COURT OF APPEALS
PRISTINA

Case number: **PAKR 259/14**
Date: **22 May 2015**

Basic Court: **Gjilan, PKR 56/13**

Original: **English**

The Court of Appeals, in a Panel composed of EULEX Court of Appeals judge Hajnalka Veronika Karpati, as presiding and reporting judge, and Kosovo Court of Appeals judges Mejreme Memaj and Xhevdet Abazi as panel members, assisted by Alan Vasak, EULEX legal officer, acting in the capacity of a recording officer,

in the case concerning the defendants:

A.K., male, father's name S., mother's name and maiden surname A.M., .., Kosovo Albanian;

I.P., male, father's name A., mother's name and maiden surname R.U., .., Kosovo Albanian;

B.S., male, father's name F., mother's name and maiden surname F.M., .., Kosovo Albanian;

H.M., male, father's name H., mother's name and maiden surname H.D., .., Kosovo Albanian;

charged with the Special Prosecution Office of the Republic of Kosovo's (SPRK) indictment PPS 91/11 filed on 23 April 2012 with the following act:

that from an unspecified date to 09.09.2011, in co-perpetration with each other and a person called D.P., citizen of the Republic of Serbia, acting as an organized and structured criminal group have smuggled migrants - citizens of the Republic of Kosovo who were interested to illegally go out of Kosovo; defendant A.K. and H.M. found migrants S.X. and defendant H.M.'s two friends X. and another friend, then they sent these migrants to West European countries through the territory of the Republic of Serbia

through suspect D.P.; on 09.09.2011 defendant I.P. found three migrants after agreeing so with A.K.: S.G., F.S. and S.L.; following the payments of at least 1.600 euros per person they took these three migrants to Gjilan to A.K., who, as of the agreement took them to defendant B.S. who would then take the three migrants to the Village of Stublina to submit them to a person form Serbia who would further send them to France; however on the way, defendant B.S. and the three migrants S.G., F.S. and S.L. were stopped by the police and were taken to the police station,

which said actions were classified as the following criminal offences:

Organized Crime, in violation of Article 274 §2 in conjunction with Article 23 of the Provisional Criminal Code of Kosovo (PCCK),

Smuggling of Migrants, in violation of Article 138 §6 in conjunction with Article 138 §1 PCCK,

adjudicated in first instance by the Basic Court of Gjilan with judgment PKR 56/13, dated 5 December 2013, by which:

The defendants A.K., I.P. and B.S. were found guilty of committing the criminal offence of Attempted Smuggling of Migrants pursuant to Article 170 §1 of the Criminal Code of the Republic of Kosovo (CCRK) and Article 28 §1 and 2 of the CCRK and Article 31 CCRK, by – briefly put – acting in co-perpetration with each other with the intention of obtaining material benefit for themselves by attempting to illegally smuggle three Kosovo nationals out of Kosovo to enter the Schengen Area;

The defendant A.K. was sentenced to 2 (two) years of imprisonment with time spent in detention on remand credited and a fine in the amount of EUR 2000. Furthermore the defendant A.K. is obliged to pay EURO 300 and EUR 5, corresponding the material benefit acquired;

The defendant I.P. was sentenced to 1 (one) year and 6 (six) months of imprisonment with time spent in detention on remand credited and a fine in the amount of EUR 200;

The defendant B.S. was sentenced to 1 (one) year and 6 (six) months of imprisonment with time spent in detention on remand credited and a fine in the amount of EUR 500. The imposed imprisonment shall not be executed if the defendant does not commit another criminal offence for the verification period of 3 (three) years. Furthermore EURO 295 material benefit was confiscated from the defendant B.S.;

The defendants A.K., I.P. and B.S. were acquitted of Attempted Smuggling of Migrants regarding the remaining persons mentioned in the enacting clause of the indictment;

The defendants A.K., I.P. and B.S. were further acquitted of having committed the criminal offence of Organized Crime;

The costs of the criminal proceedings were set to be partially reimbursed by the defendants A.K., I.P. and B.S. respectively in the lump sum of EUR 50. The remaining costs were set to be paid from the budgetary resources;

The defendant H.M. was acquitted of all the indicted criminal offences,

seised of the appeals against the aforementioned judgment filed by

- defence counsel Masar Morina on behalf of the defendant A.K.
- the SPRK
- defence counsel Ymer Huruglica on behalf of the defendant I.P.

having considered the response of

- defence counsel Masar Morina on behalf of the defendant A.K.
- defence counsel Hajredin Leka on behalf of the defendant H.M.

having considered the motion of the appellate state prosecutor,

after having held a public session of the Court of Appeals on 22 May 2015;

having deliberated and voted on 22 May 2015;

acting pursuant to Articles 389, 390, 394, 398 and 401 of the Criminal Procedure Code of Kosovo (CPC);

renders the following:

JUDGEMENT

I. The appeal of defence counsel Masar Morina on behalf of the defendant A.K. against the judgment of the Basic Court of Gjilan PKR 56/13 dated 5 December 2013 is hereby rejected as unfounded.

II. The appeal of defence counsel Ymer Huruglica on behalf of the defendant I.P. against the judgment of the Basic Court of Gjilan PKR 56/13 dated 5 December 2013 is hereby rejected as unfounded.

III. The appeal of the Special Prosecution Office of the Republic of Kosovo against the judgment of the Basic Court of Gjilan PKR 56/13 dated 5 December 2013 is hereby rejected as unfounded.

IV. The judgment of the Basic Court of Gjilan PKR 56/13 dated 5 December 2013 is hereby affirmed.

REASONING

I. PROCEDURAL BACKGROUND

On 23 April 2012 the SPRK filed indictment PPS 91/11 against the defendants A.K., I.P., B.S. and H.M.

As defendant A.K. was at large on 23 October 2012, his case was severed from the case against the other three defendants. The international wanted notice was issued against him.

On 5 December 2012 the Basic Court of Gjilan confirmed the aforementioned indictment against the defendants I.P., B.S. and H.M. During the confirmation hearing the three defendants pleaded not guilty. The main trial against the three defendants commenced on 6 June 2013. The defendants sustained their stance with regard to the charges and pleaded not guilty.

On 7 July 2013 the Basic Court of Gjilan received information that the defendant A.K. was willing to surrender thus the main trial was adjourned until further notice.
On 8 July 2013 the defendant A.K. appeared before the Basic Court. The initial hearing in his case was held on 17 July 2013. During this hearing the defendant pleaded guilty on each charge of the indictment. The presiding judge was not satisfied that the matters provided for in Article 248 §1 CPC were established. Therefore the ruling not accepting the guilty plea was rendered and the presiding judge proceeded with the initial hearing as if the guilty plea was not made.

The defence of the defendant A.K. did not file any objections against the evidence and did not request to dismiss the indictment. By ruling of 20 August 2013 the case against him was rejoined

to the case of the defendants I.P., B.S. and H.M. Therefore it was necessary to commence the main trial from the beginning with all four defendants.

The main trail against the four defendants commenced on 10 September 2013. The defendants H.M. and I.P. pleaded not guilty, the defendant B.S. pleaded guilty to the count of Smuggling of Migrants, and A.K. pleaded guilty to each count of the indictment. The Basic Court found that the requirements under Article 148 §1 CPC were not met, therefore the guilty plea of the defendant A.K. was not accepted.

The main trial continued on 21 and 22 October 2013 and 3 and 4 December 2013 with the judgment publicly announced on 5 December 2013.

The SPRK was served with the written judgment on 31 January 2014.
The SPRK filed an appeal on 12 February 2014.

The defendant H.M. was served with the written judgment on 3 February 2014.
The defendant did not file an appeal.

The defendant A.K. was served with the written judgment on 3 February 2014.
The defendant, through his defence counsel, filed an appeal on 11 February 2014.

The defendant B.S. was served with the written judgment on 10 February 2014.
The defendant did not file an appeal.

The defendant I.P. was served with the written judgment on 12 February 2014.
The defendant, through his defence counsel, filed an appeal on 24 February 2014.

On 19 February 2014 defence counsel Masar Morina on behalf of the defendant A.K. filed a response to the appeal of the SPRK.

On 28 February 2014 defence counsel Hajredin Leka on behalf of the defendant H.M. filed a response to the appeal of the SPRK.

On 13 May 2014 the case was transferred to the Court of Appeals for a decision on the appeals.

On 16 May 2014 the appellate state prosecutor filed a motion.

The session of the Court of Appeals Panel was held on 22 May 2015 in the presence of the defendant I.P. and defence counsel Masar Morina on behalf of the defendant A.K..

The Panel deliberated and voted on 22 May 2015.

II. SUBMISSIONS OF THE PARTIES

A. The appeal of defence counsel Masar Morina

Defence counsel Masar Morina filed an appeal on behalf of the defendant A.K. on the grounds of

- Decision on criminal sanctions;
- Violation of the criminal law;

and proposes the Appellate Court to acquit the defendant for the offence of Attempted Smuggling of Migrants or reduce the sentence imposed, including the fine.

The defence submits that according to Article 170 §1 CCRK the punishment for the criminal offence of Smuggling of Migrants is 2 to 10 years. Therefore an attempt of Smuggling of Migrants is not punishable, seeing as Article 28 §2 CCRK prescribes that an attempt to commit a criminal offense shall only be punishable if a punishment of three or more years may be imposed on the underlying criminal offence.

The defence further submits that in the present case there are no migrants, seeing as the persons mentioned in the indictment are Kosovo citizens and not citizens of another country. The criminal offence of Attempted Smuggling of Migrants therefore could not have occurred.

Alternatively, the defence argues that due to the cooperative attitude of the defendant, the defendant is entitled to a reduction of his punishment of up to 40%.

B. The appeal of defence counsel Ymer Huruglica

Defence counsel Ymer Huruglica filed an appeal on behalf of the defendant I.P. on the grounds of

- Substantial violation of the provisions of criminal procedure code;
- Violation of the criminal code;
- Erroneous and incomplete determination of the factual situation;
- Decision on criminal sanctions;

and proposes the Appellate Court to render a judgment of acquittal, to grant the appeal as grounded, or to annul the judgment and refer the case back for retrial.

The defence submits that the appealed judgment was not compiled according to the provisions of Article 370 CPC, and as a result it further contains substantial violations of provisions of Article 384 §1 point 1.12 CPC, as the appealed judgment does not clearly and completely present the facts which the Basic Court has deemed as proven. Furthermore, the Basic Court has not provided any reasons as to which evidence or facts it grounded the appealed judgment on, or which evidence formed the basis for rendering the conviction.

The defence further submits that the proven facts concerning the defendant do not constitute the criminal offence of Attempted Smuggling of Migrants. The acts were merely performed with regard to a regular taxi service without any connection whatsoever regarding a possible criminal offence. The defendant therefore also did not benefit from any criminal offence. The Basic Court acknowledged this when it excluded the role of the defendant regarding the assessment of the obtained benefits. Therefore the Basic Court contradicts itself when it established in the enacting clause that the defendant committed the criminal offence of Attempted Smuggling of Migrants.

Furthermore, the defence submits that the defendant does not deny the fact that he contacted the defendant A.K.; however the contact was made based on the request of the injured parties. Also, the defendant had no knowledge about any possible attempt of smuggling migrants. The defendant did not discuss this with the other defendants, nor with the injured parties; he was merely performing his job as taxi driver. The defence therefore submits that the Basic Court violated the law when it found the defendant guilty of the criminal offence of Attempted Smuggling of Migrants.

Alternatively, the defence submits that bearing in mind the fact that the criminal offence remained as attempted, that the role of the defendant was small and that the defendant's family is dependent on him, the imposed sentence is too severe and a more lenient sentence should be imposed.

C. The appeal of the SPRK

The SPRK filed an appeal on the grounds of

- Substantial violation of the provisions of criminal procedure,
- Violation of the criminal law,
- Erroneous and incomplete determination of the factual situation,
- Decision on criminal sanctions,

and proposes the Appellate Court to annul the impugned judgment with regard to the acquittals and to return the case for retrial, whereas with regard to the convictions to amend the impugned

judgment concerning the criminal sanctions by imposing more severe sanctions, or to annul the impugned judgment concerning this part and return the case for retrial.

The SPRK submits that the finding of the Basic Court, that there is insufficient evidence to convict the defendant H.M. for the criminal offences, is erroneous, because there are several pieces of evidence to support a conviction for the criminal acts, not in the least the statement of the defendant H.M. himself.

The SPRK further submits that there is also sufficient evidence to support a conviction for the criminal offence of organized crime regarding all defendants, as according to the statement of the defendant A.K. there was a well-structured criminal group in place.

Furthermore the Basic Court has committed another substantial violation of the criminal procedure code, by providing contradicting reasons when it did not permit the expansion of the indictment during main trial against the defendant H.M. The ascertainment made by the Basic Court that the prosecution has not specified the criminal offence and the witnesses who were supposed to be summoned, is ungrounded; on the contrary this was done in a very clear manner.

The SPRK lastly submits that the Basic Court did not correctly assess the administered evidence during the court hearing, in particular the statement provided by migrants/witnesses. This has resulted in an erroneous and incomplete determination of the factual situation which violates the law, because it is not disputable that the accused persons had in fact committed the criminal offences which are contained in the indictment. Furthermore the Basic Court did not determine the correct amount of material benefit obtained by the defendants.

D. The response of defence counsel Masar Morina

Defence counsel Masar Morina filed a response on behalf of the defendant A.K. to the appeal of the SPRK.

The defence proposes the Court of Appeals to reject the appeal of the SPRK as ungrounded. The defence submits that the prosecution failed to use a legal remedy when the Basic Court confirmed the indictment. Therefore, the prosecution is too late when addressing the issue of the rejection of amending the indictment.
The defence further submits that the imposed sentence is far from being a low sentence; on the contrary it is rather a high one.

E. The response of defence counsel Hajredin Leka

Defence counsel Hajredin Leka filed a response on behalf of the defendant H.M. to the appeal of the SPRK.

The defence proposes the Court of Appeals to reject the appeal of the SPRK as ungrounded and to confirm the impugned judgment. The defence submits that the allegations of the prosecutor presented in his appeal have already been object of review and subsequently have been thoroughly assessed by the Basic Court. The Basic Court justly and completely determined the factual situation and rightly and properly applied the criminal law when it found that the defendant H.M. is not guilty.

F. The motion of the appellate prosecution

The appellate prosecutor filed a motion proposing the Court of Appeals to grant as well-founded the appeal of the SPRK, while with respect to acquittals to annul the appealed judgment and to return the case for retrial and reconsideration at Basic Court, whereas to modify the convictions for the defendants A.K., I.P. and A.S. and to impose more severe criminal sanctions against the defendants or to annul this part of the judgment and to return the case for retrial.

Furthermore, the appellate prosecutor proposes the Court of Appeals to reject the appeals and responses of the defendants as unfounded.

The appellate prosecutor submits that the analysis and assessment of evidence proposed by the SPRK is indisputable and contains sufficient incriminating facts to establish the criminal liability of all the defendants for the criminal offences they are charged with.

III. FINDINGS OF THE PANEL

A. Competence

Pursuant to Article 472 §1 CPC the Panel has reviewed its competence and since no objections were raised by the parties the Panel will suffice with the following. In accordance with the Law on Courts and the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo - Law no 03/L-053 as amended by the Law no. 04/L-273 and clarified through the Agreement between the Head of EULEX Kosovo and the Kosovo Judicial Council dated 18 June 2014, the Panel concludes that EULEX has jurisdiction over the case and that the Panel is competent to decide the respective case in the composition of two Kosovo judges and one EULEX judge.

B. Admissibility of the appeals

All three appeals were filed within the 15-day deadline pursuant to Article 380 §1 CPC. The appeals were further filed by authorized persons and contain all other information pursuant to Article 376 *et seq* CPC.

The appeals are timely filed and admissible.

C. Extension of the indictment

The prosecution submits that the Basic Court erred in law when it did not permit its request for extension of the indictment regarding the defendant H.M.

Pursuant to Article 351 §1 CPC the prosecution may submit a new charge when a previous criminal offence committed by the defendant is discovered in the course of the main trial. The Panel notes however that Article 351 §1 CPC cannot be interpreted in a way to circumvent the procedural and substantial requirements in place to safeguard the defendant's right. The threshold for extending the indictment at main trial is therefore also dependent on the procedural and substantial requirements set out in *inter alia* Articles 19, 241 and 253 CPC.
The Basic Court, in paragraph 25 of the impugned judgment (English version pagination), reasoned that the submission to extend the indictment did not contain sufficient evidence to support a well-grounded suspicion that the defendant H.M. committed the criminal offence of Providing assistance to perpetrators after the commission of criminal offenses. After having reviewed the record of the main trial of the Basic Court of Gjilan (PKR 56/13) of the session held on 4 December 2013, pages 2 and 3 (English version) and the session held on 3 December 2013, pages 34 and 35 (English version), the Panel concurs with the conclusion and reasoning of the Basic Court. The existing evidence, namely the statement of the defendant A.K., suffices merely for a grounded suspicion.

The Panel rejects the appeal as unfounded.

D. Erroneous or incomplete determination of the factual situation

All appellants challenged the determination of the factual situation by the Basic Court.

The Appellate Panel reminds that when the law defines the terms "erroneous determination of the factual situation" and "incomplete determination of the factual situation", it is referring to errors or omissions related to "material facts" that are critical to the verdict reached.[1] Only if the

[1] B. Petric, in: Commentaries of the Articles of the Yugoslav Law on Criminal Procedure, 2nd Edition 1986, Article 366, para. 3.

Basic Court committed a fundamental mistake while assessing the evidence and determining the facts will the Court of Appeals overturn the judgment.

As a general principle the evaluation of evidence should rely on a direct and immediate examination of oral testimonies and statements by a panel of judges. The reading of the record of the evidence examined in the trial, however faithful and accurate it may be, is always a less reliable instrument for evaluation of evidence. Even the examine of documents and other material evidence is in general more accurate in the trial because often those piece of evidence have to be conjugated with other elements and subject to oral explanations by witnesses or parties. Therefore, as affirmed by this court in other occasions[2], "*it is a general principle of appellate proceedings that the Court of Appeals must give a margin of deference to the finding of fact reached by the Trial Panel because it is the latter which was best placed to assess the evidence*". This is in line with the standard applied by the Supreme Court "*to not disturb the trial court's findings unless the evidence relied upon by the trial court could have not been accepted by any reasonable tribunal of fact, or where its evaluation has been wholly erroneous*".[3]

With this in mind the Panel has carefully analyzed the evidence in this criminal proceeding along with the reasoning of the Basic Court in the impugned judgment. The Panel further has carefully reviewed the arguments presented in the appeals, the replies and the motion of the appellate prosecutor.

The Basic Court in the impugned judgment in detail analyzes the evidence administered during the main trial. In the view of the Panel, the Basic Court comes to logical conclusions in its assessment of that evidence. The Panel examined the thorough analysis of the factual findings, set out on pages 9 to 16 of the impugned judgment (English version pagination), and adopts this analysis in its entirety. The Panel finds that there is sufficient evidence to proof that the defendants A.K., I.P. and B.S. committed the criminal offence of Attempted Smuggling of Migrants in co-perpetration. The Panel further finds that there is insufficient evidence to proof that the defendants A.K., I.P. and B.S. committed the criminal act of Ogranized Crime. Furthermore the Panel finds that there is insufficient evidence to proof that the defendant H.M. committed any of the indicted criminal offences.

The Panel reviewed with specific attention the analysis of the Basic Court with regard to the role of the defendant I.P., addressed more specifically in paragraph 46 (English version pagination). The Panel is fully persuaded by the conclusion and reasoning of the Basic Court and finds no flaws or contradiction in the stance of the Basic Court. The defence does not bring forth any new arguments that undermine this analysis. The Panel therefore fully concurs with the reasoning of the Basic Court that the actions committed by the defendant I.P. – more in particular, discussing the details of the smuggling, bringing the injured parties into contact with the defendant A.K. and driving the injured parties to Gjilan – constitute the criminal offence of Attempted Smuggling of

[2] PAKR 1121/12, judgment dated 25/09/2012.
[3] Supreme Court of Kosovo, AP-KZi 84/2009, 3 December 2009, paragraph 35; Supreme Court of Kosovo, AP-KZi 2/2012, 24 September 2012, paragraph 30.

Migrants in co-perpetration. Considering the nature of the aforementioned committed actions, the Panel does not believe the defendant I.P. was not aware of the fact that he was committing the criminal offence of (Attempted) Smuggling of Migrants.

The Panel further specifically reviewed the analysis of the Basic Court with regard to the charge of organized crime, addressed in the impugned judgment on pages 18 to 19 (English version pagination). The Panel once more is fully persuaded by the conclusions and reasoning of the Basic Court and finds no contradiction in the stance of the Basic Court. The Panel finds that although some degree of a structure can be identified in which the defendants acted, the evidence suggests such a structure was insubstantial, random and merely in place for this particular criminal offence. The Panel therefore fully concurs with the reasoning of the Basic Court that the evidence put forth by the prosecution does not proof beyond a reasonable doubt that the acts committed by the defendants were committed as part of a structured association, established over a period of time.

The Panel also reviewed with specific attention the analysis of the Basic Court with regard to the acquittal of the defendant H.M., addressed in the impugned judgment in paragraph 43 (English version pagination). The Panel once more is fully persuaded by the conclusions and reasoning of the Basic Court and finds no contradiction in the stance of the Basic Court. The Panel finds that although there are some indications that the defendant H.M. was involved in the indicted criminal offence of Attempt of Smuggling of Migrants, sufficient evidence is lacking to proof his involvement beyond a reasonable doubt. The Panel therefore fully concurs with the reasoning of the Basic Court.

With regard to the material benefit obtained by the defendants A.K. and B.S., the Panel concurs with the reasoning of the Basic Court that the evidence presented in this case is only sufficient to establish that each of the injured parties paid 200 EURO to the defendant A.K.. The allegation that a higher amount was paid is not sufficiently substantiated.

Concluding, the Panel finds that the judgment does not contain an incomplete or erroneous determination of the factual situation. Furthermore, the Basic Court comes to logical conclusions in its assessment of the presented evidence. The submissions of the defence and prosecution are therefore rejected as unfounded.

E. Attempt

Defence counsel Masar Morina submits that an attempt of the criminal offence of Smuggling of Migrants is not punishable, as the punishment for the criminal offence is two (2) to ten (10) years and therefore the prerequisite of Article 28 §2 CCRK - that an attempt to commit a criminal

offense can only be punishable if a punishment of three (3) or more years may be imposed on the underlying criminal offence - is not met.

The Panel does not subscribe to this reasoning. Article 28 §2 CCRK relates to the maximum punishment prescribed for the underlying criminal offence and not the minimum punishment. Pursuant to Article 170 §1 CCRK a punishment of up to ten (10) years may be imposed for committing the criminal offence of Smuggling of Migrants, thus the prerequisite of three (3) or more years of Article 28 §2 CCRK is clearly met.

The submission of the defence is rejected as unfounded.

F. Republic of Kosovo National

Defence counsel Masar Morina argues that due to the injured parties being Republic of Kosovo Nationals, the acts committed do not qualify as the criminal offence of Smuggling of Migrants.

The Panel does not subscribe to this reasoning. Article 170 §8.1 CCRK clearly states that the illegal entry of a person who is a Republic of Kosovo National into a State in which such a person is not a permanent resident or a citizen of such State (also) constitutes the criminal offence of Smuggling of Migrants. Insofar as the defence argues that the defendants did not smuggle the injured parties outside of Kosovo, the Panel notes that the defendants are found guilty of an attempt to smuggle the injured parties, therefore the element of actually crossing the border need not be fulfilled.

The submission of the defence is rejected as unfounded.

G. Incomprehensibility or inconsistency of the enacting clause

Defence counsel Ymer Huruglica alleges that the judgment is inconsistent and ambiguous due to the contradiction between the enacting clause and the reasoning related to defendant I.P.'s intent to obtain material benefit from the Smuggling of Migrants.

The panel notes that in paragraph 49 on page 15 of the impugned judgment (English version pagination) the Basic Court found that there is insufficient evidence that the defendant I.P. received from the injured parties other money than the sum of 20 euro per person paid for the drive from Peja to Gjilan. This however does not contradict the enacting clause of the impugned judgment wherein the defendant I.P. is found guilty of attempting to smuggle migrants in co-perpetration with the intention of obtaining material benefit. Although the defendant I.P. might not have received additional payment beyond the sum of 20 euro per person, he still received this money in the context of the criminal offence, as he transported the injured parties G. and S. to

the defendant A.K. in Gjilan, from where the injured parties would get further transport in order to be smuggled into the Schengen area.
Furthermore, it is clear from the reasoning – and the evidence upon which the Basic Court based the conviction – that the defendant A.K. acted with the intention of obtaining, and also received, material benefit. Given that the defendant I.P. acted in co-perpetration with *inter alia* the defendant A.K., the intent to obtain material benefit from the Smuggling of Migrants also applies to the actions committed by the defendant I.P. The enacting clause is therefore not in contradiction with the reasoning related to defendant I.P.'s intent to obtain material benefit from the Smuggling of Migrants.

The submission of the defence is rejected as unfounded.

H. Erroneous determination of the punishment

The defendants A.K. and I.P. challenged the determination of punishments, considering it too severe.

Pursuant to Articles 28, 41, 74, 75 and 76 CCRK the Basic Court on pages 20 to 22 of the impugned judgment (English version pagination) considered all the relevant factors needed to determine an adequate punishment. The Panel fully concurs with this analysis. The Basic Court appropriately assessed and weighed all the mitigating and aggravating circumstances and came to proportional sentences. The defendants A.K. and I.P. did not bring forth any new circumstances that have not already been considered by the Basic Court. The Panel therefore rejects the submissions of the defence.

I. Closing remarks

The Court of Appeals - for reasons elaborated above - rejects the appeals and affirms the impugned judgment.

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Reasoned written judgment completed on 25 June 2015.

Presiding Judge

_____

Hajnalka Veronika Karpati
EULEX Judge

Panel member	Panel member
_____	_____
Mejreme Memaj Kosovo Judge	Xhevdet Abazi Kosovo Judge

Recording Officer

_____

Alan Vasak
EULEX Legal Officer

Court of Appeals
Pristina

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22 May 2015