

IN THE BASIC COURT OF PRIZREN

Case Number: P. 233/2013

30 October 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 PRIZREN in the Trial Panel composed of EULEX Judge Malcolm Simmons, Presiding and Judge Zejnullah Gashi and EULEX Judge Manuel Soares, panel members and Valentina Gashi as recording officer, in the criminal case against:

A.B., also known as A.M., D.B., B.H. and 'T.'; born B.H.¹ on xxx at xxx, District of Glogovac, Kosovo, Male, ID number xxx, fathers name M.H., mothers name K.C., Kosovo Albanian, citizen of Kosovo, residing at xxx, District of Glogovac, married with xxx child, economic status average, in detention since 17 April 2012;

CHARGED in the Indictment of the EULEX Special Prosecutor PPS No. 50/2011 dated 15 April 2013 and filed on 16 April 2013, as amended on 30 October 2013, in the following Counts:

COUNT 1

ORGANISED CRIME, under Article 274 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo, punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years

BECAUSE between 5 February 2012 and 17 April 2012, A.B., on the territory of Kosovo Montenegro, Croatia, Slovenia and Italy, committed the offence of Organised Crime by:

¹ changed his name to A.B. at the Kosovo Civil Registration Agency on 3 July 2009, number 201-3874

1. Organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K., C.K., E.K., L.K., 'N.', A.B., A.C., N.N., M.B., A.M., I.H., M.H.("B"), T.H., Sh.B., N.P., Z.G., M.C., Z.M., G.N., and other unidentified perpetrators;
2. Committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.K., C.K., E.K., L.K., 'N.', A.B., A.C., N.N., M.B., A.M., I.H., M.H.("B"), T.H., Sh.B., N.P., Z.G., M.C., Z.M., G.N., and other unidentified perpetrators; and/or
3. Actively participating in the criminal or other activities of the said organised criminal group knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit.

COUNT 2

SMUGGLING OF MIGRANTS, under Article 138 (1) of the Criminal Code of Kosovo, in co-perpetration under Article 23 of the CCK,

BECAUSE 3 February 2012 and 17 April 2012, A.B., on the territory of Kosovo, Montenegro, Croatia, Slovenia and Italy, committed the offence of Smuggling of Migrants by engaging in the smuggling of persons who are not nationals or permanent residents of the state to cross a border without complying with the requirements for legal entry, for the following migrants:

- (1) Between 5 February 2012 and 25 February 2012, smuggling Z.G., Turkish citizen, A.G., Turkish citizen, M.G., Turkish citizen, R.G., Turkish citizen, B.G., Turkish citizen, and G.K., Turkish citizen, from Croatia through Slovenia to Italy.
- (2) Between 26 February 2012 and 10 March 2012, smuggling H.K., Turkish citizen, and G.K., Kosovo citizen from Croatia through Slovenia to Italy.

(3) Between 24 February 2012 and 16 March 2012, smuggling A.B.1, Kosovo citizen, M.H., Kosovo citizen, R.J., Kosovo citizen and A.K., Kosovo citizen, from Kosovo through Montenegro and Croatia to Slovenia, with Italy as the intended destination.

(4) Between 17 March 2012 and 28 March 2012, smuggling B. (last name known), and two other migrants from Kosovo through Montenegro and Croatia and into Slovenia, with Italy as the intended destination.

AFTER having held the Main Trial sessions in open court on 28 and 30 October 2013, in the presence of the Accused A.B., his Defence Counsel H.K. and in the presence of EULEX Special Prosecutor Alister Cumming of the Special Prosecution Office of Kosovo and after deliberation and voting held on 30 October 2013,

PURSUANT to Article 359 of the Criminal Procedure Code² (hereinafter “CPC”) on this 30th day of October 2013, in open court and in the presence of the Accused, his Defence Counsel and the EULEX Special Prosecutor, the Court renders and announces the following

JUDGMENT

A.B., with personal details above, in detention since 17 April 2012 is found as follows:

Pursuant to Article 363 paragraph 1 (1.1) of the CPC,

Count 1: **REJECTED** because the prosecutor withdrew the charge during the main trial;

Further, pursuant to Article 365 of the CPC,

² Criminal No. 04/L-123

Count 2: **GUILTY** of Smuggling of Migrants under Article 138 paragraph 1 of the Criminal Code of Kosovo (hereinafter “CCK”), in co-perpetration under Article 23 of the CCK.

BECAUSE the Accused, A.B., engaged in the smuggling of migrants, mostly of Turkish origin, from Kosovo to Croatia and Slovenia and onwards to their final destination in Italy and other EU countries, including Hungary, Austria, Germany, and other countries in Western Europe. Specifically:

1. Between 5 February 2012 and 25 February 2012, A.B. smuggled a group of six Turkish migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as Z.G., born xxx, A.G., born xxx, M.G., xxx, B.G., born xxx, and G.K., born xxx.

The planning of the criminal offence began on 5 February 2012, when A.B. entered into an agreement with ‘N.’, a recruiter and main organizer on a transnational level, to regularly smuggle migrants through Montenegro and Croatia into Slovenia and Italy. After this agreement, A.B. contacted other members of the criminal group from 6 to 19 February 2012 in order to get them prepared. These members included Z.G.1 in Croatia, in Italy, A. (last name unknown) in Kosovo, and an unidentified member of the group in Montenegro. A. would work with A.B. in Kosovo to co-ordinate the drivers and Z.G.1 would take care of transportation of the migrants in Croatia towards Slovenia, while Sh.B. would oversee their onward crossing into Italy and transportation thereafter.

The planning of the operation was further concretized on 21 February 2012, when A.B. entered into a direct agreement with L.K., a main organizer on a level above ‘N.’ in the same organized criminal group, to smuggle a group of six persons in the next days. These six migrants were Turkish citizens Z.G., A.G., M.G., B.G. and G.K.. L.K. informed A.B. that the migrants consisted of a family of five adults and one seven year old child. He agreed to the smuggling of these persons from Zagreb, Croatia to Italy. Other members of the wider transnational criminal group had already transported them from Turkey to Croatia, where

A.B. would take over. The migrants were each charged 1,400 euros for their transportation from Croatia through Slovenia to Italy alone.

While L.K. was the direct and main contact point for A.B., the overall direction was given by her husband O.K., the leader of the criminal group. This is demonstrated by L. asking for permission from O. while talking on the phone with A.B. about the forthcoming operation. A.B. also received instructions directly from O.K. regarding the smuggling of this specific group of migrants. In particular, O.K. enquired about the drivers, the timing and modalities of the movement of the migrants and entry into the planned destination country, and where the migrants would be accommodated in Rijeka and money that would be taken from them in Croatia. C.K., the brother of O., was also involved in the smuggling arrangements from Turkey and communicated directly with A.B..

A.B.'s role was to communicate with the transporters from Croatia to Slovenia to Italy, the crucial stages of the migrants' journey, given that these were the stages that the crime was concretised by the illegal crossing of borders into EU states. In doing so, A.B. spoke with M.C.. M.C. organized the drivers directly, communicating back to A.B. frequently to gain instructions and agree money arrangements. Moreover, A.B. arranged for accommodation of the migrants in Opatija, Croatia, in the "Hotel Opatija" run by G.N., another member of the group in Croatia who also works with M.C..

In addition, A.B. was involved in the activities in Slovenia with his associate known as R.L. who contributed to the commission of the offence as a driver for the group from Slovenia to Italy.

On the evening of 23 February 2012, the migrants departed from Zagreb, Croatia to Rijeka, Croatia in two groups. Some of the group went by taxi for 350 euros from Zagreb to Rijeka, while the remainder went by bus after A.B. expressed his concern to L.K. that they would be

caught if they all travelled by taxi at night. In Rijeka they were met by the drivers organized by M.C., who took them to “Hotel Opatija” run by G.N.. The migrants were made to pay 200 euros for staying one night. On 24 February 2012, A.B. discussed the final arrangements with M.C. for transportation of the migrants from Rijeka, Croatia to Slovenia and onwards to Italy. M.C. and another associate travelled to Rijeka that evening in order to be ready to transport the migrants the next morning.

On 25 February 2012, at around 05:00hrs, M.C. and another driver picked-up the migrants from Hotel Opatija. At this point, the migrants were made to hand over another 1,200 euros to the drivers (500 euro to one, 700 euro to the other). Three migrants travelled in each of the two vehicles towards the Croatian border with Slovenia. The border was in fact crossed at Starod, with the migrants entering into Slovenia illegally at some time before 11:00hrs.

Around 11:00hrs that day, the migrants were met by another driver in a Mercedes vehicle at Račice, Ilirska Bistrica region, Slovenia, who was secured by A.B. to bring them to Italy. The prior plan had been to bring them to Udine, Italy, but on the day the driver took them towards Trieste, Italy.

The migrants Z.G., A.G., M.G., B.G. and G.K., were all stopped at a police control point as they illegally crossed into Italy between 11:00 and 13:00hrs and were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

The ages and identities of the migrants’ accord with the factual circumstances communicated in the intercepted calls of A.B., namely that the migrants were a family including a child. Notably, the youngest child of the group (B.G.) was only xxx years of age at the time of the events, even younger than the xxx years old indicated. In addition, three other children were also smuggled since R.G. was xxx years old, A.G. xxx years old and M.G.

xxx years old at the time. Only two members of the group were adults (Z.G., xxx, and G.K., xxx).

2. Between 26 February 2012 and 10 March 2012, A.B. smuggled two migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as H.K., Turkish citizen, born xxx (then aged xxx years), and G.K., Kosovo citizen, born xxx (then aged xxx years).

The planning of the criminal offence began on 26 February 2012, when A.B. agreed to smuggle G.K. from Kosovo to Italy. Further, on 27 February 2012, A.B. agreed with the K. brothers to transport two Turkish migrants from Zagreb, Croatia to Italy. The migrants had already been transported from Turkey to Croatia by other members of the transnational organized criminal group. On 6 March 2012, O.K. called A.B. personally, at which point it was clarified that one Turkish migrant would be going. This migrant to be smuggled was H.K.. Later that day, A.B. agreed with L.K. that H. would be transported at the same time as the migrant from Kosovo.

A.B.'s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.N., who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with Sh.B., Kosovo citizen, T.H., Kosovo citizen and H.B., Serbian citizen living in Montenegro who served as the guides and transporters. These three members of the group directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

The migrant departed from Rijeka, Croatia to Slovenia on 8 March 2012, crossing illegally into the region of Ilirska Bistrica, Slovenia by boat to the vicinity of Koper. They continued their journey towards Italy by night on 9 March 2012, in an effort to avoid the border police.

A.B. directly communicated with the migrants along the way, telling them in precise detail where to cross between Slovenia and Italy. From these communications, the illicit nature of the entry is extremely clear. For example, he instructed the migrant not to jump over a fence but to walk around it across railway tracks, since there were guard dogs. He further directed the migrants to walk through pine trees towards Italy, indicating that they were entering Italy via an illegal crossing point through the forest.

The migrants H.K., and G.K., as well as the transporters Sh.B., H.B., T.H. were all stopped at a police control point as they illegally crossed into Italy in the early hours of 10 March 2012. They were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

From intercepted communications in the aftermath of the arrests, the role of Sh.B., H.B., T.H. as transporters for the criminal group was revealed. They were housed in a camp for illegal immigrants in Croatia together with the two migrants, since their entry was also unauthorized. T.H. and G.K. were released and deported to Kosovo on 15 March 2012, while Sh.B. was released and deported on 16 March 2012. Notably, the illegal nature of their activities in Croatia is demonstrated from A.B.'s suggestion to Sh.B. to come up with an excuse for their presence in Croatia for the Kosovo Border Police upon arrival at Pristina airport which was not true.

Photographic surveillance of A.B. by EULEX Police on 12 March 2012 further corroborates the evidence of his involvement in this smuggling operation, since he is photographed collecting T.H. and G.K. from Pristina airport.

3. Between 24 February 2012 and 16 March 2012, A.B. smuggled four migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as A.B.1., Kosovo citizen, born xxx (age xxx), M.H., Kosovo citizen, born xxx (then aged xxx), R.J., Kosovo citizen, born xxx (then aged xxx), and A.K., Kosovo citizen, born xxx (then aged xxx).

Planning of the smuggling operation began on 24 February 2012, when A.B. received a call from “V.”, a member of his group in Kosovo, informing him that four migrants had been recruited (referred to as “four vehicles” in coded language) and they were ready to be transported from Kosovo abroad. Overall, A.B. reported to O.K. for the operation. The migrants were each charged 2,500 euros for their transportation from Kosovo through Montenegro, Croatia and Slovenia to Italy alone. They left this amount with I. (last name unknown) in Kosovo, as security, until their transportation into Europe was completed.

A.B.’s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.N., who provided accommodation at “Hotel Opatija” near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with M.H., Kosovo citizen, I.H., Kosovo citizen, H.B., Serbian citizen living in Montenegro, and R.R., Serbian citizen. I.H., H.B., and R.R. served as the guides and transporters from Kosovo onwards, while M.H. took care of arrangements on the Italian side. I.H., H.B., and R.R. directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

In addition, A.B. discussed the activities in Montenegro, a transit country, with his associate known as "C." who contributed to the commission of the offence as a driver for the group from Montenegro to Croatia and Slovenia.

The migrants departed Kosovo for Montenegro on or around 14 March 2012. The migrants and transporters stayed with "C." in Montenegro. A.B. told "C." to ensure that the migrants each give the driver an additional 300 euros and 700 euros to another Montenegrin associate managing the transportation. In the event, the Montenegrin associate in fact took 1,000 euros from the migrants.

From Montenegro, on 15 March 2012, the migrants were driven by two Montenegrin members of the criminal group to Croatia where they were accommodated by G.N. at "Hotel Opatija", near Rijeka. At some point, they switched cars to evade the authorities. They were then taken by ship to Dubrovnik, Croatia. A.B. kept in touch with "C." and the other Montenegrin members of the criminal group along the way, providing continuous directions on the route to take, money arrangements and accommodation. The boat arrived around 09:40hrs on 16 March 2012.

From there, the migrants were taken in the direction of a border crossing in Ilirska Bistrica region, Slovenia. A new driver from Slovenia was told by A.B. to wait for the migrants the other side of the Croatia- Slovenian border. The migrants crossed the border on foot on the night of 16 March 2012 and early hours of 17 March 2012. A.B. was aware of plans for them to go onwards to cross the border from Slovenia into Italy in the direction of Gorizia, in the Friuli Venezia Giulia region of northeast Italy.

However, the four migrants A.B., M.H., R.J., and A.K., as well as the transporters I.H., H.B., and R.R. were all caught by the Slovenian police in Ilirska Bistrica and arrested.

4. Between 17 March 2012 and 28 March 2012, A.B. smuggled three migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. One of the migrants was identified as B. (last name unknown), Kosovo citizen.

Planning for this smuggling operation began on 17 March 2012, when A.B. arranged with a recruiter to send a new group abroad for 2,800 euros per migrant. The recruiter informed A.B. that he had overcharged the migrants by 200 euros, but A.B. told him he could keep it for himself.

A.B.'s main role was to communicate with the transporters from Kosovo to Montenegro, Montenegro to Croatia, Croatia into Slovenia and onwards from there into Italy. The crime was concretized by the illegal crossing of the Croatia – Slovenia border and entry into Slovenia and Italy without authorization.

In carrying out the smuggling of the migrants, A.B. discussed the activities in Montenegro with an associate named and in Croatia with M.C., each of whom organized the drivers within their respective areas. A.B. also tasked G.N. and her sister, who provided accommodation at Hotel Opatija near Rijeka, Croatia. M., G. and her sister also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with I.H., and Sh.B. who served as the guides and transporters from Kosovo onwards.

On or around 04:00hrs on 22 March 2013, the three migrants departed from Kosovo to Montenegro. They arrived in Budva, Montenegro around 11:00hrs, where they were met by a member of the group in Montenegro at the bus station. They were accommodated for the night by another Montenegrin associate. The next day, they were driven to Dubrovnik, Croatia where they were met by another transporter. A.B. told his associate known as “K

H.” in Montenegro to ensure that each of the migrants gave the driver 300 euro at Budva and another 100 euro each when they arrived in Dubrovnik. The group crossed the Croatia – Slovenia border on or around 27 March. Thereafter, they were to travel onwards into Italy with another driver. However, the migrants were arrested by the Slovenian Police and deported to Kosovo.

THEREFORE, by reason of the aforesaid, the Court imposes the following sentence:

Having been found guilty under Count 2 of Smuggling of Migrants under Article 138 paragraph 1 of the CCK the Accused is sentenced to a term of imprisonment of 3 (three) years.

Pursuant to Article 73 paragraph 1 of the CCK the time spent in detention from 17 April 2012 to the date hereof shall be credited towards the sentence.

Pursuant to Articles 451, 453 and 450 of the CPC the Accused shall reimburse the costs of the criminal proceedings, assessed in the sum of 100 (one hundred) Euros.

Any property claim shall be pursued through the civil courts.

This Judgment may be announced in the press and public media.

REASONING

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The annex hereto comprises an integral part of this Judgment.

A. INTRODUCTION

i. Jurisdiction

The judges composing this panel are competent to adjudicate this case as per Articles 20, 21, 22, 25 and 29 of the CPC and Law on Courts, Law no.03/L-199 entered into force on 1 January 2013.

The CPC that entered into force on 1 January 2013 re-classified District Courts as Basic Courts.

The Indictment of the EULEX Special Prosecutor charges the Accused with the offences of Organised Crime and Smuggling of Migrants which falls under offences considered as serious Crimes as per Article 22 (1.1.45) and (1.1.74) of the CPC.

The alleged crimes were committed in Kosovo and elsewhere, therefore the jurisdiction to try these crimes falls within the jurisdiction of the Basic Court of Prizren. Accordingly, this Court has territorial jurisdiction over the case under Article 29 of the CPC.

The SPRK has exclusive competence over the offence of Organised Crime, in accordance with Article 5.1 n) of the Law on the SPRK, Law 03/L-052 of 2008.

Article 3.2 of the Law no.03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo provides that EULEX Judges shall have jurisdiction over cases prosecuted by the SPRK. Consequently, EULEX Judges have jurisdiction in this case.

ii. Procedural History

On 11 December 2012, the Prosecutor filed an Indictment against O.A. and B.F.. On 13 February 2012, the Prosecutor filed an amended indictment to include an additional defendant, F.A., in

the same proceedings.

The Accused herein was investigated as part of the same case, referred to as “PINK”.

This case was investigated by a Joint Investigation Team consisting of investigators from both EULEX Police Organised Crime Investigation Unit (OCIU) and Kosovo Police Department of Organised Crime (DOC).

On 10th May 2011, the SPRK received an International Legal Assistance (ILA) Request from the District Public Prosecutor in Ljubljana, Republic of Slovenia³ regarding a suspect to be identified as O.A..

On 11th July 2011, the Prosecutor issued a Ruling of Initiation against O.A..

On 11 January 2012 and 11 July 2012, the Pre-Trial Judge granted the extension of the investigation for another six months.

On 14 December 2011, the Prosecutor issued a Ruling on Expansion of the Investigation to B.F..

On 15 June 2012, the Pre-Trial Judge granted the extension of the investigation against suspect F. for another six months. The investigation against him expired on 14 December 2012.

On 20 January 2012, the Prosecutor issued a third Ruling on Expansion of the Investigation to F.A.. Following an extension, the investigation against him was to expire on 20 January 2013.

On 20 January 2012, the Prosecutor issued a Ruling on Expansion of the Investigation to A.M. who was later re-identified as A.B..

On 21 March 2012, the Prosecutor issued a Ruling on Expansion of the Investigation to A.B.. On

³ Reference TPP-S-1 27/2010 – DŠ dated 21st April 2011

20 September 2012, the Pre-Trial Judge granted the extension of the investigation for another six months. The investigation against him was previously set to expire on 21 March 2013 but pursuant to Article 159 (1) of the KCCP, Law 04/L-123 of 2012, shall expire on 21 March 2014 (2 years from initiation of the investigation).

Other suspects were part of the same case and the investigation against them is ongoing. Most relevant to this defendant, aside from the above, are A.C., A.M., M.B., and A.M. who are also in detention on remand, and N.N. who is detained in Croatia upon a request for extradition.

ILA Requests have also been issued by the EULEX Prosecutor to Slovenia, Croatia, Italy and Turkey regarding this case, while international police co-operation has also included several other countries in Europe. Initial responses have been received from Slovenia, Croatia and Italy at this point. Further responses are still expected from each of these countries as well as those involved in operation 'Fimathu'. Most relevant to the defendant A.B. is the response from Croatia.

Six operations were undertaken in Kosovo in furtherance of this case. These actions were linked to operations in other countries against other suspected members of the organised criminal group, in particular, in Slovenia, Croatia and Italy in 2012 and many other countries as part of 'operation Fimathu' conducted under the umbrella of Europol on 29 January 2013.

On 16 April 2012, the EULEX Pre-Trial Judge granted an Order for Arrest against A.B. and a Search Order for his residence. On 17 April 2012, the Joint Investigation Team conducted so-called "Operation PINK", which resulted in the arrest of A.B.. On the same day, a search was conducted by EULEX and Kosovo Police at the residence of A.B. pursuant to the Order of the Pre-Trial Judge.

The main trial commenced on 28 October 2013 at the Basic Court in Prizren. At the commencement of the main trial the Prosecutor informed the court of discussions between the

parties regarding a possible plea agreement. At the request of the parties the Trial Panel adjourned the main hearing in order for those discussions to continue. On 30 October 2013 the prosecutor filed in court a plea agreement signed by the parties.

B. INDICTMENT

The Defendant was charged in two counts in the Indictment.

Under **Count 1** (Organised Crime) it was averred that:

O.K. is suspected to be the leader of one organised criminal group that organised the illegal transportation of persons from Turkey through Kosovo, Serbia, Bosnia and Herzegovina, Montenegro, Croatia, Slovenia and onto Italy. He co-ordinated the recruitment, transportation, transit, accommodation, hiding, and other movements and payments by the migrants, mostly of Turkish origin, from Turkey, through Kosovo, Serbia, the Former Yugoslav Republic of Macedonia, Montenegro, Bosnia and Herzegovina, and Croatia and onwards to their final destination in Slovenia, Italy, Hungary, Austria, Germany, France and other countries in Western Europe. He maintained contact with the migrants throughout their transportation from the country of origin, and during transit through the Balkans until they reached their final destination. He also supervised and directed the activities of other members of the group, particularly C.K., L.K., "N." and A.B..

It was averred that the Accused was a mid-level organizer of the smuggling of migrants and people transporter, a key contact and worker of O. K., L.K. and "N.". In particular, his role was to find, arrange, plan, and co-ordinate drivers, guides and other transporters to bring the illegal migrants across state borders and facilitate their passage through the transit countries. He was particularly active in the part of the route through Croatia into Slovenia and Slovenia into Italy, including to Trieste and Udine. He had a strong relationship with other managers of the group in Croatia in particular, especially Z.G., M.C., Z.M., G.N. and N.P. who had various

responsibilities including transporting the migrants and providing their accommodation.

I.H., M.H.(“B”), T.H., Sh.B., who were A.B.’s inner circle from Kosovo, who also operate in Italy, Croatia and Slovenia serve as transporters and guides and are also actively involved in the transfer of payments between members of the criminal group in Kosovo and abroad.

The main transit route is from Turkey to Kosovo through Montenegro, Croatia, and Slovenia, with Italy as the destination.

The migrants were recruited by L.K. other contacts in Turkey, who relied on ‘N.’ to manage their passage from Turkey, across at least three different transit routes, and on to destination countries. “N.” is of Albanian ethnicity, citizenship unclear – living in Turkey but moves between Turkey, Greece, FYROM and Kosovo amongst other countries. He is a key recruiter and organiser of the smuggling.

N. relies on the support of A.C., a key participant in the criminal group in Kosovo who manages, procures, provides and facilitates the provision of identity and travel documents and other paperwork for the illegal crossing of the migrants over the borders of Kosovo and other states, including Croatia, Slovenia, Italy and Austria. This primarily includes the creation of invitation letters from hosts within Kosovo and the other countries to facilitate their entry into those countries. Most of these documents are fraudulent or otherwise falsified, with the hosts having no relationship with the migrants they are purportedly inviting to stay and paid to assist the commission of the offences in such a manner.

The smuggling of migrants from Turkey into Kosovo and thereafter to Croatia, Slovenia, Italy, and other countries, required the co-ordination of several persons acting in concert as an organised criminal group. Indeed, the concurrent following factors indicate that such criminal offences are planned, orchestrated and supervised by a structured group of more than three persons: (i) the cross-border character of the criminal offences; (ii) the regularity of the

incoming and outgoing groups of migrants and the large number of migrants transported; (iii) the structured group has operated in Kosovo and beyond since at least 2011; and (iv) the amount of money demanded from the migrants has generated substantial financial benefits for members of the group.

Under **Count 2** (Smuggling of Migrants) it was averred that:

The organized criminal group comprised the Accused, O.K., C.K., E.K., L.K., 'N.', A.C., N.N., M.B., A.M., I.H., M.H.("B"), T.H., Sh.B., N.P., Z.G., M.C., Z.M., G.N., and other unidentified perpetrators who organised the illegal transportation of persons from Turkey through Kosovo, Bosnia and Herzegovina, Montenegro, Croatia, Slovenia and onto Italy. A.B. co-ordinated the recruitment, transportation, transit, accommodation, hiding, and other movements and payments by the migrants, mostly of Turkish origin, from Kosovo to Croatia and Slovenia and onwards to their final destination in Italy and other EU countries, including Hungary, Austria, Germany, and other countries in Western Europe

The migrants do not have visas, residence permits, permission to remain or other authorization to enter or thereafter stay on the territory of the European Union (EU), destination countries of Slovenia, Italy, Austria, Germany, Hungary or France.

While in some instances the initial stages of the journey may start by legal means using flights or trains, the group produces fraudulent or falsified invitation letters for the migrants to enter Kosovo, Serbia and other transit countries. The hosts do not have any relationship or familiarity with any of the migrants which they purport to invite to stay, but rather are suspected to receive payment to give the permission or more frequently, the papers were fully falsified by members of the criminal group, in particular A.C. on the instruction of N..

After entry to the transit countries, the passports and other travel documents were taken away from the migrants or the migrants were instructed to throw away their passports or such

documents themselves. They were then driven or more frequently, forced to walk through forests, across rivers, or other land in order to cross the state borders illicitly, especially at the entry points of Croatia to Slovenia, Slovenia to Italy, Serbia to Hungary and Hungary to Austria. The migrants were often kept outdoors, regardless of the time of day or weather conditions, or their physical condition. In many instances, the migrants are children, increasing their vulnerability and the risk of exploitation. In this manner, the health and security of the migrants is endangered.

Moreover, the criminal group distributed stamps and instructed the migrants to cover up previous refusals of permission to enter the state and orders for deportation with such stamps, in order to increase the chances that they would be able to enter the transit and destination countries without alerting the authorities as to their illegal status. In some instances, interceptions revealed that the group also provided new or altered passports to the migrants in the origin country, Turkey, so that they could travel unhindered by previous entries on border control systems that had forbidden them to re-enter after previous illegal stays or other criminal activity.

The criminal group demanded significant monetary amounts from each migrant in order to organise and facilitate their entry into and stay in the transit and destination countries and to transport them across multiple countries. In most cases, these amounts were extortionate, for example, 2,500 EUR per migrant for one border crossing, with no correlation to the average cost of travel, accommodation or hospitality in the transit or destination countries and without regard to their economic status. In this way, the migrants were exploited by the criminal group, of which the defendant A.B. was a main organiser.

The Indictment referred to four specific periods during which the prosecution averred migrants were smuggled across borders by the organized criminal group that included the Defendant.

5 February 2012 to 25 February 2012

Between 5 February 2012 and 25 February 2012, the Accused, as part of a group consisting of himself, O.K., L.K., C.K., 'N.' (last name unknown), Z.G., M.C., G.N., I.H., A. (last name unknown), Sh.B., R.L. (alias), smuggled a group of six Turkish migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as Z.G., born xxx, A.G., born xxx, M.G., xxx, B.G., born xxx, and G.K., born xxx.

The planning of the criminal offence began on 5 February 2012, when the Accused entered into an agreement with 'N.', a recruiter and main organizer on a transnational level, to regularly smuggle migrants through Montenegro and Croatia into Slovenia and Italy.⁴ After this agreement the Accused contacted other members of the criminal group in the next days (6 to 19 February 2012) to get them prepared. This included Z.G.1 in Croatia, Sh.B. in Italy, A.⁵ in Kosovo, and an unidentified member of the group in Montenegro. A. would work with the Accused in Kosovo to co-ordinate the drivers and Z.G.1 would take care of transportation of the migrants in Croatia towards Slovenia, while Sh.B. would oversee their onward crossing into Italy and transportation thereafter.

The planning of the operation was further concretized on 21 February 2012, when the Accused entered into a direct agreement with L.K., a main organizer on a level above 'N.' in the same organized criminal group, to smuggle a group of six persons in the next days.⁶ These six migrants were Turkish citizens Z.G., A.G., M.G., B.G. and G.K.. L.K. informed the Accused that the migrants consisted of a family of five adults and one seven year old child. He agreed to organize the smuggling of these persons from Zagreb, Croatia to Italy. Other members of the wider transnational criminal group had already transported them from Turkey to Croatia, where the Accused would take over. The migrants were each charged 1,400 euros for their transportation from Croatia through Slovenia to Italy alone.

⁴ intercepted call of 05/02/2012 at 21:42:11

⁵ Last name not known

⁶ intercepted call of 21/02/2012 at 10:19:45

While L.K. was the direct and main contact point for the Accused, the overall direction was given by her husband O.K., the leader of the criminal group. This is demonstrated by L. asking for permission from O. while talking on the phone with the Accused about the forthcoming operation.⁷ The Accused also received instructions directly from O.K. regarding the smuggling of this specific group of migrants. In particular, O.K. stepped in to check that the drivers were arranged⁸ the timing and modalities of the movement of the migrants and entry into the planned destination country (intercepted calls of 24/02/2012 at 12:32:46, 24/02/2012 at 15:39:30, 25/02/2012 at 11:27:14), and where the migrants would be accommodated in Rijeka and money that would be taken from them Croatia (intercepted calls of 24/02/2012 at 17:01:28 24/02/2012 at 17:19:10). C.K., the brother of O., was also involved in the smuggling arrangements from Turkey and communicated directly with the Accused (intercepted call of 25/02/2012 at 13:57:35).

The Accused's role was to organize the transporters from Croatia to Slovenia to Italy, the crucial stages of the migrants' journey given that these were the stages that the crime was committed by the illegal crossing of borders into EU states. In doing so, the Accused coordinated the activities in Croatia with M.C.. M.C. organized the drivers directly, communicating back to the Accused frequently to gain instructions and agree money arrangements.⁹ Moreover, the Accused arranged for accommodation of the migrants in Opatija, Croatia, in "Hotel Opatija" run by G.N., another member of the group in Croatia who also works with M.C..¹⁰

In addition, the Accused co-ordinated the activities in Slovenia with his associate known as R.L. who contributed to the commission of the offence as a driver for the group from Slovenia to Italy.¹¹

⁷ intercepted call of 22/02/2012 of 10:41:33

⁸ intercepted call of 23/02/2012 at 16:03:39

⁹ intercepted call of 24/02/2012 at 11:28:26

¹⁰ intercepted calls of 24/02/2012 at 17:08:13, 24/02/2012 at 17:28:25, 24/02/2012 at 20:01:24

¹¹ intercepted call of 24/02/2012 at 16:05:55

On the evening of 23 February 2012, the migrants departed from Zagreb, Croatia to Rijeka, Croatia in two groups. Some of the group went by taxi for 350 euro from Zagreb to Rijeka, while the remainder went by bus after the Accused expressed his concern to L.K. that they would be caught if they all travelled by taxi at night. In Rijeka they were met by the drivers of M.C., who took them to “Hotel Opatija” run by G.N.. The migrants were made to pay 200 euros for staying one night. On 24 February 2012 the Accused made the final arrangements with M.C. for transportation of the migrants from Rijeka, Croatia to Slovenia and on to Italy. M.C. and another associate travelled to Rijeka that evening in order to be ready to transport the migrants the next morning.

On 25 February 2012, at around 05:00hrs, M.C. and another driver picked up the migrants from Hotel Opatija. At this point, the migrants were made to hand over another 1,200 euros to the drivers (500 euro to one, 700 euro to the other). Three migrants travelled in each of the two vehicles towards the Croatian border with Slovenia. The border was in fact crossed at Starod, with the migrants entering into Slovenia illegally at some time before 11:00hrs.

Around 11:00hrs that day, the migrants were met by another driver in a Mercedes vehicle at Račice, Ilirska Bistrica region, Slovenia, who was secured by the Accused to bring them to Italy. The prior plan had been to bring them to Udine, Italy, but on the day the driver took them towards Trieste, Italy.

The migrants Z.G., A.G., M.G., B.G. and G.K., were all stopped at a police control point as they illegally crossed into Italy between 11:00 and 13:00hrs and were deported back to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.¹²

The ages and identities of the migrants’ accord with the factual circumstances communicated in the intercepted calls of A.B., namely that the migrants were a family including a child. Notably, the youngest child of the group (B.G.) was only xxx years of age at the time of the events, even

¹² EULEX Police report OCIU 2521 dated 7/3/2012 (SPRK/in/320/OC of 20.3.2012).

younger than the xxx years old indicated. In addition, three other children were also smuggled since R.G. was xxx years old, A.G. 14 xxx old and M.G. xxx years old at the time. Only two members of the group were adults (Z.G., xxx, and G.K., xxx). M.G. was xxx at the time, so he may have been considered an adult by the criminal group, as indicated by their intercepted communications. Nevertheless, under the applicable law, all persons under 18 years of age are children. This is therefore a relevant aggravating circumstance and demonstrates the vulnerability of the migrant-victims in terms of exploitation.

26 February 2012 to 10 March 2012

Between 26 February 2012 and 10 March 2012 the Accused, as part of a group consisting of himself, O.K., L.K., Z.G., M.C., Z.M., G.N., Sh.B., T.H. and H.B., smuggled two migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as H.K., Turkish citizen, born xxx and G.K., Kosovo citizen, born xxx.

The planning of the criminal offence began on 26 February 2012, when the Accused agreed to smuggle G.K. from Kosovo to Italy.¹³ Further, on 27 February 2012, the Accused agreed with the K. brothers to transport two Turkish migrants from Zagreb, Croatia to Italy.¹⁴ The migrants had already been transported from Turkey to Croatia by other members of the transnational organized criminal group. On 6 March 2012, O.K. called the Accused personally, at which point it was clarified that one Turkish migrant would be going.¹⁵ This migrant to be smuggled was H.K.. Later that day, A.B. agreed with L.K. that H. would be transported at the same time as the migrant from Kosovo.¹⁶

The main role of the Accused was to organize the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states.

¹³ intercepted call of 26/02/2012 at 09:31:28

¹⁴ intercepted call of 27/02/2012 at 19:17:18

¹⁵ intercepted call 06/03/2012 at 14:06:24

¹⁶ intercepted call of 06/03/2012 at 22:37:41

In doing so, the Accused coordinated the activities in Croatia with M.C., who organized the drivers. The Accused also tasked G.N., who provided accommodation at “Hotel Opatija” near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, the Accused worked with Sh.B., Kosovo citizen, T.H., Kosovo citizen and H.B., Serbian citizen living in Montenegro who served as the guides and transporters. These three members of the group directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

The migrant departed from Rijeka, Croatia to Slovenia on 8 March 2012, crossing illegally into the region of Ilirska Bistrica, Slovenia by boat to the vicinity of Koper. They continued their journey towards Italy by night on 9 March 2012, in an effort to avoid the border police.

The Accused directly communicated with the migrants along the way, instructing them in precise detail where to cross between Slovenia and Italy.¹⁷ From these communications, the illicit nature of the entry is extremely clear. For example, he instructs the migrant not to jump over a fence but to walk around it across railway tracks, since there were guard dogs.¹⁸ He further directs the migrants to walk through pine trees towards Italy, indicating that they were entering Italy via an illegal crossing point through the forest.¹⁹

The migrants H.K., and G.K., as well as the transporters Sh.B., H.B., T.H. were all stopped at a police control point as they illegally crossed into Italy in the early hours of 10 March 2012. They were deported back to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.²⁰

From intercepted communications in the aftermath of the arrests, the role of Sh.B., H.B., T.H. as

¹⁷ intercepted calls 08/03/2012 at 21:11:29, 08/03/2012 at 21:43:24, 09/03/2012 at 21:43:24, 09/03/2012 at 22:15:54, 09/03/2012 at 22:21:56

¹⁸ Intercepted calls on 09/03/2012 at 21:43:24 and 09/03/2012 at 22:15:54

¹⁹ Intercepted call on 09/03/2012 at 22:21:56

²⁰ See EULEX Police report OCIU 3525 dated 12/3/2012 (SPRK/in/320/OC of 20.3.2012).

transporters for the criminal group was revealed.²¹ They were housed in a camp for illegal immigrants in Croatia together with the two migrants, since their entry was also unauthorized. T.H. and G.K. were released and deported to Kosovo on 15 March 2012, while Sh.B. was released and deported on 16 March 2012. Notably, the illegal nature of their activities in Croatia is demonstrated from A.B.'s instruction to Sh.B. to come up with an excuse for their presence in Croatia for the Kosovo Border Police upon arrival at Pristina airport which was not true.²²

Photographic surveillance of the Accused by EULEX Police on 12 March 2012 further corroborates the evidence of his involvement in this smuggling operation, since he is photographed collecting T.H. and G.K. from Pristina airport.

24 February 2012 to 16 March 2012

Between 24 February 2012 and 16 March 2012 the Accused, as part of a group consisting of himself, O.K., L.K., Z.G., M.C., Z.M., G.N., Sh.B., I.H., H.B., R.R., V.²³, C.²⁴, A.²⁵, I.²⁶, smuggled four migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as A.B., Kosovo citizen, born xxx, M.H., Kosovo citizen, born xxx, R.J., Kosovo citizen, born xxx, and A.K., Kosovo citizen, born xxx.

Planning of the smuggling operation began on 24 February 2012, when the Accused received a call from "V.", a member of his group in Kosovo, informed him that there were four migrants recruited (referred to as "four vehicles" in coded language) and ready to be transported from Kosovo abroad.²⁷ Overall, the Accused reported to O.K. for the operation.²⁸ The migrants were

²¹ intercepted calls 15/03/2012 of 10:28:04, 15/03/2012 at 11:26:38, 15/03/2012 at 13:36:28

²² intercepted call of 16/03/2012 at 22:54:43

²³ Last name not known

²⁴ Last name not known

²⁵ Last name not known

²⁶ Last name not known

²⁷ intercepted call of 24/02/2012 at 18:05:10

²⁸ intercepted call of 14/03/2012 at 17:12:39

each charged 2,500 euros for their transportation from Kosovo through Montenegro, Croatia and Slovenia to Italy alone.²⁹ They left this amount with 'I.' in Kosovo, as security, until their transportation into Europe was completed.

The Accused's main role was to organize the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, the Accused coordinated the activities in Croatia with M.C., who organized the drivers. The Accused also tasked G.N., who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, the Accused worked with M.H., Kosovo citizen, I.H., Kosovo citizen, H.B., Serbian citizen living in Montenegro, and R.R., Serbian citizen. I.H., H.B., and R.R. served as the guides and transporters from Kosovo onwards, while M.H. took care of arrangements on the Italian side. I.H., H.B., and R.R. directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

In addition, the Accused coordinated the activities in Montenegro, a transit country, with his associate known as "C." who contributed to the commission of the offence as a driver for the group from Montenegro to Croatia and Slovenia.

The migrants departed Kosovo for Montenegro on or around 14 March 2012. The migrants and transporters stayed with "C." in Montenegro. The Accused instructed "C." to ensure that the migrants each gave the driver an additional 300 euros and 700 euros to another Montenegrin associate managing the transportation.³⁰ In the event, the Montenegrin associate in fact took 1,000 euros from the migrants.³¹

From Montenegro, on 15 March 2012, the migrants were driven by two Montenegrin members

²⁹ intercepted call of 14/03/2012 at 19:13:14

³⁰ intercepted call of 14/03/2012 at 17:25:59

³¹ intercepted call of 14/03/2012 of 19:05:26

of the criminal group to Croatia where they were accommodated by G.N. at “Hotel Opatija”, near Rijeka.³² At some point, they switched cars to evade the authorities.³³ They were then taken by ship to Dubrovnik, Croatia.³⁴ The Accused kept in touch with “C.” and the other Montenegrin members of the criminal group along the way, providing continuous instructions and directions on the route to take, money arrangements and accommodation.³⁵ The boat arrived around 09:40hrs on 16 March 2012.³⁶

From there, the migrants were taken in the direction of a border crossing in Ilirska Bistrica region, Slovenia.³⁷ A new driver from Slovenia was instructed by the Accused to wait for the migrants the other side of the Croatia- Slovenian border. The migrants crossed the border on foot on the night of 16 March 2012 and early hours of 17 March 2012.³⁸ The Accused had made plans for them to go onwards to cross the border from Slovenia into Italy in the direction of Gorizia, in the Friuli Venezia Giulia region of northeast Italy.³⁹

However, the four migrants A.B., M.H., R.J., and A.K., as well as the transporters I.H., H.B., and R.R. were all caught by the Slovenian police in Ilirska Bistrica and arrested.⁴⁰

17 March 2012 to 28 March 2012

Between 17 March 2012 and 28 March 2012 the Accused, as part of a group consisting of himself, Z.G., M.C., Z.M., N.P., G.N., Sh.B., I.H., H.B., N.⁴¹, and a Montenegrin identified as “K. H.”, smuggled three migrants illegally from Kosovo through Montenegro and Croatia into

³² intercepted call of 14/03/2012 at 17:12:39

³³ intercepted call of 15/03/2012 at 23:17:21

³⁴ intercepted call of 15/03/2012 at 19:23:29

³⁵ e.g. intercepted call of 15/03/2012 at 23:02:18

³⁶ intercepted call of 16/03/2012 at 09:42:06

³⁷ intercepted call 17/03/2012 at 05:06:20

³⁸ intercepted call of 17/03/2012 at 02:26:11hrs

³⁹ intercepted call of 14/03/2012 at 19:05:26

⁴⁰ See EULEX Police report OCIU 3520 (SPRK/in/321/OC of 20.3.2012).

⁴¹ Last name not known

Slovenia, with Italy as the intended destination. One of the migrants was identified as B.⁴², Kosovo citizen.

Planning for this smuggling operation began on 17 March 2012, when the Accused arranged with a recruiter to send a new group abroad for 2,800 euro per migrant.⁴³ The recruiter informed the Accused that he had overcharged the migrants by 200 euro, but the Accused told him he could keep it for himself.

The Accused's main role was to organize the transporters from Kosovo to Montenegro, Montenegro to Croatia, Croatia into Slovenia and onwards from there into Italy. The crime was concretized by the illegal crossing of the Croatia – Slovenia border and entry into Slovenia and Italy without authorization.

In carrying out the smuggling of the migrants, the Accused co-ordinated the activities in Montenegro with an associate named N.⁴⁴ and in Croatia with M.C.⁴⁵ each of whom organized the drivers within their respective areas. The Accused also tasked G.N. and her sister, who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M., G. and her sister also reported to Z.M., a manager for the criminal group in Croatia.⁴⁶

Furthermore, the Accused worked with I.H., and Sh.B. who served as the guides and transporters from Kosovo onwards.

On or around 04:00hrs on 22 March 2013, the three migrants departed from Kosovo to Montenegro.⁴⁷ They arrived in Budva, Montenegro around 11:00hrs, where they were met by a member of the group in Montenegro at the bus station. They were accommodated for the night

⁴² Last name not known

⁴³ intercepted call of 17/03/2012 of 20:00:50

⁴⁴ intercepted call of 21/03/2012 at 18:44:50

⁴⁵ intercepted call of 21/03/2012 at 11:31:56

⁴⁶ intercepted call of 27/03/2012 at 18:47:34

⁴⁷ intercepted call of 21/03/2012 at 18:23:27

by another Montenegrin associate. The next day, they were driven to Dubrovnik, Croatia where they were met by another transporter.⁴⁸ The Accused instructed his associate known as “K H.” in Montenegro to ensure that each of the migrants gave the driver 300 euro at Budva and another 100 euro each when they arrived in Dubrovnik.⁴⁹ The group crossed the Croatia – Slovenia border on or around 27 March 2013.⁵⁰ Thereafter, they were to travel onwards into Italy with another driver.⁵¹

On 30 October 2013 the prosecutor amended Count 2 of the indictment charging the Accused under Article 138 paragraph 1 of the CCK.

C. LAW

In Count 1 the Accused was charged with Organised Crime under Article 274 paragraphs 1, 2 and 3 of the CCK.

Article 274 of the CCK provides:

(1) Whoever commits a serious crime as part of an organized criminal group shall be punished by a fine of up to 250.000 EUR and by imprisonment of at least seven years.

(2) Whoever actively participates in the criminal or other activities of an organized criminal group, knowing that his or her participation will contribute to the commission of serious crimes by the organized criminal group, shall be punished by imprisonment of at least five years.

⁴⁸ intercepted call of 18/03/2012 at 16:20:23

⁴⁹ intercepted call of 23/03/2012 at 19:44:42

⁵⁰ intercepted call of 27/03/2012 at 18:46:01

⁵¹ intercepted call of 22/03/2012 at 18:44:50

(3) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

In Count 2, as amended, the Accused was charged with Smuggling of Migrants under Article 138 paragraphs 1 of the Criminal Code of Kosovo.

Article 138 paragraph 1 of the CCK provides:

Whoever engages in the smuggling of migrants shall be punished by imprisonment of two to twelve years.

D. CONSIDERATIONS REGARDING THE EVIDENCE

I. Burden and standard of proof

Article 6 (2) of the European Convention on Human Rights (hereinafter the “ECHR”), the Constitution of Kosovo and Article 3 (1) of the CPC enshrine the presumption of innocence to which Accused are entitled. This presumption places on the Prosecution the burden of establishing the guilt of the Accused, a burden which remains on the Prosecution throughout the trial.

Article 370 (7) of the CPC stipulates that *‘the court shall state clearly and exhaustively which facts it considers proven or not proven, as well as grounds for this’*. Accordingly, the Trial Panel must determine in respect of each of the counts charged against each of the Accused, whether it is satisfied on the basis of the whole of the evidence so that it is sure that every element of that crime has been established. Any doubt must be resolved in favour of the accused.

The Trial Panel pursuant to Article 7 (1), (2) of the CPC *‘... must truthfully and completely*

establish the facts which are important to rendering a lawful decision’ and ‘... has a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in ... favour ...’.

E. PLEA AGREEMENT

On 30 October 2013 the parties filed in court a written plea agreement wherein it was agreed the Accused would enter a guilty plea under Count 2 to the offence of Smuggling of Migrants under Article 138 paragraph 1 of the CCK. Count 1 of the indictment was withdrawn.

The possibility of a Plea agreement was outlined to the Court on the morning of 28 October 2013 at the commencement of the main trial in Prizren Basic Court. In these circumstances the Indictment was not read to the Court by the prosecutor and the matter was adjourned for a period of two days to ensure that all parties had time to be fully apprised of their rights and obligations and in order that any conditions precedent to the agreement could be completed to the satisfaction of all parties.

The plea agreement was accordingly executed and the matter proceeded to disposal on 30 October 2013.

F. THE EVIDENCE

i. Searches and Evidence Seized

On 16 April 2012, the EULEX Pre-Trial Judge granted an Order for Arrest against A.B. and a Search Order for his residence. On 17 April 2012, the Joint Investigation Team conducted so-called “Operation PINK”, which resulted in the arrest of A.B.. On the same day, a search was

conducted by EULEX and Kosovo Police at the residence of A.B. pursuant to the Order of the Pre-Trial Judge.⁵²

During the course of that search police seized 5 telephone handsets, 3 SIM cards and a computer.

a. Telephone Handsets

1. Samsung, without visible serial number
2. Nokia RM-240, model 6500, IMEI number: xxx
3. Samsung T-Mobile, IMEI number: xxx
4. Nokia X2-00, IMEI number: xxx
5. Nokia model 1208, IMEI number: xxx

b. SIM Cards

1. VALA, serial number: xxx
2. IPKO, serial number: xxx
3. IPKO, serial number: xxx

Those items were the subject of forensic analysis.⁵³

Findings regarding the telephone evidence

The Trial Panel finds that telephone numbers xxx, xxx, xxx, xxx and xxx were in the possession of and used by the Accused at the material times.

⁵² Arrest and House Search Report dated 17 April 2012.

⁵³ EULEX Police report 4742 dated 4 October 2012, titled 'analysis subsequent to the forensic examination, (SPRK/in/OC/1156 of 09.10.2012), A.B.Binder V; see also EULEX Forensic Examination report dated 30.7.2012, A.B.Binder V, Tab13.

ii. **Interceptions and Metering**⁵⁴

On 17 January 2012, the Joint Investigation Team received information from the Slovenian Police about a member of the criminal group identified in the course of their investigation. The suspect was named as A.M. and information was provided on three IPKO telephone numbers purportedly being used by him: xxx, xxx, and xxx.

On 31 January 2012, the Pre-Trial Judge issued an Order for Interception of Telecommunications against the suspect then known as A.M..

On 15 March 2012, EULEX Police re-identified the suspect as A.B., following information received from the Croatian Police. This identification was supported by the telephone interceptions. New orders for interception were subsequently issued against the defendant under the name A.B..

Interceptions

The Prosecution relied upon summaries of the intercepted conversations, save where a verbatim part of the interception is transposed. The Trial Panel finds the summaries are accurate summaries of the intercepted conversations.

5 February to 25 February 2012

During this period of interception it was averred the Accused had engaged in smuggling Z.G., Turkish citizen, A.G., Turkish citizen, M.G., Turkish citizen, R.G., Turkish citizen, B.G., Turkish citizen, and G.K., Turkish citizen, from Croatia through Slovenia to Italy.

⁵⁴ EULEX Police report 5638 dated 10.04.2013 (SPRK/in/324/OC of 11.4.2012), PINK/A.B.Binder VI, pp. 3-4.

5 February 2012

At 21:42:11 the Accused (xxx) called "N." (xxx)⁵⁵

Accused: Is there any job?

N.: One came there. He is in Croatia. ...another one is there but he doesn't have enough money...

Accused: And where is he?

N.: They are both in Zagreb

Accused: Send them down there, understand? Send them down there because it is – 20. It is -14, -15, very cold. ...There are only two of them?

N.: No, no. Two more will come....you take these ones and finish them...

..

Accused: I will tell her they are mine, don't worry about it, ok?

N.: Ok, yes

6 February 2012

At 14:02:11 the Accused (xxx) received an SMS from an UMP⁵⁶ in Montenegro (xxx)⁵⁷ wherein it was stated:

"...what is the price of vehicle?"

At 14:05:00 the Accused (xxx) send an SMS to an UMP in Montenegro (xxx)⁵⁸ wherein it was stated:

⁵⁵ PINK I/A. *Interception Binder VII*, pp. 20-24

⁵⁶ Unidentified Male Person

⁵⁷ PINK I/A. *Interception Binder VII*, pp. 39-40

⁵⁸ PINK I/A. *Interception Binder VII*, pp. 41-42

"...my friend who is to drive car did not give money, he took it – this is not good"

10 February 2012

At 18:35:29 the Accused (xxx) called Z.G.1(xxx)⁵⁹

Z.: on top there is snow and blizzard...may god help you, you understand?

Accused: ...everything has been stuck here...

Z.: ...there is snow everywhere around, but we don't have snow in Rijeka, you understand?

This conversation is suspected to be coded, with references to the snow referring to police operations and arrests.

16 February 2012

At 11:44:52 I.H. using the Accused's telephone (xxx) called Sh.B. (xxx)⁶⁰

I.H.: I am here with your brother in law from Orllat and there is a guy who is interested to go to Italy, to come to you.

Sh.: Yes

I.H.: I don't know if you have spoken to him...

⁵⁹ PINK I/A. *Interception Binder VII*, pp. 61-64

⁶⁰ PINK I/A. *Interception Binder VII*, pp. 84-87

Sh.: Aha

I.H.: We told that guy everything. If he agreed. But we were thinking to tell you to go out there because we have drivers until Gorezi. Near Trieste in Gorezi. I told him that he can go ahead if you could go there and pick up the guy and if not, it is better not to go because the Police will catch him there in Udine in Gorezi....so I am asking you if you can do that in a week.

At 11:50:29 I.H. using the Accuseds telephone (xxx) called Sh.B. (xxx)⁶¹

...

I.H.: Tell me, could you come pick him up in Gorezi?

...

Sh.: When is he planning to depart?

I.H.: In a week or so...

18 February 2012

At 17:55:34 the Accused (xxx) contacted an UMP in Montenegro (xxx)⁶²

Accused: I have found a guy here and I need to find two or three other guys.. I have talked with my guy today and he finished something there, and he asked me for your phone number and I gave it to him, because he left all the numbers here and he asked for your telephone number in Turkey, and he said he will arrange something...

Associate: ...regarding the people, as soon as you find them you just start up and I will

⁶¹ PINK I/ A. Interception Binder VII, pp. 88-91

⁶² PINK I/ A. Interception Binder VII, pp. 104-107

wait you, only just let me know a day before you start so I will wait you...

19 February 2012

At 10:16:36 the Accused (xxx) called "A." (xxx)⁶³

A.: ...I told him to tell that person what do you want to do, will we meet somewhere today because he will go soon...I called him last night and he told me I swear A. I told him and he told me that he has to walk a lot, it is certain but I don't know when...

22 February 2012

At 10:14:33 the Accused (xxx) was called by L.K. (xxx)⁶⁴

L.: I just sent 3 people to Italy...I have another family...do you think you can take them there?

Accused: Do they have any child or woman, what are they?

L.: ...they have only one child, he's 7 years old

Accused: ...I don't take people with children...I don't dare to take kids, do you understand me?

..

L.: Ok talk to them you have seven year old, he is not little do you understand? He won't cry he is not small.

⁶³ PINK I/A. *Interception Binder VII*, pp. 115-116

⁶⁴ PINK I/A. *an Interception Binder VII*, pp. 143-151

Accused: How old is the family?

L.: five adults and one child seven years old...you know most of the time we take families, it is good money from them.

Accused: Where are they, in Croatia right?

L.: Zagreb

22 February 2012

At 10:31:28 the Accused (xxx) contacted M.C. (xxx)⁶⁵

Accused asks M.C. if he is available to go to Slavonski Brod. M.C. responds, stating that he is available the day after tomorrow.

At 10:41:33 the Accused (xxx) contacted L.K. on Turkish (xxx)⁶⁶

Accused: I called my friend there, he said he can finish that on Friday, but he cannot finish everything at once, its only one place, shouldn't be too many do you understand, you know they can pass for example 3 at once then the other two

L.: (asking a question in Turkish language in the background) yes, he said yes

At 15:40:37 the Accused (xxx) was called by an UMP in Turkey on (xxx)⁶⁷

Associate: What happened? Is there any news?

⁶⁵ PINK I/A. *Interception Binder VII*, pp. 152-153

⁶⁶ PINK I/A. *Interception Binder VII*, pp. 154-157

⁶⁷ PINK I/A. *Interception Binder VII*, pp. 160-161

Accused: I cannot do anything until Friday, because they have kids with them. Do you understand? I will finish it on Friday, the day after tomorrow.

Associate: Friday morning?

Accused: Friday morning at 4 AM.

Associate: OK.

23 February 2012

At 09:45:16 the Accused (xxx) contacted M.C. (xxx)⁶⁸

Accused asks UMP⁶⁹ how long it would take for him to reach the area , stating "I have to know if you will be there or not because he has the item with him". The UMP asks how many things he has. The Accused replies "as usually [sic] it's one car."

At 10:39:44 the Accused (xxx) contacted M.C. (xxx)⁷⁰

Accused: "down there waiting for you, you go there and they will give you 500 Euros if you want there or when you arrive up here...there are three persons".

At 15:47:02 the Accused (xxx) contacted L.K. (xxx)⁷¹

Accused: ...it is a man, woman and child

⁶⁸ PINK I/A. *Interception Binder VII*, pp. 162-163

⁶⁹ Unknown Male Person

⁷⁰ PINK I/A. *Interception Binder VII*, pp. 164-165

⁷¹ PINK I/A. *Interception Binder VII*, pp. 166-169

L.: Yes

Accused: and three adults?

L.: five adults and one child altogether

Accused: meaning five adults and one child, one woman and only one child

L.: Yes, he is seven

At 16:03:39 the Accused (xxx) was contacted by O.K. (xxx)⁷²

Associate: Did you talk to my wife?

Accused: She/he will talk to the driver today.

At 16:22:04 the Accused (xxx) was contacted by L.K. (xxx)⁷³

L.: I called because O. called and said that he knows about it, you said that someone called, it was O. who called...if you take them I will give you 1500 Euro immediately when they are on the road

Accused: Ok, there is no problem, listen to me L., they are in Zagreb now

L.: Yes

Accused: Can they go to Rijeka in Opatija?...I only work in Rijeka...and Opatija, Trieste

⁷² PINK I/A. *Interception Binder VII*, pp. 170-171

⁷³ PINK I/A. *Interception Binder VII*, pp. 172-177

from here is 32 km, can you put them tonight in the bus?

L.: yes

Accused: the bus will be in Rijeka, the distance from there to Zagreb is 150km, give me a call when they arrive in Rijeka...then a woman will go and take care of them

L.: When do they have to start, now or later?

Accused: in the morning at 8 or 9...when they arrive then they have to take a taxi to Opatija it costs only 2 Euros, then they will go with a woman in her flat which is near the border then the drivers will take them...you know about the money, don't be late OK.

L.: do I have to send them all in there?

Accused: yes all of them because I cannot take them in one car, man, five adults with a child

L.: if you have doubts you can keep hostage two of them until I send you the money

At 16:47:09 the Accused (xxx) was contacted by an UMP on (xxx)⁷⁴

Associate: The owner of the family is here...is there any walking?

Accused: No

Associate: ...What time is the departure to Italy?

⁷⁴ PINK I/A. *Interception Binder VII*, pp. 190-192

Accused: 4 AM in the morning to Italy. They will arrive in 3 -4 hours to Italy.

At 16:54:16 the Accused (xxx) was contacted by O.K. (xxx)⁷⁵

O.: The family T.ght to Rijeka?

Accused: What?

O.: Are you taking them to the house?

Accused: There's a house in Rijeka

O.: N. knows that woman...at the house in Opatija

Accused: I have someone at the house

At 17:15:33 the Accused (xxx) contacted L.K. (xxx)⁷⁶

L.: they are leaving now for Rijeka

Accused: I will call the landlady and there won't be a problem

At 17:20:21 the Accused (xxx) contacted G.N. (xxx)⁷⁷

Accused: "don't tell anyone that they are there, just if they call you from Turkey".

⁷⁵ PINK I/A. *Interception Binder VII*, pp. 178-179

⁷⁶ PINK I/A. *Interception Binder VII*, pp. 180-181

⁷⁷ PINK I/A. *Interception Binder VII*, pp. 184-185

At 18:59:01 the Accused (xxx) contacted L.K. (xxx)⁷⁸

Accused tells L. to call him when they arrive at hotel Opatija

At 20:49:09 the Accused (xxx) was contacted by L.K. (xxx)⁷⁹

L.: I will put them in a taxi, I will have to pay 350 Euro for a taxi, is it sure that they will pass tomorrow night?

Accused: don't take them with taxi they will catch them, it's late, do you hear me, do you understand...

L.: So it's better if they leave in the morning

Accused: Yes tomorrow between 10 or 11 it's not a problem...who is asking for 250 Euros?

L.: That's what they told them when they leave if you want either Italy or Rijeka, I can bring you 2000 Euros.

Accused: ...with N. we finished thousands of them and never had problems...

L.: It's easier for me because the passengers have 2000 Euros...

Accused:...put them in a bus...

L.: how many will you take to pass? ... I will bring you eight persons and another two

⁷⁸ PINK I/A. Interception Binder VII, pp. 193-194

⁷⁹ PINK I/A. Interception Binder VII, pp. 199-204

from Bosnia arrived and you decide how many you will take...

Accused: You take them to Rijeka, leave them there, I will finish three once and three once even if they are ten, I know what to do...ok L., so 1500 Euro 200 or how much they have. I will tell you to whom you should give when they go to Slovenia...

At 21:12:49 the Accused (xxx) received an SMS from L.K. (xxx)⁸⁰ wherein it was stated:

“They have sent them on their way; when they arrive I’ll let you know!”

24 February 2012

At 10:55:41 the Accused (xxx) contacted an UMP in Bosnia and Herzegovina (xxx)⁸¹

Accused is talking to an UMP in Bosnia & Herzegovina. The person with whom he is talking asks the Accused to send him 200 or 300 Euros and says he will then go without any problem. The Accused informs the UMP that the people he is to collect have the money with them. The Accused tells the UMP to send the driver and that he will instruct the persons to give him 200 Euros.

At 11:28:26 the Accused (xxx) contacted M.C. (xxx)⁸²

M.C. informs the Accused that he would “finish tomorrow with three of the persons when I go at 5 in the morning to Rijeka”, in return for 500 euro now and more later because he has to give the money to another person. The Accused agrees.

⁸⁰ PINK I/A. *Interception Binder VII*, pp. 205-206

⁸¹ PINK I/A. *Interception Binder VII*, pp. 211-212

⁸² PINK I/A. *Interception Binder VII*, pp. 213-214

At 11:35:21 the Accused (xxx) was contacted by L.K. (xxx)⁸³

L.K. informed the Accused that all 8 persons had arrived. The Accused advises her that 4 of the migrants should leave at 4 in the morning and the man, wife and kid should leave in the evening "in order not to walk".

At 12:32:46 the Accused (xxx) was contacted by O.K. (xxx)⁸⁴

O.K.: They are a complete family...the half will go T.ght. The other half will go tomorrow morning at 4.

At 15:39:30 the Accused (xxx) was contacted by O.K. (xxx)⁸⁵

O.K.: What time will they depart?

Accused: Tomorrow morning at 4 o'clock

O.: All of them will depart at 4 o'clock

Accused: All of them will go at 4 AM. They will arrive to Italy at 8 -9, tomorrow morning.

At 15:43:35 the Accused (xxx) contacted L.K. (xxx)⁸⁶

L.K. tells the Accused that the man, wife and kid went in the vehicle but the others were coming by bus in order to avoid having to pay 350 Euros because there was only one vehicle and there was not enough space in the vehicle for everyone.

⁸³ PINK I/A. *Interception Binder VII*, pp. 217-218

⁸⁴ PINK I/A. *Interception Binder VII*, pp. 219-220

⁸⁵ PINK I/A. *Interception Binder VII*, pp. 221-222

⁸⁶ PINK I/A. *Interception Binder VII*, pp. 223-224

At 15:51:27 the Accused (xxx) contacted M.C. (xxx)⁸⁷

M.C. tells the Accused that he will arrive there at 5 o'clock in the morning. M.C. asks the Accused if he will receive payment of 500 Euros immediately after they meet and the rest to give to a friend. The Accused tells him that he will be met by the driver and that the migrants would give money from which he will take 600 euro for three persons.

At 16:05:55 the Accused (xxx) contacted an associate "R.L." (xxx)⁸⁸

The Accused tells R.L. that he has three friends who have 1000 Euro with them and to take 500 euro for himself and the other 500 to give to him. The driver warns the Accused that he was stopped by the police last time he passed through the border to Trieste. The Accused instructs him not to use the Trieste route but to use "the one Gorizia near Gorica".⁸⁹

At 17:01:28 the Accused (xxx) was contacted by O.K. (xxx)⁹⁰

O.: The apartment is 200 euros for 1 day for the family to stay. Why?

Accused: Why? How much money did he take from the owner of the apartment?

O.: The house in Opatija. 1 day is 200 euros.

At 17:08:13 the Accused (xxx) contacted G.N. (xxx)⁹¹

⁸⁷ PINK I/A. Interception Binder VII, pp. 225-226

⁸⁸ PINK I/A. Interception Binder VII, pp. 227-228

⁸⁹ Gorizia is a town in northeast Italy, bordering Slovenia near Nova Gorica.

⁹⁰ PINK I/A. Interception Binder VII, pp. 232-233

⁹¹ PINK I/A. Interception Binder VII, pp. 234-235

The Accused asks G. N. if they gave her the money. She replied that they had not given her the money yet but had told her they would give 200 euro, whereas she told them 160 euro would be enough.

At 17:19:10 the Accused (xxx) was contacted by O.K. (xxx)⁹²

O.: The house in Opatija...that woman is causing a problem.

Accused: What problem?

*O.: The money is a problem. She once said 100 euros, now it's 200. Why is it 200 now?
Talk to her.*

At 17:28:25 the Accused (xxx) was contacted by G.N. (xxx)⁹³

The Accused asks G. N. what happened and how much money she had received. She replies that they had not given her anything yet and that O. also owed her 300 euro and N. owed her 1000 Euros. She promised to send the Accused his share on Monday.

At 17:59:04 the Accused (xxx) contacted L.K. (xxx)⁹⁴

L.K. tells the Accused that her husband had been the one calling him in Turkish. The Accused clarified that the migrants should pay 20 euro per night for the hotel in Opatija. He further stated that they would leave at 4am or 5am the following morning.

At 18:01:45 the Accused (xxx) contacted M.C. (xxx)⁹⁵

⁹² PINK I/A. *Interception Binder VII*, pp. 236-237

⁹³ PINK I/A. *Interception Binder VII*, pp. 238-239

⁹⁴ PINK I/A. *Interception Binder VII*, pp. 240-241

⁹⁵ PINK I/A. *Interception Binder VII*, pp. 242-243

The Accused speaks with M.C. and asks him if he has left. M.C. replies that he will leave at 10 that evening to get to Rijeka at 5 in the morning.

At 18:25:45 the Accused (xxx) was contacted by an UFP⁹⁶ (xxx)⁹⁷

The Accused speaks to an UFP and asks her how much money the persons in Croatia have on them. He asks her how many persons there are. She replies that there are 6 persons. The Accused states that one group has 500 euro and the other group has 700 euro. The Accused tells her to tell them to give the money to the driver and not make problems.

At 20:00:17 the Accused (xxx) contacted M.C. (xxx)⁹⁸

M.C. asks the Accused for instructions on which route to take since the migrants include children. The Accused tells him there should be one man, one woman and one child and another three adults. He instructed him to take the 3 adults.

At 20:01:24 the Accused (xxx) contacted G.N. (xxx)⁹⁹

The Accused asks G. N. if she had received a call from C.. She replied that she had spoken to C. who told her there are kids in the group. The Accused instructs her that he will take the three adults in the morning and that the man, woman and child would go in the afternoon.

The Trial Panel finds that "C." is M.C.. This telephone conversation with G. N. took place approximately one minute after the Accuseds telephone conversation with M.C.. Both

⁹⁶ Unknown Female Person

⁹⁷ PINK I/A. *Interception Binder VII*, pp. 246-247

⁹⁸ PINK I/A. *Interception Binder VII*, pp. 248-249

⁹⁹ PINK I/A. *Interception Binder VII*, pp. 250-251

conversations refer to the same number of persons who are to be transported.

At 21:59:05 the Accused (xxx) contacted M.C. (xxx)¹⁰⁰

The Accused asks M.C. whether he has left yet. He replied that they would leave in 10 minutes to be there by five thirty the next morning with the other driver.

At 22:53:37 the Accused (xxx) was contacted by an UFP (xxx)¹⁰¹

Associate: Did you send any car to them there?

Accused: No, I didn't because I am not that crazy to take them out with a child at this time, they will leave at 5 o'clock during the shift changes of the border police...

25 February 2012

At 04:38:26 the Accused (xxx) contacted M.C. (xxx)¹⁰²

Accused: ...did you arrive?

M.: I am there in 20 minutes and he will fetch down there at five....tell them down there in order not to quarrel, call and tell that only 3 are going

At 04:44:27 the Accused (xxx) contacted L.K. (xxx)¹⁰³

¹⁰⁰ PINK I/ A. Interception Binder VII, pp. 256-257

¹⁰¹ PINK I/ A. Interception Binder VII, pp. 260-261

¹⁰² PINK I/ A. Interception Binder VII, pp. 264-267

¹⁰³ PINK I/ A. Interception Binder VII, pp. 268-271

Accused: ...speak to those people...those adults will walk and that man and woman will remain there. He will come and pick them up. That man and that woman will not walk, they will go, understand me. They need to have 700 euro to give to taxi driver, when they get on board, they should give him 700 euro and they need to have with them 500 euro. Don't give to anyone until they go to Slovenia. When they get there, they should give those 500, all right?

L.K.: Ok, it is done.

Accused: So these adults will give 700 to taxi driver and 500 when they get on board in Slovenia.

At 04:48:13 the Accused (xxx) was contacted by M.C. (xxx)¹⁰⁴

M.C.: entire family will go together...she says that they are a family...

Accused: ...do not listen to stupid people, you take the grownups you understand and then just put the wife and husband and they have a child eight years old...if you want take also the wife and child and tell them to give you another 300, then you will have 800 and just go slowly and do not hurry and don't worry they will help you

M.C.: come on...I know how the situation is...

Accused: no one was going my friend...for two and a half months, same shit, God forbid, some shit happens

Accused: now they will give 700 euros, they will give to my friend 200 and you will take

¹⁰⁴ PINK I/ A. Interception Binder VII, pp. 272-275

500 and the family will also give another 300 so you will have 800 and I will credit my friend for 500

M.C.: So up there will be another two sheep?

Accused: yes, they are children that come from rich families; they are thirteen, fourteen years old, maybe fifteen years old

M.C.: how old is the little one?

Accused: eight years old

M.C.: Ok then tell your friend to bring the other two

At 04:55:17 the Accused (xxx) was contacted by an UMP (xxx)¹⁰⁵

The Accused instructs the UMP to take the first group who would give him 700, including 200 for himself and 500 for their other associate and then go back for the other three.

At 04:57:17 the Accused (xxx) contacts L.K. (xxx)¹⁰⁶

The Accused tells her to call them because they are in the car and tell them to give 700 Euros and to also tell them that he will go back to get the woman and child.

At 05:31:17 the Accused (xxx) was contacted by an UMP (xxx)¹⁰⁷

¹⁰⁵ PINK I/ A. *Interception Binder VII*, pp. 280-281

¹⁰⁶ PINK I/ A. *Interception Binder VII*, pp. 268-271

¹⁰⁷ PINK I/ A. *Interception Binder VII*, pp. 290-293

The Accused speaks to an UMP and tells him he will receive 700 Euros and that he will take 200 and 500...The UMP asks the Accused if it is correct that he will give him 500 and take from the Accused 200. The Accused responds by stating that as soon as everything is in order he will send the UMP 500.

At 05:34:18 the Accused (xxx) contacted L.K. (xxx)¹⁰⁸

Accused: Call them and tell them to give 700 euro to that man in the car because it is nearly dawn.

At 08:07:23 the Accused (xxx) was contacted by M.C. (xxx)¹⁰⁹

M.C. informs the Accused that he would arrive at 11:00 and that the migrants would be transported in a Mercedes car where they would all fit. The Accused is concerned they will all fit into the car and remarks about previous occasions when they have been "screwed". He warns him to make sure they turn off the phones.

At 08:46:17 the Accused (xxx) was contacted by L.K. (xxx)¹¹⁰

Accused: ...I am a good man in this, no matter if it has to do with people or something else. ...I can do this work; I have already told you that together with N. I have finished more than a thousand persons.

L.: ...it is in my mind to send you the money

Accused: I will send you an address...he will enter somewhere in Italy, they cannot move with a car up and down freely in Italy...we have to see if he will take them to Trieste

¹⁰⁸ PINK I/ A. Interception Binder VII, pp. 294-295

¹⁰⁹ PINK I/ A. Interception Binder VII, pp. 298-299

¹¹⁰ PINK I/ A. Interception Binder VII, pp. 302-307

because it might happen that in Trieste border to be the police and then he will take them to another border...one day I work in Medine [Udine?] and one day in Trieste...

At 08:54:14 the Accused (xxx) was contacted by L.K. (xxx)¹¹¹

L.: What is your price now for the kids?

Accused: Half ticket, for adults is 1400-1500...make it 500 for those kids

L.: I will calculate for you 1.4 per person.

Accused: Deal

At 09:35:17 the Accused (xxx) contacted M.C. (xxx)¹¹²

Accused: I will tell him to be there in about an hour, how much money did they give you, those two persons?

M.: 500

Accused: ..Today I will send you this, as well

M.: Should give me now 300 more, right?

Accused:... if there won't be any problems with the driver...I will send you 600 more

¹¹¹ PINK I/A. *Interception Binder VII*, pp. 308-310

¹¹² PINK I/A. *Interception Binder VII*, pp. 312-315

At 09:36:52 the Accused (xxx) contacted an associate (xxx)¹¹³

Accused: How is the name of that girl over there?

*Associate: It is Starod, about 10km near Bistrice.*¹¹⁴

At 10:38:35 the Accused (xxx) received an SMS from an UMP (xxx)¹¹⁵ wherein it was stated:

*"Racice, 2 km before Starod"*¹¹⁶

At 10:46:44 the Accused (xxx) contacted an UMP (xxx)¹¹⁷

The Accused asks him to transport some people from Ilirska Bistrica to Udine but he refused.

At 10:57:59 the Accused (xxx) was contacted by L.K. (xxx)¹¹⁸

*The Accused tells L.K. that they should go to Udine*¹¹⁹

At 11:27:14 the Accused (xxx) was contacted by O.K. (xxx)¹²⁰

O.K.: Is the family in Trieste yet?

Accused: ...no, no to Udine. Not Trieste.

¹¹³ PINK I/ A. Interception Binder VII, pp. 316-317

¹¹⁴ Starod is in Slovenia, located on the Croatian- Slovenian border

¹¹⁵ PINK I/ A. Interception Binder VII, pp. 322-323

¹¹⁶ Račice is in Slovenia, Ilirska Bistrica after the border crossing with Croatia at Starod

¹¹⁷ PINK I/ A. Interception Binder VII, pp. 324-325

¹¹⁸ PINK I/ A. Interception Binder VII, pp. 330-333

¹¹⁹ Italy

¹²⁰ PINK I/ A. Interception Binder VII, pp. 341-342

At 13:57:35 the Accused (xxx) was contacted by C.K. (xxx)¹²¹

C.K.: I'm O.'s brother, C....they got caught in Italy.

Accused: They got caught in Italy, 1km away from Trieste. The Carabinieri police caught them during control. They were all caught together with the driver.

C.K.: Will they be sent back to Slovenia?

Accused: Slovenia is 15 minutes driving distance from Italy

C.K.: ... I hope they will not be sent back to Turkey.

26 February 2012

At 09:22:28 the Accused (xxx) contacted L.K. (xxx)¹²²

Accused: They were caught by police in Italy...

L.K.: Is it Udine, Italy?

Accused: No, it's in Trieste. They were caught as they crossed the border and passed one kilometre.

The Trial Panel finds that Z.G., A.G., M.G., B.G., and G.K. were arrested on 25 February 2012 Ilirska Bistrica, Slovenia, a town between the Croatia-Slovenia and Slovenia-Italy borders. All were citizens of Turkey.¹²³

¹²¹ PINK I/ A. *Interception Binder VII*, pp. 356-357

¹²² PINK I/ A. *Interception Binder VII*, pp. 358-361

¹²³ Report dated 7 March 2012 signed by M.J.

26 February to 10 March 2012

During this period of interception it was averred the the Accused had engaged in smuggling H.K., Turkish citizen, G.K., Kosovo citizen and H.B., Serbian citizen, from Croatia through Slovenia to Italy.

26 February 2012

At 09:31:28 the Accused (xxx) was contacted by I. (xxx)¹²⁴

Discussion between the Accused and 'I.' regarding sending I.'s brother abroad.

27 February 2012

At 19:17:18 the Accused (xxx) was contacted by an UMP (xxx)¹²⁵

UMP: Family is a lot of problems. From Slovenia to Zagreb, Zagreb to Istanbul.

Accused: They got caught. What can we do?

UMP: It's a lot of expenses. Is there any safe road for tomorrow morning?

Accused: Yes, but how many people?

UMP: Two people.

Accused: ...where are they?

¹²⁴ PINK I/ A. Interception Binder VII, pp. 362-366

¹²⁵ PINK I/ A. nterception Binder VII, pp. 395-396

UMP: ...Zagreb

6 March 2012

At 14:06:24 the Accused (xxx) was contacted by O.K. (xxx)¹²⁶

'H.': Is it set for 1 passenger?

Accused: I talked to the driver, he told me he will travel tomorrow for sure...

Telephone number xxx is used by L.K. and O.K.. On this occasion the person called is referred to as 'H.'.

At 22:37:41 the Accused (xxx) was contacted by L.K. (xxx)¹²⁷

Accused: ...O. called me and told me for that boy there that you have in Rijeka...

L.: what time tomorrow?

Accused: either in the morning or in the evening, I will take him...walk safely you hear me because I also have my people on the road...

L.: Ok done

8 March 2012

At 21:11:29 the Accused (xxx) contacted an UMP (xxx)¹²⁸

¹²⁶ PINK I/A. Interception Binder VII, pp. 407-408

¹²⁷ PINK I/A. Interception Binder VII, pp. 411-414

Accused: Where are you now?

UMP: in boat

9 March 2012

At 21:43:24 the Accused (xxx) contacted a UMP (xxx)¹²⁹

Accused: Where are you now?

UMP: We are jumping over the fence/barrier.

Accused: What kind of fence/barrier are those?

UMP: ...big ones from concrete

Accused: ...it is with net/wire?

UMP: yes

Accused: do you see lots of lights there?

UMP: yes

Accused: don't jump over that man because that is zoo garden...go under it aside till it end...do you have the wire fence?

¹²⁸ PINK I/A. *Interception Binder VII*, pp. 425-426

¹²⁹ PINK I/A. *Interception Binder VII*, pp. 444-447

UMP: Yes

Accused: ...don't jump over it there and go over on the other side because there are dogs...walk left aside it.

The Accused is clearly giving directions to a migrant who is suspected to be crossing the border between Slovenia and Italy illegally.

At 22:15:54 the Accused (xxx) called an UMP (xxx)¹³⁰

Accused: "Go uphill, cross an asphalt and you will see then a tennis court, after that there are 5-6 pairs of railways which you need to cross and then there is only one more railway you need to cross in order to get to the other side".

The Accused continues to give directions to a migrant who is suspected to be crossing the border between Slovenia and Italy illegally.

At 22:21:56 the Accused (xxx) called an UMP (xxx)¹³¹

Accused: Are the trains far away on the left side?

UMP: ...they are about 100 metres away

Accused: How long?

UMP: 100 metres 200

¹³⁰ PINK I/A. *Interception Binder VII*, pp. 439-441

¹³¹ PINK I/A. *Interception Binder VII*, pp. 435-438

Accused: Are you going downhill now or how?

UMP: Do I/we have to climb up this hill through this valley?

Accused: Do you see these trains?...You are down there just to cross them...

UMP: Shall I go beside the trains?

Accused: Go a bit downhill from the valley and then climb up the hill in front of you and go uphill. Do you see the lights up there in the street? ...Can you go to those lights and when you go up to those lights do you see the last lights in front of you? There is a place you should go to and there is asphalt which you need to cross and then turn in order to get back to the railway and continue from there. There are pines. Continue going straight.

10 March 2012

At 08:47:21 the Accused (xxx) received an SMS (xxx)¹³² wherein it was stated:

"We were caught at Italy border. I cannot talk. Don't call me."

At 09:06:34 the Accused (xxx) received an SMS from the K. brothers (xxx)¹³³ wherein it was stated:

"Have they been caught in Italy or where? Tell me, we need to know to tell his family where he was caught"

G.K., Kosovo citizen, Sh.B., Kosovo citizen, H.B., Serbian citizen, T.H., Kosovo citizen, and H.K.

¹³² PINK I/ A. Interception Binder VII, pp. 465-466

¹³³ PINK I/ A. Interception Binder VII, pp. 459-460

were arrested on 10 March 2012 in Ilirska Bistrica, Slovenia, a town next to the Croatia-Slovenia border. All were citizens of Turkey.¹³⁴

15 March 2012

At 10:28:04 the Accused (xxx) received an SMS from an UMP (xxx)¹³⁵ wherein it was stated:

“Talk to T. and T. will bring those guys from Negrovs, they will release them today, they will bring them by plane, and Sh. tomorrow...”

At 11:26:28 the Accused (xxx) contacted an UMP at the holding centre in Slovenia (xxx)¹³⁶

Accused: When will they depart you for here?

UMP: I and G. will go out of here today at three o'clock and Sh. will go tomorrow

At 13:36:28 the Accused (xxx) was contacted by an associate (xxx)¹³⁷

UMP tells the Accused that “T. and that young guy departed today, they entered the plane at 3 o'clock” and advised to pick them up at 4:30.

16 March 2012

At 22:54:43 the Accused (xxx) calls Sh.B. (xxx)¹³⁸

Sh.B.: We just got out, we landed now.

¹³⁴ Report dated 12 March 2012 signed by M.J.

¹³⁵ PINK I/ A. *Interception Binder VIII*, pp. 31-32

¹³⁶ PINK I/ A. *Interception Binder VIII*, pp. 35-36

¹³⁷ PINK I/ A. *Interception Binder VIII*, pp. 37-38

¹³⁸ PINK I/ A. *Interception Binder VIII*, pp. 113-114

Accused: When they ask you, you have to say that you have been to Croatia and say you have to work, so and so, do you hear me?

It was the Prosecution case that Sh.B. and T.H. from Kosovo and H.B., Serbian citizen but living in Montenegro “the Montenegrin” were the transporters working with A.B.. G.K., Kosovo citizen, and H.K., Turkish citizens, were the two persons to be smuggled into the EU.

Photographic surveillance by EULEX Police depicts the Accused collecting T.H. and G.K. from Pristina airport.

24 February to 16 March 2012

During this period of interception it was averred the the Accused had engaged in smuggling A.B., Kosovo citizen, M.H., Kosovo citizen, R.R., Kosovo citizen, R.J., Kosovo citizen and A.K., Kosovo citizen, from Kosovo through Montenegro and Croatia to Slovenia, with Italy as the intended destination.

24 February 2012

At 18:05:10 the Accused (xxx) was called by “V.” (xxx)¹³⁹

V. introduces himself to the Accused and says that he has “four vehicles”. The Accused asks V. if they are ready because he will leave tomorrow evening to go there.

The Trial Panel finds that “vehicles” was a coded reference to a group of 4 migrants to be smuggled.

¹³⁹ PINK I/A. *Interception Binder VII*, pp. 240-245

14 March 2012

At 17:12:39 the Accused (xxx) was called by H.B. using G.N.'s telephone (xxx)¹⁴⁰

H.B.: We are having a hard time staying here, disaster ... call those Turks because this one went crazy, she is nervous, do you understand?

Accused: I called them, that N. is not answering the phone. I told O. that N. sent [me] to him.

H.B.: ...she said if one of them doesn't send the money, she said I will never receive their people. Do you understand, spoil your job

Accused: I have nothing in that matter, I don't owe her any cents

H.B.: She is not saying that you owe her...but she is saying that all of them came through you, do you understand, she is saying that I received them because of him.

The Accused then gives him the number of "C.", Montenegrin number xxx.

It was the prosecution case "C." worked as a guide/transporter for the organized criminal group, guiding the migrants cross the Slovenia - Italy border at illegal crossing points.

At 17:15:03 the Accused (xxx) was contacted by H.B. using G.N.'s telephone (xxx)¹⁴¹

Accused: Tell that Slovenian when C. comes, when he takes you to the other side, he shall take only you, he shall put you in the car...

¹⁴⁰ PINK I/A. Interception Binder VIII, pp. 1-4

¹⁴¹ PINK I/A. Interception Binder VIII, pp. 5-8

At 17:25:59 the Accused (xxx) was contacted by "C." (xxx)¹⁴²

C.: I went out to get some water for tomorrow, we are getting ready but that Montenegrin disappeared, he no longer came to get the money from these ones

Accused: ...get 300 from him, is it enough

C.: To get 300 from this one, tell him take 1000 because he should immediately make 300 into Kuna, I shall have about 100 in the pocket

Accused: ...get 300 from him, they make 1500, give him 7-800, and you shall have 2-300 for yourself...

C.: Ok get this one then speak to that M.

Accused: I will tell M. to give to that driver 300 each, to tell that Montenegrin to get about 700

C.: He can get even 800, it will be fine for me if I have 200 euro in the pocket

At 17:28:57 the Accused (xxx) contacted "C." (xxx)¹⁴³

Accused: Where are you?

C.: I am on the way...

Accused: I said to go to take what you have to take

¹⁴² PINK I/ A. Interception Binder VIII, pp. 9-12

¹⁴³ PINK I/ A. Interception Binder VIII, pp. 13-14

At 17:30:11 the Accused (xxx) contacted "C." (xxx)¹⁴⁴

The Accused informs him he spoke to the Montenegrin and to reach an agreement with him

At 18:21:12 the Accused (xxx) contacted "C." (xxx)¹⁴⁵

Associate: This Montenegrin came because he booked the cars there at rent a car, he is asking for money now

Accused: Give me M. on the phone... (passes phone) listen M. arrange the matter to give this one 300 euro each...the five of you shall give him 300 each

At 19:05:26 the Accused (xxx) called "C." (xxx)¹⁴⁶

Associate: the Montenegrin took 1000 euro...that guy from Malishevo, not that son of the police officer but that other one said I will not give any money until Gorizi, I told him take 300 and return home...

At 19:13:14 the Accused (xxx) contacted "C." (xxx)¹⁴⁷

C.: ...have you spoken to that I. who took the money?

Accused: Yes

C.: Have we decided for 2500 or 2600 or are they lying to us?

¹⁴⁴ PINK I/A. *Interception Binder VIII*, pp. 15-16

¹⁴⁵ PINK I/A. *Interception Binder VIII*, pp. 17-20

¹⁴⁶ PINK I/A. *Interception Binder VIII*, pp. 21-22

¹⁴⁷ PINK I/A. *Interception Binder VIII*, pp. 23-26

Accused: No, I asked I., he said 2500

C.: Ok...we will here from each other tomorrow when I enter there

At 19:15:48 the Accused (xxx) contacts an UMP (xxx)¹⁴⁸

The Accused asks the UMP if "they left those things with you". The UMP confirms "they are here". The Accused then says that they will reach there tomorrow and that they will finish things.

15 March 2012

At 07:27:33 the Accused (xxx) contacted "C." (xxx)¹⁴⁹

C.: I have crossed this road above, we are away from the road for about 20-30m, fine until here, I will let you know when I reach the end

At 11:24:14 the Accused (xxx) contacted "C." (xxx)¹⁵⁰

C.: ...the Montenegrin said that we will not depart until evening

Accused: ...I spoke to him and he told me that when I went to get the cars I saw that there are a lot of checks, that is why you depart in the evening.

At 19:23:29 the Accused (xxx) contacted "C." (xxx)¹⁵¹

Accused: Where are you now?

¹⁴⁸ PINK I/A. *Interception Binder VIII*, pp. 27-28

¹⁴⁹ PINK I/A. *Interception Binder VIII*, pp. 29-30

¹⁵⁰ PINK I/A. *Interception Binder VIII*, pp. 33-34

¹⁵¹ PINK I/A. *Interception Binder VIII*, pp. 45-49

C.: almost arrived in Dubrovnik, but we don't have money because he didn't exchange any, the worst thing that might happen is that we must go back to stay in the woods again

Accused: ...is the Montenegrin guy with you now?

C.: Yes

At 20:46:35 the Accused (xxx) contacted "C." (xxx)¹⁵²

C. informs the Accused that they are "at the ship"

The Accused tells him that he informed Remzi about the money difficulties but instructs C. not to tell I. [H.]. The Accused tells him that T. arrived and that Sh. will come tomorrow.

It was the prosecution case the Accused was transporting a group of migrants, some of his associates who were caught while transporting an earlier group are returning to Kosovo after being held in a camp in Slovenia for illegal migrants.

At 23:00:25 the Accused (xxx) contacted "C." (xxx)¹⁵³

C. asks the Accused to phone the guy from Montenegro because "they only have two places free to sleep"

At 23:02:18 the Accused (xxx) is contacted by an UMP (xxx)¹⁵⁴

The Accused instructs his associate to "send them there"

¹⁵² PINK I/A. *Interception Binder VIII*, pp. 52-53

¹⁵³ PINK I/A. *Interception Binder VIII*, pp. 54-55

¹⁵⁴ PINK I/A. *Interception Binder VIII*, pp. 56-57

At 23:05:26 the Accused (xxx) contacted an UMP on (xxx)¹⁵⁵

The associate asks the Accused "where does the taxi driver live?" to which the Accused replies "Bjelo Luka" before the associate hangs up saying "bye now because the police will catch us"

At 23:08:24 the Accused (xxx) contacted an UMP on (xxx)¹⁵⁶

The associate tells the Accused that they are stuck in the car. The Accused informs him that he had already called the other transporter and told him to "move quicker because people are waiting outside"

At 23:17:21 the Accused (xxx) contacted an UMP on (xxx)¹⁵⁷

The associate confirms that they got in the car and during the telephone conversation refers to a second car.

It was the prosecution case the migrants switched vehicles at a certain point and are travelling in two separate cars.

At 23:25:07 the Accused (xxx) contacted an UMP (xxx)¹⁵⁸

The Accused says "helo (sic) M." but is informed "it's not him, he's in the other car". The Accused asks the UMP if they arrived at the apartment but is told they are still waiting in the car.

¹⁵⁵ PINK I/A. *Interception Binder VIII*, pp. 58-59

¹⁵⁶ PINK I/A. *Interception Binder VIII*, pp. 60-61

¹⁵⁷ PINK I/A. *Interception Binder VIII*, pp. 62-63

¹⁵⁸ PINK I/A. *Interception Binder VIII*, pp. 68-69

At 23:40:16 the Accused (xxx) is contacted by an UMP (xxx)¹⁵⁹

The Accused speaks to an UMP and asks if they found a place to stay. The UMP answers "no, he only found a place for himself".

16 March 2012

At 09:42:06 the Accused (xxx) is contacted by an UMP (xxx)¹⁶⁰

The Accused asks the UMP if they have got off the ship.

At 09:43:43 the Accused (xxx) contacted an UMP (xxx)¹⁶¹

The UMP tells the Accused "yes we arrived, we are in Split..."

At 15:51:08 the Accused (xxx) contacted an UMP (xxx)¹⁶²

The UMP tells the Accused they are approximately 170 – 200 km from Rijeka.

At 15:56:09 the Accused (xxx) contacted an UMP (xxx)¹⁶³

Accused: another 150 km and they will arrive there, keep your phone close to you so when he calls and tells you the location where to meet, go and meet him

UMP: yes, that's the deal because I spoke to him and he said around six or half past six

¹⁵⁹ PINK I/A. *Interception Binder VIII*, pp. 70-71

¹⁶⁰ PINK I/A. *Interception Binder VIII*, pp. 72-73

¹⁶¹ PINK I/A. *Interception Binder VIII*, p. 75

¹⁶² PINK I/A. *Interception Binder VIII*, p. 101

¹⁶³ PINK I/A. *Interception Binder VIII*, pp. 103-104

At 16:46:10 the Accused (xxx) was contacted by an UMP (xxx)¹⁶⁴

The Accused tells the UMP that he told the Montenegrans that he will receive the money when they arrive in Slovenia whereupon the UMP agrees to 100 euro each.

At 18:22:06 the Accused (xxx) contacted an UMP (xxx)¹⁶⁵

The UMP states that he is on the way to the station but that he had not met them yet.

At 18:49:52 the Accused (xxx) contacted an UMP (xxx)¹⁶⁶

The UMP confirms that he has met them and says they are driving.

At 19:18:06 the Accused (xxx) contacted an UMP (xxx)¹⁶⁷

The UMP tells the Accused not to call him since they are en route.

17 March 2012

At 02:26:11 the Accused (xxx) is contacted by an UMP (xxx)¹⁶⁸

The UMP is waiting for "them" in Ilirska Bistrica, Slovenia. These persons are passing the border on foot. The Accused instructs the UMP to meet them at the agreed place at 5 o'clock.

At 04:08:39 the Accused (xxx) is contacted by the UMP (xxx)¹⁶⁹

¹⁶⁴ PINK I/A. *Interception Binder VIII*, pp. 105-106

¹⁶⁵ PINK I/A. *Interception Binder VIII*, pp. 107-108

¹⁶⁶ PINK I/A. *Interception Binder VIII*, pp. 109-110

¹⁶⁷ PINK I/A. *Interception Binder VIII*, pp. 111-112

¹⁶⁸ PINK I/A. *Interception Binder VIII*, pp. 115-116

The UMP asks the Accused if they have called. The Accused asks him to wait and says he might have to go and pick them up.

At 05:00:38 the Accused (xxx) is contacted by the UMP (xxx)¹⁷⁰

The UMP asks the Accused they have called. The Accused says they have not called and that they may be taking a longer way round.

At 05:06:20 the Accused (xxx) contacted the UMP (xxx)¹⁷¹

The asks the Accused asks if they had called because it was now past 5 o'clock and the border police started on duty and if they are another 15-20 minutes he cannot go and pick them up.

At 06:04:59 the Accused (xxx) contacted the UMP (xxx)¹⁷²

The Accused tells the UMP they have not called back. The UMP says they will have to wait until it gets dark.

At 08:42:15 the Accused (xxx) contacted "A. Sh." (xxx)¹⁷³

The Accused says they do not reply when he calls and that worries that they have been caught as "H." is unlucky.

At 10:13:35 the Accused (xxx) contacted an UMP (xxx)¹⁷⁴

¹⁶⁹ PINK I/A. *Interception Binder VIII*, p. 118

¹⁷⁰ PINK I/A. *Interception Binder VIII*, p. 120

¹⁷¹ PINK I/A. *Interception Binder VIII*, pp. 121-122

¹⁷² PINK I/A. *Interception Binder VIII*, pp. 128-129

¹⁷³ PINK I/Ardian *Interception Binder VIII*, pp. 131-132

¹⁷⁴ PINK I/A. *Interception Binder VIII*, pp. 135-138

UMP:..I just passed Croatian border

Accused: It looks like they are finished...over there on Slovenian [territory]...cunt mother fuck I guess it was a raid...you saw that man from the last time

UMP: I know, same bad luck person

It was the prosecution case the migrants were travelling separately.

At 10:20:40 the Accused (xxx) contacted an UMP (xxx)¹⁷⁵

The Accused informs the UMP that his friend from Split will come to pick him up and give him 2500 euro. The Accused tells the UMP that later they will reach an agreement.

At 15:19:26 the Accused (xxx) contacted an UMP (xxx)¹⁷⁶

The Accused tells the UMP that they might have been captured adfter entering Slovenia because there has been no response from them.

At 15:23:40 the Accused (xxx) is contacted by an UMP (xxx)¹⁷⁷

The UMP asks about his brother who was in the last group. The Accused states they have not responded and the person travelling with them has not responded and that he is sure they have been captured. The Accused says he will try and make contact with them and determine if they will be sent to a camp in Slovenia or Croatia.

At 18:15:59 the Accused (xxx) is contacted by an UMP (xxx)¹⁷⁸

¹⁷⁵ PINK I/ A. *Interception Binder VIII*, pp. 139-140

¹⁷⁶ PINK I/ A. *Interception Binder VIII*, p. 142

¹⁷⁷ PINK I/ A. *Interception Binder VIII*, pp. 143-144

The UMP introduces himself as 'P.' and asks if there is any news since his brothers phone and the phone of his brothers' friend are switched off. The Accused says his uncle is with them and that none of them has responded to his calls. The UMP asks if they have been captured in Slovenia.

At 18:47:00 the Accused (xxx) sent an SMS to "A. Sh." (xxx)¹⁷⁹ wherein he stated:

"My friend, dok was captured, tell him"

At 20:07:01 the Accused (xxx) contacted an UMP (xxx)¹⁸⁰

The Accused asks the UMP if anyone from Kosovo has been brought in today. The UMP says no. The Accused tells the UMP that if a person called 'I.' arrives to inform him that 'H.' is looking for him and to call him immediately.

At 21:31:15 the Accused (xxx) is contacted by M.H. (xxx)¹⁸¹

M.H. asks the Accused if he had spoken to I. because they were caught. The Accused asks him not to tell anyone, saying they would be held for 2 days and then returned.

18 March 2012

At 08:01:39 the Accused (xxx) is contacted by an UMP (xxx)¹⁸²

¹⁷⁸ PINK I/A. *Interception Binder VIII*, p. 148

¹⁷⁹ PINK I/A. *Interception Binder VIII*, pp. 151-152

¹⁸⁰ PINK I/A. *Interception Binder VIII*, p. 142

¹⁸¹ PINK I/A. *Interception Binder VII*, pp. 484-488

¹⁸² PINK I/A. *Interception Binder VIII*, pp. 161-162

The Accused is told that 5-6 persons were brought from Kosovo last night. He asks to speak with 'I.'. I. tells the Accused that he and H. and the others had been "captured immediately upon passing the bridge".

At 08:26:25 the Accused (xxx) contacted an UMP (xxx)¹⁸³

The Accused tells the UMP that "I just learned that they are in a camp in Croatia and you can talk to them on xxx..."

At 08:29:28 the Accused (xxx) contacted the brother of migrant A.K. (xxx)¹⁸⁴

The Accused tells the UMP "they have been caught, they are in a camp in Croatia. Did you call me about A.1.?" The UMP replies "I am the brother of A.2. from Damaneku" and says they will be sent back this week.

At 12:17:04 the Accused (xxx) contacted an UMP (xxx)¹⁸⁵

The Accused tells the UMP to return the things to them since they were caught

19 March 2012

At 11:00:45 the Accused (xxx) contacted an UMP (xxx)¹⁸⁶

The Accused speaks to M. and I. and during that conversation refers to A.1.. He tells them that when they return to Kosovo they should say they went to Croatia to work. He

¹⁸³ PINK I/ A. Interception Binder VIII, pp. 161-162

¹⁸⁴ PINK I/ A. Interception Binder VIII, p. 166

¹⁸⁵ PINK I/ A. Interception Binder VIII, pp. 173-174

¹⁸⁶ PINK I/ A. Interception Binder VIII, p. 188

says A.1. has said he will “tell everything what has happened”. The Accused told M. to speak to A.1..

At 11:19:05 the Accused (xxx) contacted an UMP (xxx)¹⁸⁷

The Accused asks the UMP if he is the brother of A.1.. The UMP replies that he is. The Accused tells him to speak to A.1. and to tell him not to speak since he had threatened to “tell everything” when he is returned to Kosovo.

At 11:20:22 the Accused (xxx) contacted the UMP (xxx)¹⁸⁸

The Accused tells the UMP to talk to his brother today. The UMP asks the Accused “What shall I do regarding the issue of payment”. The Accused replies stating “go and get the money from the place where you left it.”

At 11:25:58 the Accused (xxx) contacted an UMP (xxx)¹⁸⁹

The Accused speaks to I. and says “I spoke with A.1.s brother and he told me don’t worry since he doesn’t dare to speak a word.”

20 March 2012

At 15:56:13 the Accused (xxx) is contacted by “P.” (xxx)¹⁹⁰

¹⁸⁷ PINK I/A. Interception Binder VIII, p. 190

¹⁸⁸ PINK I/A. Interception Binder VIII, p. 192

¹⁸⁹ PINK I/A. n Interception Binder VIII, p. 194

¹⁹⁰ PINK I/A. Interception Binder VIII, pp. 199-207

P. tells the Accused he is enquiring about A.1.. The Accused tells him A.1. will return to Kosovo tomorrow. There is a discussion about money. The Accused tells P. they asked A.1. for 500 Euros for 'expenses'. P. is angry about the loss of money and says the Accused should have told him that he had already had other persons caught by the police on the route. The Accused insists "it was a big control, big checkpoint", not his fault. The Accused and P. discuss taking A.1. abroad. The Accused requests payment of 1000 Euros. The Accused subsequently says that A.1. should pay 500 Euros when he arrives on the other side of the border. The UMP tells the Accused "you have no other obligation but just to take him into Croatian land".

24 March 2012

At 13:47:44 the Accused (xxx) contacted the migrant A.B. (xxx)¹⁹¹

A.1. Berishsa speaks with the Accused and complains about the trouble he says the Accused put them through. He says "I am in debt up to my neck just in order to get there." He complains that the Accused did not tell them he had people already in prison. The Accused tells A.1. "...it is not only me that is doing this business but there is also my uncles son who is doing this, so when they got them into prison...they asked them who did you leave with and they just lied giving out my name...for more than a year I didn't have anyone else except you." The Accused tells A.1. that he sent the 700 Euros via Western Union to "that person". The Accused tells A.1. "So, when I am going to have the next tour, if you want I can call you and I will try to help you man, I can take you over there...P. your brother called me from Italy and said that a Slovenian guy can come to pick you up."

¹⁹¹ PINK I/ A. Interception Binder VIII, pp. 290-297

I.H., Kosovo citizen, A.B., Kosovo citizen, M.H., Kosovo citizen, H.B., Serbian citizen, R.R., Serbian citizen, R.J., Kosovo citizen, and A.K., Kosovo citizen were arrested on 16 March 2012 in Sapjane village, Croatia, near Ilirska Bistrica, Slovenia, a border crossing point between Croatia – Slovenia for illegal migration.¹⁹²

17 March to 29 March 2012

During this period of interception it was averred the the Accused had engaged in smuggling B. (last name not known), and two other migrants from Kosovo through Montenegro and Croatia and into Slovenia, with Italy as the intended destination.

17 March 2012

At 18:00:18 the Accused (xxx) was contacted by an UMP (xxx)¹⁹³

The UMP asks the Accused how much it would cost to take someone abroad. The Accused tells him the price is “2800 Euro until they reach the area”. The UMP replies that he told him 3000 Euro, to which the Accused responds that he can keep the extra 200 for himself.

At 21:33:56 the Accused (xxx) is contacted by an UMP (xxx)¹⁹⁴

The UMP asks the Accused “when the ones who are here shall depart?” The Accused tells him that his uncle would take them.

It was the prosecution case that ‘uncle’ is T.H..

¹⁹² Report dated 19 March 2012 signed by M.J.

¹⁹³ PINK I/ A. *Interception Binder VII*, p. 480

¹⁹⁴ PINK I/ A. *Interception Binder VIII*, pp. 157-158

18 March 2012

At 03:28:28 the Accused (xxx) received an SMS from a person (xxx)¹⁹⁵ wherein it was stated:

“...I was taken by bus from Gostivar to Bujanovac...”

At 16:18 the Accused (xxx) contacted an UMP (xxx)¹⁹⁶

The Accused asks the UMP if he could go to Montenegro, he declines but agrees to “send it” to a person at Dubrovnik airport.

At 16:20:23 the Accused (xxx) contacted an UMP (xxx)¹⁹⁷

The Accused asks the UMP to send “it” to a friend at Dubrovnik airport and says “you’ll take from him 2500 Euros and then we will agree”.

21 March 2012

At 11:31:56 the Accused (xxx) contacted M.C. (xxx).¹⁹⁸

Accused tells M.C. that he is “gathering” and that he will inform the UMP once it is ready.

At 17:16:03 the Accused (xxx) contacted “B.” (xxx)¹⁹⁹

¹⁹⁵ PINK I/ A. *Interception Binder VIII*, pp. 160-161

¹⁹⁶ PINK I/ A. *Interception Binder VIII*, pp. 175-176

¹⁹⁷ PINK I/ A. *Interception Binder VIII*, pp. 177-178

¹⁹⁸ PINK I/ A. *Interception Binder VIII*, pp. 208-209

¹⁹⁹ PINK I/ A. *Interception Binder VIII*, pp. 210-211

Accused: Are you ready for tomorrow?

B.: Do you really think for tomorrow, where are you?

Accused: I am in Komoran talking to the two boys

At 18:23:27 the Accused (xxx) contacted "N." (xxx)²⁰⁰

Accused: tomorrow morning, some guests will come there [Montenegro]...they leave about 04:00 so at around 11:00 they will be there

At 18:36:25 the Accused (xxx) contacted I.H. in the detention camp in Croatia (xxx)²⁰¹

Accused: I will send Q. of M. and three others today with B...B. of Komoran

22 March 2012

At 18:44:50 the Accused (xxx) contacted an UMP (xxx)²⁰²

Accused: on Sunday, I have two friends to send there, where you usually send all.

UMP: Ok, what time and how?

Accused: ...on the morning at 8 or 9. ..you know the place that you take?

UMP: Yes

²⁰⁰ PINK I/A. *Interception Binder VIII*, pp. 212-213

²⁰¹ PINK I/A. *Interception Binder VIII*, pp. 214-215

²⁰² PINK I/A. *Interception Binder VIII*, pp. 216-219

R.: When we arrive there, are we coming from the vehicle that we come towards your vehicle? Is this the connection?

...

Accused: Yes, after you arrive you come to my vehicle....I will call you when the cross the border of Slovenia.

During that conversation R. refers to "A.". The Trial Panel finds this was reference to the Accused.

23 March 2012

At 08:45:50 the Accused (xxx) contacted an UMP (xxx)²⁰³

The Accused asks the UMP if they can stay at his apartment in Budva. He agrees.

At 10:38:44 the Accused (xxx) contacted an UMP (xxx)²⁰⁴

Accused: go to the bus station because they are waiting for you

At 19:09:52 the Accused (xxx) sent an SMS to the migrant "Sh. A." (xxx)²⁰⁵ wherein he stated:

"You won't have to stay long. You will come on Sunday, don't worry"

At 19:44:42 the Accused (xxx) contacted an associate "KH." (xxx)²⁰⁶

²⁰³ PINK I/ A. *Interception Binder VIII*, pp. 252-253

²⁰⁴ PINK I/ A. *Interception Binder VIII*, pp. 254-255

²⁰⁵ PINK I/ A. *Interception Binder VIII*, pp. 268-269

²⁰⁶ PINK I/ A. *Interception Binder VIII*, pp. 272-273

The Accused tells him that they will pay 300 Euros each. The UMP asks for 400 Euros each saying that he will need to get a bigger vehicle. The Accused agrees that they will each pay 300 Euros and when they get to Dubrovnik, they will give him another 100 each. During the conversation the Accused refers to some people being “captured”.

24 March 2012

At 12:48:40 the Accused (xxx) was contacted by an UFP (xxx)²⁰⁷

The UFP informs the Accused that G. is there and that she and her sister sent money to H.. She had sent him 500 euros, and her sister sent him 300 euros.

27 March 2012

At 18:46:01 the Accused (xxx) is contacted by an UMP (xxx)²⁰⁸

The Accused tells the UMP that they reached Slovenia, but may have been caught there

At 18:47:34 the Accused (xxx) is contacted by the UFP (xxx)²⁰⁹

The UFP tells the Accused that a third person “went there” with the 500 Euros and 300 Euros that they had given him but that he had deceived them. She says “if M. finds out” it would be better for her to disappear.

It was the prosecution case this was a reference to Z.M., a key member of the organized criminal group of A.B. in Croatia.

²⁰⁷ PINK I/A. *Interception Binder VIII*, pp. 280-281

²⁰⁸ PINK I/A. *Interception Binder VIII*, pp. 300-301

²⁰⁹ PINK I/A. *Interception Binder VIII*, pp. 302-303

28 March 2012

At 19:42:10 the Accused (xxx) is contacted by "A." (xxx)²¹⁰

A. introduces himself to the Accused as the brother of B.. The Accused tells him that B. was caught in Slovenia before entering Italy and that he would be returned to Kosovo.

Other interception evidence upon which the prosecution relies relevant to Count 2

18 March 2012

At 13:18:33 the Accused (xxx) was contacted by an UMP (xxx)²¹¹

The UMP tells the Accused that he got his number from "someone you took to Switzerland."

7 March 2012

At 15:17:47 the Accused (xxx) contacted an associate (xxx)²¹²

Accused: ...he said when they went to the border with Switzerland ...they made the documents ready for them...

Associate: ...to the tall guy, he gave it to him in hand when he gave him the money and to this other he totally forgot to give it to him

²¹⁰ PINK I/A. Interception Binder VIII, pp. 304-305

²¹¹ PINK I/A. Interception Binder VII, pp. 489-490

²¹² PINK I/A. Interception Binder VII, pp. 421-424

Accused: ...let T. call me and I will tell him here is the number of the one who drove them and find out with him what have you done up there, they have talked with him there

22 February 2012

At 10:14:33 the Accused (xxx) was contacted by L.K. (xxx)²¹³

L.: How many hours they walk with you?

Accused: I work in the evening and during the day, for example I take them at 4 in the morning then they have to walk for about 1 and a half hour whilst if I take them in the evening they have to walk for about 2 or 3 hours...

L.: last time they had to walk 5 hours

Accused: ...they cannot walk there for 5 hours because of the place, for 5 hours they can go to Ljubljana walking

L.: really 5 hours they were walking, then they made a call, they were even crying

Accused: When did that happen?

L.: on Friday...they put them in a cabin and they kept them there until morning, they were freezing, he took them in the morning then he sent them at the house

Accused: ...are you saying last Friday?

²¹³ PINK I/A. *Interception Binder VII*, pp. 143-151

L.: yes

Accused: No that is not true, they were not with me

L.: I am telling you that is very bad imagine when they call Turkey and tell them that they had to walk for 5 hours and they were freezing you know?

Accused: ... 2 and a half at most 3 because if you walk 5 hours you can reach Ljubljana, I work in the other part...

L.: that is understandable; if you pass illegally you have to walk at least one, two or three hours but walking five hours...

17 February 2012

At 16:03:02 the Accused (xxx) contacted an UMP (xxx)²¹⁴

During this conversation the Accused says it is difficult to work because of the “boots”. His associate informs him that he was imprisoned in Hungary for some time. The Accused asks him if it is possible to go from Serbia to Croatia.

It was the prosecution case that “boots” is coded reference to the police.

26 February 2012

At 20:33:26 the Accused (xxx) contacted M.C. (xxx)²¹⁵

²¹⁴ PINK I/A. *Interception Binder VII*, pp. 92-95

²¹⁵ PINK I/A. *Interception Binder VII*, pp. 389-390

M.C. tells the Accused that he would go to Ilirska Bistrica and go to a road described by the Accused to assess the situation. He said he would be available all Spring.

At 20:36:52 the Accused (xxx) contacted M.C. (xxx)²¹⁶

The Accused tells M.C. to cross from Croatia to Slovenia.

Surveillance Evidence

The Accused was observed meeting a group of migrants at Pristina Airport. That group included G.K. and T.H..²¹⁷

These persons were returned from Croatia after they were caught and arrested on 10 March 2012 in Ilirska Bistrica, Slovenia, a town next to the Croatia-Slovenia border, having illegally entered Slovenia pursuant to the actions of the organized criminal group.

Financial Investigation

Pursuant to an Order for Disclosure of Financial Data issued on 19 July 2012 against the Accused²¹⁸, investigations revealed that the Accused had received 1.901,61 EUR via Western Union from Z.G., a suspected member of the organized criminal group in Croatia, between December 2010 and mid-2011.²¹⁹

²¹⁶ PINK I/ A. Interception Binder VII, pp. 391-392

²¹⁷ EULEX Police surveillance report for 15.3.2012, A.B. BINDER 1.

²¹⁸ See A. B., BINDER IX.

²¹⁹ See Kosovo Police 'Summary Report of Financial Investigation ('PINK')', dated 17.09.2012 (SPRK/in/OC/1078 of 26.09.2012), pp.1-86, A.B. BINDER IX.

Statements of the defendant

The defendant A.B. was interviewed on four occasions by the Prosecutor and EULEX and Kosovo Police investigators. The defendant denied that he made or received any of the relevant telephone calls and SMS messages but rather claimed to have lost his phone during the relevant dates, only to find it later in his own house. The interception of his telecommunications and triangulation data therefrom, reveals that the communications sent and received were consistent with A.B.'s movements as revealed by photographic surveillance in public places.

Moreover, in view of the great extent of his communications with "N.", O.K., L.K. and other suspected members of the alleged organized criminal group, the Prosecutor considers the defendant's account that he does not know them or could not identify them further as incredible, and demonstrative of his lack of co-operation in the proceedings.

G. RESPONSIBILITY OF THE ACCUSED

The Accused was charged in two counts in the Indictment.

In Count 1 he was charged with Organised Crime under Article 274 paragraphs 1, 2 and 3 of the CCK.

In Count 2 he was charged with Smuggling of Migrants under Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the CCK in co-perpetration pursuant to Article 23 of the CCK.

In the Plea Agreement dated 30 October 2013, signed by the parties, it was stated "the Prosecutor will no longer insist on Count 1 on the Indictment." During the hearing on the Plea

Agreement on 30 October 2013 the Prosecutor stated he withdrew Count 1. Count 2 was amended to charge the Accused under Article 138 paragraph 1 only.

The Court accepted the plea agreement and rejected Count 1.

The basis of the guilty plea under Count 2 was that the Accused had engaged in the smuggling of migrants, mostly of Turkish origin, from Kosovo to Croatia and Slovenia and onwards to their final destination in Italy and other EU countries, including Hungary, Austria, Germany, and other countries in Western Europe. Specifically:

That **between 5 February 2012 and 25 February 2012**, A.B. smuggled a group of six Turkish migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as Z.G., born xxx, A.G., born xxx, M.G., xxx, B.G., born xxx, and G.K., born xxx.

The planning of the criminal offence began on 5 February 2012, when A.B. entered into an agreement with N., a recruiter and main organizer on a transnational level, to regularly smuggle migrants through Montenegro and Croatia into Slovenia and Italy. After this agreement, A.B. contacted other members of the criminal group from 6 to 19 February 2012 in order to get them prepared. These members included Z.G.1 in Croatia, Sh.B. in Italy, A. (last name unknown) in Kosovo, and an unidentified member of the group in Montenegro. A. would work with A.B. in Kosovo to co-ordinate the drivers and Z.G.1 would take care of transportation of the migrants in Croatia towards Slovenia, while Sh.B. would oversee their onward crossing into Italy and transportation thereafter.

The planning of the operation was further concretized on 21 February 2012, when A.B. entered into a direct agreement with L.K., a main organizer on a level above N. in the same organized criminal group, to smuggle a group of six persons in the next days. These six migrants were

Turkish citizens Z.G., A.G., M.G., B.G. and G.K.. L.K. informed A.B. that the migrants consisted of a family of five adults and one seven year old child. He agreed to the smuggling of these persons from Zagreb, Croatia to Italy. Other members of the wider transnational criminal group had already transported them from Turkey to Croatia, where A.B. would take over. The migrants were each charged 1,400 euros for their transportation from Croatia through Slovenia to Italy alone.

While L.K. was the direct and main contact point for A.B., the overall direction was given by her husband O.K., the leader of the criminal group. This is demonstrated by L. asking for permission from O. while talking on the phone with A.B. about the forthcoming operation. A.B. also received instructions directly from O.K. regarding the smuggling of this specific group of migrants. In particular, O.K. enquired about the drivers, the timing and modalities of the movement of the migrants and entry into the planned destination country, and where the migrants would be accommodated in Rijeka and money that would be taken from them in Croatia. C.K., the brother of O., was also involved in the smuggling arrangements from Turkey and communicated directly with A.B..

A.B.'s role was to communicate with the transporters from Croatia to Slovenia to Italy, the crucial stages of the migrants' journey given that these were the stages that the crime was concretised by the illegal crossing of borders into EU states. In doing so, A.B.spoke with M.C.. M.C. organized the drivers directly, communicating back to A.B. frequently to gain instructions and agree money arrangements. Moreover, A.B. arranged for accommodation of the migrants in Opatija, Croatia, in "Hotel Opatija" run by G.N., another member of the group in Croatia who also works with M.C..

In addition, A.B. was involved in the activities in Slovenia with his associate known as R.L. who contributed to the commission of the offence as a driver for the group from Slovenia to Italy.

On the evening of 23 February 2012, the migrants departed from Zagreb, Croatia to Rijeka, Croatia in two groups. Some of the group went by taxi for 350 euros from Zagreb to Rijeka, while the remainder went by bus after A.B. expressed his concern to L.K. that they would be caught if they all travelled by taxi at night. In Rijeka they were met by the drivers organized by M.C., who took them to “Hotel Opatija” run by G.N.. The migrants were made to pay 200 euros for staying one night. On 24 February 2012, A.B. discussed the final arrangements with M.C. for transportation of the migrants from Rijeka, Croatia to Slovenia and onwards to Italy. M.C. and another associate travelled to Rijeka that evening in order to be ready to transport the migrants the next morning.

On 25 February 2012, at around 05:00hrs, M.C. and another driver picked-up the migrants from Hotel Opatija. At this point, the migrants were made to hand over another 1,200 euros to the drivers (500 euro to one, 700 euro to the other). Three migrants travelled in each of the two vehicles towards the Croatian border with Slovenia. The border was in fact crossed at Starod, with the migrants entering into Slovenia illegally at some time before 11:00hrs.

Around 11:00hrs that day, the migrants were met by another driver in a Mercedes vehicle at Račice, Ilirska Bistrica region, Slovenia, who was secured by A.B. to bring them to Italy. The prior plan had been to bring them to Udine, Italy, but on the day the driver took them towards Trieste, Italy.

The migrants Z.G., A.G., M.G., B.G. and G.K., were all stopped at a police control point as they illegally crossed into Italy between 11:00 and 13:00hrs and were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

The ages and identities of the migrants’ accord with the factual circumstances communicated in the intercepted calls of A.B., namely that the migrants were a family including a child. Notably, the youngest child of the group (B.G.) was only xxx years of age at the time of the events, even

younger than the xxx years old indicated. In addition, three other children were also smuggled since R.G. was xxx years old, A.G. xxx years old and M.G. xxx years old at the time. Only two members of the group were adults (Z.G., xxx, and G.K., xxx).

Further, that **between 26 February 2012 and 10 March 2012**, A.B. smuggled two migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as H.K., Turkish citizen, born xxx (age xxx years), and G.K., Kosovo citizen, born xxx (age xxx).

The planning of the criminal offence began on 26 February 2012, when A.B. agreed to smuggle G.K. from Kosovo to Italy. Further, on 27 February 2012, A.B. agreed with the K. brothers to transport two Turkish migrants from Zagreb, Croatia to Italy. The migrants had already been transported from Turkey to Croatia by other members of the transnational organized criminal group. On 6 March 2012, O.K. called A.B. personally, at which point it was clarified that one Turkish migrant would be going. This migrant to be smuggled was H.K.. Later that day, A.B. agreed with L.K. that H. would be transported at the same time as the migrant from Kosovo.

A.B.'s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.N., who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with Sh.B., Kosovo citizen, T.H., Kosovo citizen and H.B., Serbian citizen living in Montenegro who served as the guides and transporters. These three members of the group directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

The migrant departed from Rijeka, Croatia to Slovenia on 8 March 2012, crossing illegally into the region of Ilirska Bistrica, Slovenia by boat to the vicinity of Koper. They continued their journey towards Italy by night on 9 March 2012, in an effort to avoid the border police.

A.B. directly communicated with the migrants along the way, telling them in precise detail where to cross between Slovenia and Italy. From these communications, the illicit nature of the entry is extremely clear. For example, he instructed the migrant not to jump over a fence but to walk around it across railway tracks, since there were guard dogs. He further directed the migrants to walk through pine trees towards Italy, indicating that they were entering Italy via an illegal crossing point through the forest.

The migrants H.K., and G.K., as well as the transporters Sh.B., H.B., T.H. were all stopped at a police control point as they illegally crossed into Italy in the early hours of 10 March 2012. They were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

From intercepted communications in the aftermath of the arrests, the role of Sh.B., H.B., T.H. as transporters for the criminal group was revealed. They were housed in a camp for illegal immigrants in Croatia together with the two migrants, since their entry was also unauthorized. T.H. and G.K. were released and deported to Kosovo on 15 March 2012, while Sh.B. was released and deported on 16 March 2012. Notably, the illegal nature of their activities in Croatia is demonstrated from A.B.'s suggestion to Sh.B. to come up with an excuse for their presence in Croatia for the Kosovo Border Police upon arrival at Pristina airport which was not true.

Photographic surveillance of A.B. by EULEX Police on 12 March 2012 further corroborates the evidence of his involvement in this smuggling operation, since he is photographed collecting T.H. and G.K. from Pristina airport.

Further, that **between 24 February 2012 and 16 March 2012**, A.B. smuggled four migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as A.B., Kosovo citizen, born xxx (age xxx), M.H., Kosovo citizen, born xxx (age xxx), R.J., Kosovo citizen, born xxx (age xxx), and A.K., Kosovo citizen, born xxx (age xxx).

Planning of the smuggling operation began on 24 February 2012, when A.B. received a call from “V.”, a member of his group in Kosovo, informing him that four migrants had been recruited (referred to as “four vehicles” in coded language) and they were ready to be transported from Kosovo abroad. Overall, A.B. reported to O.K. for the operation. The migrants were each charged 2,500 euros for their transportation from Kosovo through Montenegro, Croatia and Slovenia to Italy alone. They left this amount with I. (last name unknown) in Kosovo, as security, until their transportation into Europe was completed.

A.B.’s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.N., who provided accommodation at “Hotel Opatija” near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with M.H., Kosovo citizen, I.H., Kosovo citizen, H.B., Serbian citizen living in Montenegro, and R.R., Serbian citizen. I.H., H.B., and R.R. served as the guides and transporters from Kosovo onwards, while M.H. took care of arrangements on the Italian side. I.H., H.B., and R.R. directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

In addition, A.B. discussed the activities in Montenegro, a transit country, with his associate known as "C." who contributed to the commission of the offence as a driver for the group from Montenegro to Croatia and Slovenia.

The migrants departed Kosovo for Montenegro on or around 14 March 2012. The migrants and transporters stayed with "C." in Montenegro. A.B. told "C." to ensure that the migrants each give the driver an additional 300 euros and 700 euros to another Montenegrin associate managing the transportation. In the event, the Montenegrin associate in fact took 1,000 euros from the migrants.

From Montenegro, on 15 March 2012, the migrants were driven by two Montenegrin members of the criminal group to Croatia where they were accommodated by G.N. at "Hotel Opatija", near Rijeka. At some point, they switched cars to evade the authorities. They were then taken by ship to Dubrovnik, Croatia. A.B. kept in touch with "C." and the other Montenegrin members of the criminal group along the way, providing continuous directions on the route to take, money arrangements and accommodation. The boat arrived around 09:40hrs on 16 March 2012.

From there, the migrants were taken in the direction of a border crossing in Ilirska Bistrica region, Slovenia. A new driver from Slovenia was told by A.B. to wait for the migrants the other side of the Croatia- Slovenian border. The migrants crossed the border on foot on the night of 16 March 2012 and early hours of 17 March 2012. A.B. was aware of plans for them to go onwards to cross the border from Slovenia into Italy in the direction of Gorizia, in the Friuli Venezia Giulia region of northeast Italy.

However, the four migrants A.B., M.H., R.J., and A.K., as well as the transporters I.H., H.B., and R.R. were all caught by the Slovenian police in Ilirska Bistrica and arrested.

Further, that **between 17 March 2012 and 28 March 2012**, A.B. smuggled three migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. One of the migrants was identified as B. (last name unknown), Kosovo citizen.

Planning for this smuggling operation began on 17 March 2012, when A.B. arranged with a recruiter to send a new group abroad for 2,800 euros per migrant. The recruiter informed A.B. that he had overcharged the migrants by 200 euros, but A.B. told him he could keep it for himself.

A.B.'s main role was to communicate with the transporters from Kosovo to Montenegro, Montenegro to Croatia, Croatia into Slovenia and onwards from there into Italy. The crime was concretized by the illegal crossing of the Croatia – Slovenia border and entry into Slovenia and Italy without authorization.

In carrying out the smuggling of the migrants, A.B. discussed the activities in Montenegro with an associate named and in Croatia with M.C., each of whom organized the drivers within their respective areas. A.B. also tasked G.N. and her sister, who provided accommodation at Hotel Opatija near Rijeka, Croatia. M., G. and her sister also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with I.H., and Sh.B. who served as the guides and transporters from Kosovo onwards.

On or around 04:00hrs on 22 March 2013, the three migrants departed from Kosovo to Montenegro. They arrived in Budva, Montenegro around 11:00hrs, where they were met by a member of the group in Montenegro at the bus station. They were accommodated for the night by another Montenegrin associate. The next day, they were driven to Dubrovnik, Croatia where

they were met by another transporter. A.B. told his associate known as “K H.” in Montenegro to ensure that each of the migrants gave the driver 300 euro at Budva and another 100 euro each when they arrived in Dubrovnik. The group crossed the Croatia – Slovenia border on or around 27 March. Thereafter, they were to travel onwards into Italy with another driver. However, the migrants were arrested by the Slovenian Police and deported to Kosovo.

Having regard to the evidence in this case upon which the prosecution relies the Trial Panel finds that the guilty plea is supported by the facts and material proofs. The Trial Panel accepted the guilty plea.

H. SENTENCING

In an early draft of the plea agreement it was proposed that the Accused plead guilty to Count 2 and that he be sentenced to a term of imprisonment of three years and a fine in the sum of 500 Euros. The fine would be converted to a further period of imprisonment if it remained unpaid.

Article 138 paragraph 1 of the ‘old’ CCK provided for a term of imprisonment of between 2 and 12 years. Article 170 of the ‘new’ CCRK provided for a term of imprisonment of between 2 and 10 years. However, under the ‘new’ CCRK it would be possible to fine the Accused. A fine following a conviction under Article 138 of the ‘old’ code was not envisaged in the law. In the circumstances, the Trial Panel found Article 138 of the ‘old’ code more favourable to the Accused, in circumstances where the possibility of the commutation of any fine into a period of imprisonment under Article 46, paragraph 3 of the CCRK allows for a theoretical maximum three (3) years of imprisonment in the event of the non-payment of any fine a Court might have chosen to impose.

In any event the proposed sentence of three years imprisonment was within the maximum sentences prescribed in both codes.

Under the terms of the plea agreement the Accused agreed to provide a statement to the Prosecutor or Police, regarding the activities of the person known as "N.", who is known to the Defendant. This interview will take place as soon as possible. This information will include N.'s full name and an account of his involvement in the smuggling of migrants. Further, in the event of "N." being indicted in Kosovo, the Defendant will give evidence against him for the prosecution at the main trial.

Prior to the Court having received the signed written plea agreement the Accused had complied with the first part of his obligation under the said plea agreement.

The Accused was convicted of a serious criminal offence.

The Accused is xxx years of age and married with a xxx year old child. He described his income as "average".

The Trial Panel considered the sentence of three years imprisonment was reasonable and proportionate.

The Court finds that the provisions of Article 233 of the Criminal Procedure Code have been complied with and that the plea agreement was entered into voluntarily by the accused and that he understood its import and implications regarding his future conduct at the time that it was signed by him. The Court notes that copies of the plea agreement have been retained by the parties and a copy has been retained on the court's file.

For the reasons stated herein we render this Judgment.

Judge Malcolm Simmons

Presiding Judge

Judge Manuel Soares

Panel Member

Judge Zejnullah Gashi

Panel Member

Valentina Gashi

Recording Officer

ANNEX

All Orders from the Court and the Prosecutor

All relevant Police reports, including

Kosovo Police 'Summary Report of PINK investigation case' dated 06.04.2012, PINK: Police Binder III, Tab 13, pp.85-206.

EULEX Police Final Report on A.B., dated 12.4.2012, A.B. BINDER IX

EULEX Police report 3451 on analysis of information about migrants gathered during the investigation dated 02.03.2012 (SPRK/in/OC/258 of 05.03.2012), PINK: Police Binder II, Tab18, pp.149-1860.

Reports on telephone subscriber information

Interception transcripts, A.B. BINDERS VI, VII and VIII.

Police 15-day reports on telephone interception, A.B. BINDER VI

EULEX Interception report 3084, 'outcomes and general assessment' dated 15.12.2011 (SPRK/767/in/OC of 15.12.2011), PINK: Police Binder 1, tab 23, pp.292-326AS.

EULEX Police report 5638 dated 10.04.2013 (SPRK/in/324/OC of 11.4.2012) on the results of the metering analysis of phone numbers used by A.B., A.B. Binder VI

Expert reports on phone analysis, including:

Kosovo Police Evidence Report dated 10.5.2012 (SPRK/in/OC/in/585 of 14.05.2012), PINK: Police Binder IV, Tab 7, pp.92-97E.

EULEX Police report 4742 dated 04.10.2012 titled 'analysis subsequent to the forensic examination, (SPRK/in/OC/1156 of 09.10.2012), A.B. Binder V, Tab 3; pp. 446-461.

EULEX Forensic Examination report dated 30.7.2012, A.B. Binder V.

Reports on verification of persons,

All surveillance reports and photographs, including

EULEX Police surveillance reports, especially report of 15 March 2012, in A.B. BINDER I.

Reports on Searches, including

Kosovo Police report on house search of A.B. dated 18.4.2012, A.B. BINDER IV,

Financial investigation reports, including:

Kosovo Police 'Summary Report of Financial Investigation ('PINK')', dated 17.09.2012 (SPRK/in/OC/1078 of 26.09.2012), PINK: Police Binder VII, Tab 1, pp.1-86, and A.B. BINDER IX

PINK: Financial Investigation of A.B., O.A., B.F., F.A. and others 2012, PINK Police Binder VII and A.B. BINDER IX

Selected international legal assistance materials in A.B. BINDER III, including

Statements of M.C., Z. G., N.P., G.N. and Z.M. taken by the Croatian authorities, A.B. BINDER III.