] wants to come to me day after tomorrow.”

At 22:15:21 hrs, F. called D. and told her that he was at her door. At 22:29:04 hrs, J. called F. and they talked about F. being able to meet at 12 o'clock but J. indicated that he would need to check if the time was convenient. At 22:31:22 hrs, J. asked if Z. could be in front of the bank at “12”. Immediately afterwards at 22:55:41 hrs, F. phoned J. and told him “10”. On 24.08.2010, Z. sent a SMS text message to Kosovo number XX regarding a payment “L. 9600.” This is without doubt the €10,000 paid to Z. by F. for heroin for D. minus Z.'s fee and payable to J.

The conversation from 13.8-20.8.2010 was regarding to a different payment then for narcotics which were seized at M.D. apartment (different amounts and logically weight) but it is without

doubt that the conversation (same modus operandi) was regarding to narcotics; despite of lack other establishing evidence (narcotics were not seized). This conversation illustrates the relationship between the other members of the group.

On 13.09.2010, contact took place between F. and D. whereby a meeting was arranged to take place between 17:30 and 18:00 hrs. F. contacted a taxi and was transported over to D. property at XX, 81673, Munich. At 21:25:24 hrs, F. contacted J. from a telephone booth in order to arrange a meeting between F. and Z. during which F. asks J. “ can you call him?” and thereafter indicating that the meeting should be at a quarter to eleven. Straight after this, J. contacted Z. and asked him to be at the bank at 22:45 hrs (this is the XX at XX in Munich). At 22:59:37 hrs, F. called J. from a telephone booth asking where Z. is. However, during the conversation, F. states “wait, I believe his is coming, wait, there he is.” F. thereafter can be heard talking to a third person and saying that it is ok.

On 14.09.2010 at 09:57:41 hrs, Z. sent a SMS to Kosovo regarding the incoming payment by texting “I. 11500”. It proved that the sum passed from D. to F. and then paid over to Z. was €12,000 which would have equated to about 750 gr of heroin.

Further evidence of the supply being to D. is that on 14.09.2010, following D. arrest, D. apartment was searched and approximately 418 grams of heroin was seized.

It was proven that all conversations are related to shipments of the narcotics. This was sufficiently proved by the seized narcotics and previous conversation which does not give rise to another explanation. The time frame is established by the time of conversation. The connection Kosovo - Germany is established by the following facts: Y. J. and courier (Z.) is Kosovar, the connection in Germany F. had the aim to distribute the heroin in the area of Munich (TH. A. statement in the main trial from 10th September 2013). The Subject of the criminal offences – heroin-, its weight and quality were proved by expert report issued by police laboratory in Germany. The evidence corroborates each other and mutually supports each other and creates the findings described in the enacting clause. Material evidence - seized heroin in the D. flat, opulent lifestyle of J. and TH. A. statement provides the key for interpretation of the intercepted conversations.

Destination of narcotics M.O. Period Between 2 January 2011 and 12 January 2011 (A.M. courier)

The seized heroin in weight of 1.992 Kg represented the pillar of the evidence. The seizure is key to interpret the conversation between the participants and there are no doubts that the telecommunications were related to narcotics, price of narcotics and organizational matters regarding shipments. Witness TH.A. confirms this and his statement corroborates with police reports of German police.

On 03.12.2010 at 13:27:33 hrs, a conversation took place between them whereby they discussed a new supply, O. saying that “they could do the same as the last time” and that, when asked by J. when he would be ready, O. stating “approximately 3-4 weeks, maximum.” “The same as last time” signified the drugs deal done on 31.08.2010 i.e. for 3 kg of heroin at a price of €55,000.

Contact continued between O. and J. throughout December 2010 and early January 2011 when they talk about doing something in the middle of January and O. being ready. On 02.01.2011, at 20:44:56 hrs, O. sent a SMS to J. stating “I am ready by the end of the week i.e. by Saturday. Can we do 3 for 54?” On 06.01.2011 at 18:31:05, O. sent a further SMS saying “please send me a message once you know approximately what we shall undertake.”

On 10.01.2011 at 18:25:20, J. asked sent SMS asking “do you have time tomorrow?” to which O. replied at 18:27:08 hrs. “yes, in the afternoon. Can I take it as his bank Raiffeisenbank?” to which J. replies at 18:29:15 hrs that it [the deal] will be “with someone else.” The handover would be in XX X, XX 60, Munich. That other person was M. On 10.01.2011, J. sent O. a SMS at 18:37:07 hrs indicating that O. would receive 2 kg at a price of €37,000 (“there are 2.37”).

On 11.01.2011, by a short SMS at 08:46:14 hrs, J. indicated to O. that the time of the hand-over would be 14:00 hrs. Via a series of SMS messages, J. indicated to O. instructions such as “tell me what are you wearing and how should he recognize you” (12:22:04 hrs), and, at 12:28:41 hrs, that he should not forget his cell phone. At 12:49:35 hrs, O. replied that he was “wearing workers clothing and rubber boots” and that he would try to be there within two hours. J. advised O. to send him, J., a SMS when he got there.

At 14:29:27 hrs J. sent O. a SMS stating “send me a SMS message when you get there” to which, at 14:34:31 hrs, O. replied to J. “I am here” (having arrived at the meeting point). At 14:53:37 hrs , J. called O. to give him a description of the clothes that a man called A. M., a drugs courier, was wearing (jeans and a black jacket).

At about 15:00 hrs, the meeting took place between O. and M. whereby they both got into the rear passenger seat of O.’s car and O. received 2 kg of heroin in exchange for €37,000. This exactly accords with the SMS sent at 18:37 (“there are 2.37”). During the exchange, both O. and M. were in phone contact with J. At 15:02:13 hrs, J. called O. to ask if everything was ok to which O. replied “Yes, it’s good. We are parting now.” He also asked O. “did you give the papers to him?” O. confirmed this and replied “yes...37...” J. then asked for M. and M. asked J.: “so I am giving all of this to him, right?” To which J. replied “yes, just give it to him. When you walk away from him, just give me a ring.” At 15:15 hrs, they were both arrested at the Esso T. petrol station on W. in Munich. 1.992 kg of heroin that had been passed from M. to O. was recovered from behind the driver’s seat. The arrest is described in the Police Investigation Report number 0426 and dated 11.01.2011. It was in four packages, amounted to 8.3% and 8.4% heroin and the total heroin content was 155.18 grams.

M. was arrested at 19:00 hrs. The money he had left at the café was subsequently collected by Z. between 17:06 and 17:18 hrs who thereafter took it back to his apartment at 285 X Strasse.

M. apartment at XX 44 was searched that same day and another 323.35 grams of heroin (21.45 grams of pure heroin) was seized as well as two fully functioning, unloaded firearms (two pistols: a Walther P99 and a Browning GDPA 9) plus live ammunition and €4,230 .

The Police also searched Z.'s apartment where they discovered €64,465. It is highly likely that the sum of €37,000 handed to Z. by M. was contained within that total sum.

What occurred next was ascertained through various sources of evidence: police observations, intercepts and statement of TH.A.

The seizure of the money and heroin in the apartment of M. and money in the apartment of F.Z. corroborates with German police reports and the verdict against S.F. and M.O. issued by Regional court of Munchen I. The voice comparison and statement of TH.A. disclosed defendant's organizational role in this purchase of 1.992 kg heroin.

Sequestered narcotics on 2nd October 2012 in Kosovo

On 2 October 2012, Y.J. on the territory of Kosovo, at street X XX, Pristina, possessed a mixture of heroin and paracetamol weighing 11.66 grams contained within a plastic bag and it was seized by the Police from behind the bathroom toilet in the apartment of Y.J. Kosovo on 2 October 2012.

On 2 October 2012, Y. J. on the territory of Kosovo on the ground floor of the house occupied by Y. J. in X, Pristina, possessed 3.38 grams of cannabis sativa these narcotics was being seized by the Police.

Forensic chemical examination confirmed that the items found in the premises occupied by defendant, the green bush material was 3.38 grams of marijuana, and the second item seized had a net weight of 11.66 grams and contained heroin mixed with other substances. Heroin is characterized in chart one, and it was mixed with acetaminophen mixed with caffeine. The court decided to confiscate the 3.38 grams of marijuana, and of mixture 11.66 grams of heroin and paracetamol, because such material is object for the commission of the criminal offence.

This act is proven by the witness statement of TH.L. and witness A.S. Both these statements do corroborate with the police reports. The court is believes that this material (heroin, marihuana) was not possessed for private use. His previous acts sufficiently prove that defendant, Y. J., was not only user but also a dealer. The electronic weighing scale found in the apartment of the Defendant in XX Street proves that he was weighing the narcotics. The only person who weights narcotics is somebody who wants to sell it later. The intent to sell these narcotics even in such a low amount was also proved by the others shipments organized and coordinated by defendant, Y.J., to Germany.

V. Legal findings

The court established that the defendant committed simultaneously two criminal offences by one continuing act, (Concurrent offences). Though the indictment contained five (5) acts of the criminal offence of unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances in violation of Article 229, par. 1, 2, 3, the court opines that the act of defendant had the continuing character. The object of the offense was the same – narcotics and drugs, especially the intent to sell. The defendant had the same intent as the perpetrator to deal with the narcotics with the intent to gain from their following purchase. The Court also established that the acts were committed under the same conditions.

The Court opines that all elements of the legal qualification of the criminal offence of Unauthorized, purchase, possession, transport and sale of dangerous narcotic drugs and psychotropic substances in violation of Article 229, par. 1, 2, 3 pursuant the Criminal Code of Kosovo, (valid until 31.12.2012) were fulfilled same as pursuant to Criminal Code of Kosovo (valid from 01.01.2013) where the legal definition of the criminal offence of Unauthorized, purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues is foreseen by Article 273 paragraph 1, 2, 3.

Defendant Y. J. had no authorization for purchasing, possessing, distributing, transporting, exporting or importing the dangerous narcotics. The heroin sized in Germany and, also that in his flat occupied by him in Kosovo, are dangerous narcotic drugs same as cannabis (LAW NO. 02/L-128 ON NARCOTIC MEDICAMENTS, PSYCHO-TROPES AND PRECURSORS).

Practically defendant J. coordinated the transport and distribution and export/import of the narcotics. His engagement can be considered also as collaboration in criminal offences but in this case the collaboration in Criminal offences is consumed by criminal offence of Organized crime.

Article 274 paragraph 7, subparagraph 2 and 4 of the Criminal Code of Kosovo defines the organized criminal group as 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. The 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.

Pursuant to article 274 paragraph 7 sub-paragraphs 3 of the Criminal Code (the old one) serious crime means an offence punishable by imprisonment of at least four years. (The same limits are required by the New Criminal Code (see Article 283 paragraph 1 of the New Criminal code).

The legislator inserted the criminal offence of Organized crime to protect society from very dangerous forms of illegal acts which is defined as organized crime. The consequences of the criminal offence of Unauthorized, purchase, possession, distribution and sale of dangerous

narcotic drugs and psychotropic substances are considered as extremely dangerous for human health that is why the aim of this criminal offence is the prevention and protection of human health and life from dangerous substances.

The enacting clause contents the factual findings which are found to be proved beyond reasonable doubt.

One of the elements of the criminal offence of organized crime is the commission of the serious crime by the organized criminal group. The court described in the enacting clause the serious crimes which were elements of the criminal offence of Organized crime. Some of the purchases/shipments –criminal acts which were indicted as the element of the Organized crime and which were attributed to the organized group were omitted in the enacting clause of this judgment because they were not charged as the criminal offence of Unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances also. The Organized crime cannot be committed without commission of a serious crime as it is adjudicated by the higher court instances. The court would extend the indictment of criminal activities of the defendant in the contradiction of the charged acts.

Used law

The above mentioned criminal offences were committed before 1st January 2013. The new criminal code is valid from 1st January 2013. The above mentioned described acts are criminalized before 1st January and also after 1st January 2013. The court used the most favorable substantive law for the defendant.

The Old Criminal Code qualifies the above mentioned act as criminal offence Unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances in violation of Article 229, par. 1, 2, 3 pursuant articles 229 paragraph 3 and it can be punished by a fine and imprisonment of three to ten years. The new Criminal Code qualifies the above mentioned act as Unauthorized, purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues pursuant article 273 paragraphs 1, 2, 3 and pursuant article 273 paragraph 2 it can be punished by a fine and the imprisonment of two to twelve years. Therefore, the Court concludes that the most favorable law according to this comparison is the Old Criminal Code.

The old Criminal Code qualifies the above mentioned act as Organized crime pursuant to Article 274 paragraph 3 and it can be punished by imprisonment of seven to twenty years and by fine of up to 500.000 EUR. The new Criminal Code qualifies the above mentioned act as Participation in or organization of organized criminal group pursuant article 283 paragraphs 2 and it can be punished by a fine of up to 500.000 EUR and imprisonment of ten to twenty five years. Therefore, the most favorable law in this case is the old Criminal Code.

VI. Punishment

The court imposed a punishment in the range of three to ten years foreseen for the criminal offence Unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, pursuant article 229 par. 3 CCK (valid until 31/12/2012). The Court is very well aware about mitigating and aggravating circumstances on the side of the defendant. The defendant has not expressed any remorse and had not cooperated with the judicial authorities. The prosecutor asserted that the defendant was sentenced in Germany for similar criminal activities related to narcotics. This fact was not considered as an aggravated circumstance nor the Defendant considered as a recidivist because such punishment has not been recognized in the Republic of Kosovo. The court has imposed the punishment in the middle of the range bearing in mind that that mitigating circumstances are missed. The Court does not consider his assertion that he was addicted to heroin as mitigating circumstance. The evaluation of the Court regarding the punishment for the narcotics related offence is directed by the material significance of the offence that the subject of the offence is approx. 7 kg of heroin (not in the highest quality) and approx. 3 g of cannabis sativa (with unknown quality). The legislation does not precisely match the quantity of dangerous narcotics or effectiveness of such dangerous narcotics with the gravity of the committed criminal offence. However, the Court cannot ignore such quantity of purchased/possessed/transported/imported of dangerous narcotic which decrease/increase the gravity of the offence of the society. The international impact of narcotic related offence aggregated circumstances foreseen by legislator as an aggravated circumstance pursuant Article 229, paragraph 3 of CCK.

The defendant Y. J. was also sentenced for criminal offence of Organized crime. He committed this criminal offence by the same acts as for the criminal offence Unauthorized, purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances. The gravity of commission of this offence is established by his role in organized criminal group. Defendant Y. J. was not a simple “trooper” or a “soldier” however his position in the organized criminal group cannot be also overvalued. The Defendant used his connections in Germany; it was him who sent the couriers to Germany with dangerous narcotics / heroin. It was him who coordinated the handing over the narcotics; it was him who collected the material benefit after deduction of shares for the couriers. His important role in the organized criminal group is visible from the shares given to him. The Court is aware that such heroin was not produced by defendant (it is supposed that such heroin was imported from foreign countries probably Turkey, A.), so logically it means that he had to somehow forward the part of his shares to somebody else also. He was operating with independent German partners (O., G., M. etc). Y. J. shares on criminal activities of the group were higher than the other perpetrators whose engagements were proved by the German court. When imposing the punishment for the criminal offence of Organized crime, the Court bears in mind that his position in the organized crime group was as a coordinator; he was somebody who was in charge of the executive part of the group.

The range of the punishment for the criminal offence of Organized crime is seven to twenty years. When imposing 8 eight years punishment of imprisonment the Court took into account the fact that the negative significance of such acts is reflected in the paragraph 3 of Article 274, and the whole range from 7 to 20 years should cover more grievous actions than it was found in this trial.

The profiteering motive was reflected by imposing a fine in the amount 25.000 EURO. Pursuant the Article 39 paragraph 1 of CCK the punishment of a fine may not be less than 50 EURO. The punishment of a fine may not exceed 25.000 EUR or, in the case of criminal offences committed to obtain a material benefit, it may not exceed 500.000 EUR.

Although the life style of the defendant was very opulent as was proved by the house search and the cash flow in his accounts however, it was not proven that such an opulent lifestyle was entirely financed by criminal activities. Such amount of fine also reflects the economic situation of an ordinary Kosovar and such a punishment of fine does not miss the signs of its severance as foreseen by law.

The calculation of punishment for concurrent offences followed the rules in the article 71 paragraph 2 of CCK. The court expects from the eleven years of imprisonment punishment the isolation of the perpetrator who for almost two years continued his criminal activities knowing the addictive and poisoning effect of narcotics on his own body. The effects of heroin for the human body and personality are generally known therefore distribution of such narcotics means that the perpetrator deliberately distributed the narcotics, and by doing this caused serious health, social and economic problems. The need of the society is to protect mostly young people whose life can be ruined by narcotics. The manner, the repetitive character of defendant's actions and his obstinacy in commission of these criminal offences call for long time isolation from society. The Court concludes that the motives of such dangerous actions for society were entirely profiteering.

VII. Confiscation

The confiscation of the 11.66 grams mixture of heroin and paracetamol and the 3.38 grams of cannabis sativa both seized on 2 October 2012 is decided pursuant to Article 54, paragraphs 1, 2, subparagraph 7, Article 60 and Article 229 paragraph 5 of the Criminal Code of Kosovo (valid until 31st December 2012).

VIII. Court expenses

The defendant is obliged to pay the costs of the criminal proceedings as follow: The amount of 2.500 EUR for the Voice Expertise, the amount of 449 EUR for the Panel of Experts and, the lump sum in the amount of 1.000 EUR, pursuant to Article 365 paragraph 1, subparagraph 1.6 of the CCK. All aforementioned costs resulted from his strategy of his defence The Article 453,

par. 1 of CPOK provides that the defendant must reimburse the costs of the criminal proceedings, when the Court finds him guilty.

With regard to extension of detention on remand, a separate ruling in which were given detailed reasons is issued.

Drafted in English, an authorized language. Judgment is reasoning finalized on 4 February 2014³⁸.

Legal remedy:

Authorized persons may file an appeal in written form against this judgment through the Basic Court of Prishtinë/Prishtina to the Court of Appeals within fifteen (15) days from the date the copy of the judgment has been served, pursuant to Article 380 paragraph 1 of the CPC.

Vladimir Mikula

Vlora Johnston

Presiding Judge

Court recorder

³⁸ The deadline for drawing up the Judgment was extended by the President of Basic Court of Prishtina, dated 18.12.2013, upon the request of the Presiding Judge