

**DISTRICT COURT OF Prizren**  
**P. Nr. 288/11**  
**Judgment NI**

**IN THE NAME OF THE PEOPLE**

The District Court of Prizren, in the trial panel composed of:

Cornelie Peeck (Eulex) presiding judge

Naim Kurteshi, panel member

Rasim Behluli, panel member

Assisted by the court recorder Christine Sengl

In the criminal case against:

**NI, SB, NA, HB, AB, BI, TB, HT and HBI,**

All defendants charged with the criminal acts of:

**I**

- 1) Organized crime, contrary to article 274, paragraph 2, of the Criminal Code of Kosovo (CCK)
- 2) Smuggling of Migrants, contrary to article 138, paragraph 6 in conjunction with paragraph 1 of the CCK;

The defendants NI and HB charged with the criminal act of:

**II**

Unauthorized ownership, control, possession or use of weapons, contrary to article 328, paragraph 2 of the CCK;

Defendant NI charged with the criminal act of:

**III**

Unauthorized purchase, possession, distribution and sale of dangerous narcotics and psychotropic substances, contrary to article 229, paragraph 1 of the CCK;

After public trial sessions held on 17, 18, 19 and 20 April, 4, 7 and 11 June, 9, 10 and 11 July, 1 and 2 August and 17 September 2012, in the presence of the SPRK Prosecutor Mr. Besim Kelmendi, the accused mentioned above and the defense counsels Fazli Balaj for NI, Muharrem Hoti for SB, Haser Susuri for NA, Arta Mustafa for HB, Brahim Sopa for AB, Osman Zajmi for BI, Gezim Kollcaku for TB, Naim Qelaj for HT and Rasim Krasniqi for HBI;

After the panel's deliberation on 19 September 2012;

Announced on 20 September 2012 in public this judgment.

### ENACTING CLAUSE

**NI**, fathers name XX, mothers name XX, residing in X village (X), born on XX 1966 in X village (X), farmer, of poor economic situation, Kosovo Albanian, secondary school, married, two children, in detention from 18 May 2011 until 21 April 2012,

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the metering results of his telephone numbers, the interception of his telephone and statements of witnesses, it is proven that he from an unspecified date until 18 May 2011 he had frequent contacts with co perpetrators both inside and outside Kosovo, with whom he discussed whereabouts, payments and amounts of migrants through the telephone. With the witnesses he discussed the details of the travels that concerned these witnesses or their relatives. With these actions he committed the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;
2. is found **GUILTY** for the act described in count II of the indictment because on 18 May 2012 in his possession two weapons were found, for which he declared not to have a weapon permit. These weapons, according to the statement of the defendant were in his possession since the war. Through this he committed the criminal offence of unauthorized ownership of a weapon, contrary to article 328, paragraph 2 of the CCK;
3. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants;
4. Is **ACQUITTED** of the act described in count III of the indictment that he from an unspecified date until 18 May 2011 with the intent to sell was in the possession of an amount of 2,02 gram Cannabis, a narcotic substance;

**SB**, fathers name XX, mothers name XX, residing in X village (X), born on XX 1969 in X village (X), finished secondary school, auto mechanic, of average financial situation, Kosovo Albanian, married, four children,

1. is **ACQUITTED** of the acts described in counts I (1 and 2) of the indictment that he from an unspecified date until 18 of May as a member of an organized group was involved in the smuggling of migrants;

**NA**, fathers name XX, mothers name XX, residing X village (X), born on XX 1974 in X village (X), finished elementary school, driver, of poor economic situation, Kosovo Albanian, married, one child, in detention from 18 May 2011 until 30 June 2011;

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the metering results of his and other telephones, the interception of his and other telephones and statements of witnesses, it is proven that he from an unspecified date until 18 May

2011 had frequent contacts through the telephone with NI, with whom he discussed, whereabouts, payments and amounts of migrants, thereby committing the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;

2. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants,

**HB**, fathers name X, mothers name X, residing Xvillage (X), born on XX 1952 in Xvillage (X) finished secondary school, auto mechanic and farmer, of poor economic situation, Kosovo Albanian, married, four children, in detention from 18 May 2011 until 30 June 2011,

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the metering results of his and other telephones, the interception of his and other telephones and statements of witnesses, it is proven that he from an unspecified date until 18 May 2011 had frequent contacts through the telephone with NI, with whom he discussed, whereabouts, payments and amounts of migrants. He also discussed with potential migrants the possibilities to travel abroad. Through these actions he committed the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;
2. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants;
3. is **ACQUITTED** of the act described under II of the indictment, that he had in his possession from an unspecified date until 18 May 2011 a hunting rifle, for which he did not have a valid Weapon Authorization;

**AB**, fathers name X, mothers name X, residing in X village (X), born on XX 1979 in X village (X), finished secondary school, façade worker, of average economic situation, Kosovo Albanian, single,

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the interception of his telephone and statements of witnesses, it is proven that he brought people to a taxi driver for further transport and that he was involved in the fabrication of fake visa and discussed the possibilities to travel abroad. Through these acts he committed the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;
2. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants;

**BI**, fathers name XX, mothers name XX, residing in X village (X) born on XX 1983 in X village (X), finished elementary school, security guard at municipal counsel, of poor economic situation, Kosovo Albanian, married, 18 May 2011 until 30 June 2011,

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the metering results of his and other telephones, the interception of his telephone and statements of witnesses, and disclosure of financial data it is proven that he from an unspecified date until 18 May 2011 had frequent contacts through the telephone with NI, with whom he discussed, whereabouts, payments and amounts of migrants and that on his bank account payments from abroad were received and payments abroad were made. Through these actions he committed the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;
2. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants;

**TB**, fathers name XX, mothers name XX, residing in X village (X), born on XX 1972 in X, finished secondary school, owner of private rent-a-car company and a casino, of good financial situation, Kosovo Albanian, married, four children,

1. is found **GUILTY** for the act described in count I (2) of the indictment because from the metering results of telephone numbers, the interception of telephones other than his and statements of witnesses, it is proven that he from an unspecified date until 18 May 2011 had frequent contacts with co perpetrators both inside and outside Kosovo, with whom he discussed whereabouts of migrants and amounts of migrants through the telephone. He safeguarded money for migrants. Through these acts he committed the criminal offence of Smuggling of Migrants contrary to article 138, paragraph 2 of the CCK;
2. is **ACQUITTED** of the act described in count I (1) of the indictment that he from an unspecified date until 18 May 2011 was a member of an organized criminal group involved in the smuggling of migrants;

**HT**, fathers name X, mothers name X, residing in X (X) born on XX 1976 in X (X) finished elementary school, cattle merchant of average economic situation, Kosovo Albanian, married, three children, 18 May 2012 until 30 June 2011,

1. is **ACQUITTED** of the acts described in counts I (1 and 2) of the indictment that he from an unspecified date until 18 of May as a member of an organized group was involved in the smuggling of migrants;

**HBI**, fathers name XX, mothers name XX, residing in X village (X), born on XX 1984 in X village (X) finished the Agricultural Technical school (high school), farmer of poor economic situation, Kosovo Albanian, married, two children, 18 May 2011 until 30 June 2011,

1. is **ACQUITTED** of the acts described in counts I (1 and 2) of the indictment that he from an unspecified date until 18 of May as a member of an organized group was involved in the smuggling of migrants;

For the above mentioned reasons the Panel imposes the following

## SENTENCES

### 1. NI

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 3 (three) years and 5 (five) months;

Pursuant to Article 328, paragraph 2 of the CCK is sentenced to a fine of € 1500 (fifteen hundred euro);

Pursuant to article 328 Paragraph 5 of the CCK read with Article 60 of the CCK the weapon Cervena Zastava (revolver), serial number C-132079, with a magazine containing 9 (nine) bullets and the weapon Ekol Tuna (revolver) serial number ET-892018 and 4 (four) bullets caliber 7,62 mm, M 57 with a magazine of 9 rounds and 8 bullets of 7,62 mm are confiscated;

Pursuant to article 229 paragraph 5 read with article 60 of the CCK, the amount of 2.02 gram of the narcotic substances Cannabis is confiscated.

Pursuant to article 73 of the CCK, the time spent in detention (from 18 May 2011 – 21 April 2012 = 339 days) and under house arrest (from 21 April 2012 until 20 September 2012 = 152 days) shall be included in the punishment.

### 2. NA

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 1 (one) year;

Pursuant to article 73 of the CCK, the time spent in detention (from 18 May 2011 – 30 June 2012 = 43 days) shall be included in the punishment.

### 3. HB

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 1 (one) year;

Pursuant to article 73 of the CCK, the time spent in detention (from 18 May 2011 – 30 June 2012 = 43 days) shall be included in the punishment.

### 4. AB

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 1 year;

### 5. BI

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 1 year;

Pursuant to article 73 of the CCK, the time spent in detention (from 18 May 2011 – 30 June 2012 = 43 days) shall be included in the punishment.

#### 6. **TB**

Pursuant to Article 138, paragraph 6 and article 23 of the CCK is sentenced to imprisonment of 2 (two) years and 5 (five) months;

#### COSTS

Pursuant to Article 102 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP) the convicted persons shall pay the costs of the proceedings. The provisions of Article 100 paragraph 2 of the KCCP shall be complied with and a separate ruling on the amount of the costs shall be issued.

The costs of the defendants SB, HT and HBI will be paid from the Kosovo budget.

#### REASONING

##### **Procedural History**

On 30 September 2010 the Special Prosecutor of the Special Prosecution office of the Republic of Kosovo (SPRK) issued a ruling on initiation of investigation against NI for the criminal offences of organized crime and smuggling of migrants.

On 27 March 2011 the Special Prosecutor issued a ruling on Expansion of investigation against SB.

On 27 January 2011 the Special Prosecutor issued a ruling on Expansion of investigation against SB.

On 25 March 2011, the investigation against NI, SB, AB and others was extended by ruling of the pre-trial judge until 25 September 2011.

On 19 April 2011 the Special Prosecutor issued a ruling on Expansion of investigation against HT and HB.

On 13 May 2011 the Special Prosecutor issued a ruling on Expansion of investigation against NA, BI and HBI.

On 19 May 2011 the Pre-trial judge ordered detention on remand against NI, HT, HB, NA, BI and HBI.

On 16 June 2011 detention on remand against these defendants was extended. On 30 June 2011 the Supreme Court confirmed the extension of detention on remand against NI, detention on remand against the other suspects was terminated.

On 24 November 2011 the indictment PPS no. 94/10 dated 18 October 2011, filed on 2 November 2011 was confirmed by the confirmation judge.

The main trial commenced on 17 April 2012. Witnesses were heard on 18 April, 19 April, 20 April, 7 June, 9 and 10 July 2012. The defendants were heard on 11 July, 1 August and 2 August 2012. On 17 September 2012 the closing arguments were given.

Detention on remand against NI was replaced with house arrest by the main trial panel from 21 April 2012. The measure of house arrest was terminated on 20 September 2012.

### **Evidence presented**

During the main trial the evidence listed in Annex I was administered.

During the main trial the following witnesses were heard.

XT on 18 April 2012

QK on 18 April 2012

AP on 19 April 2012

IB on 19 April 2012

TA on 19 April 2012

EA on 20 April 2012

AD on 20 April 2012

NS on 20 April 2012

BH on 7 June 2012

SB on 7 June 2012

SP on 7 June 2012

FT on 7 June 2012

RB on 9 July 2012

DG on 9 July 2012

BV on 9 July

BM on 10 July 2012

DRG on 10 July 2012

AH on 10 July 2012

The statements of the following witnesses were considered to be read out with consent of the public prosecutor, the defence counsels and the defendants because these witnesses could not be located in time and further inquiries would cause undue delay to the proceedings:

KM on 9 July 2012

RK on 9 July 2012

MN on 11 July 2012

AR on 9 July 2012

## **Assessment of the evidence**

### **1.0 Admissibility**

The prosecutor in his closing arguments referred to telephone conversations extracted from interceptions of the telephone 04xx on 27 January 2011. These interceptions are not included in the case file and can therefore not be used as evidence. Even if they were included in the case file, these conversations are inadmissible evidence because they derive from interceptions based on a provisional order from the prosecutor which was not confirmed by the pre-trial judge within 24 hours of its issuance pursuant to article 258, paragraph 4 of the KCCP.

The court considers all statements made by the witnesses admissible, because the defence counsels were either given the opportunity to challenge these statements during the main trial, or waived this right by consenting to reading the statements given before the police or the prosecutor during the main trial.

NB was not summoned because his statement given to the police was based on hearsay and given the testimonies of other witnesses not necessary. The statements given by this witnesses will not be used as evidence.

The court decided not to summon VB and EB because they are abroad and their addresses are unknown. XK was summoned, but according to the delivery slip he is also abroad without any known address. Further investigations for the addresses would cause undue delay to the proceedings.

The transcripts of interceptions, received from the Albanian police authorities are admissible. International Legal Assistance is based on the principle that criminal proceedings in the states involved are conducted according to the law. The requesting state is not obliged under this principle to secure that proper criminal proceedings were conducted properly in the other state, unless there are indications that there is a breach of criminal proceedings.

In this case there are no indications that proceedings in Albania were not conducted according to the Albanian criminal law. Therefore the transcripts of interceptions received from the Albanian authorities are admissible evidence in this procedure.

No requests were made regarding the admissibility of other evidence.

### **1.1 Witness statements**

#### **1.1.1 XT**

The witness was interviewed by the police on 11 May 2011. He stated that he was arrested in Hungary after illegal crossing of the border with Serbia. FT had found him a person who enabled the witness to leave Kosovo, named N from Peja. The witness received a Vala telephone number through which he contacted N. He made a deal with N, that he would take him for € 2600. The

money was to be left with his brother RT, until the witness would have reached Italy. According to the witness he was brought from X to Gjilan, where he had met N. Together with four others he entered a vehicle which brought them close to the Serbian border. Together with 10 others, he crossed the border on foot to arrive in Tërnoc in Serbia. From there a taxi took them to Subotica. During the trip to Subotica the witness was contacted by N. In Subotica they were taken by taxis to the Serbian Hungarian border. They crossed the border on foot and were caught in Hungary. After returning to Kosovo the witness met N who gave him € 400 for the plane ticket. The witness gave to the police as his telephone number 04XX/04XX

On 18 April 2012 the witness testified in court. He stated that FT gave him the telephone number of a person who set him off on his journey to Hungary. The witness called this person and received instructions. About his previous statement he stated that this is not true although he signed it. The witness had been drinking and the persons who interviewed him were not in uniform. The witness asked for the costs of his plane ticket to be returned. He did not pay any money, because he only was to pay for the journey after he safely arrived in Italy.

On 8 April 2011 a telephone call between the witness XT (04XX) and NI (04XX) was intercepted. The witness introduced himself as F's neighbor who left to Italy through him (N). N responds by saying that he will call X back with a different telephone number.

The court finds this witness reliable. His statement that he was smuggled abroad through NI is supported by the results of metering of telephone calls and interceptions. Although the witness stated that his statement given to the police was untrue, the court will use this statement also as evidence, because the content of this statement is supported by other evidence.

### **1.1.2 QK**

The witness gave a statement to the police on 23 May 2011 to the police and he testified in court 18 April 2012.

The court will not consider his statement because it does not contain specific information regarding one of the defendants.

### **1.1.3 AP**

To the police the witness stated on 25 May 2011 that his son O went abroad by the end of March 2011. His son gave him the telephone number of a N from X, who had sent his son abroad. The telephone number of N was 04XX.

The witness gave to the police as his telephone number 04XX.

The witness testified in court on 19 April 2012. He confirmed that his son went abroad. His son asked him for money. He thought his son was leaving legally with a visa. He contacted a telephone number his son left on one or two occasions. The witness recognized the signature under the previous statement as his.

From the results of the metering of telephone numbers it derives that this witness had contacted NI on 9 January 2011 on his number 04XX. After this conversation, there were contacts between

the telephone numbers 04XX and 04XX and the telephone number of the witness between 9 January 2011 and 14 January 2011.

The statement of the witness is supported by the results of the metering of telephone numbers. The court finds this witness reliable, and his statement will be used as evidence.

#### **1.1.4 TA**

When he was interviewed by the police on 3 June 2011 the witness stated that his son E attempted to go abroad through N from X. N had asked for € 1400 to be paid to him, € 200 for the taxi and € 200 travel money were to be taken by his son. E got on board in Decan. He crossed the border near Gjilan into Presheva up to Subotica. € 1000 was to be paid to N after E had arrived in Austria. TBR from X would guarantee for this money.

*During the interview the telephone of the witness was searched for the number of N, when the number 04XX under the name of TBR was found.*

The witness gave to the police as his telephone number 04XX.

The witness testified in court on 19 April 2012. He stated that his son E travelled abroad. He went with a family. They were taken by a man called N or NZ. This name was given to the witness by the police. The witness has contacted this person before his son left. According to the witness he kept the money himself. There was no guarantor involved. After being confronted with his previous statement, the witness acknowledged that his signature was on the statement. He denied having said that T was involved as a guarantor of the money. The witness said he borrowed the money from T, to whom he is related. The police wrote instead that T was the guarantor. The witness stated that he did not read his statement before he signed it, nor was it read to him.

A conversation was intercepted on 24 March 2011 between the telephone number 04XX and the telephone number used by TA 04XX. After this contact contacts were registered between this telephone number and the number 04XX, which was found in the telephone of the witness with the name TBR.

The statement of this witness is supported by technical evidence. The court finds the first statement given to the police more reliable than the testimony given in court. The witness did not give any explanation as to why the police would have written down information that was not provided by the witness.

#### **1.4.5 EA**

During his interview by the police he admitted to have travelled abroad illegally to Hungary through Subotica in March 2011. He was arrested in Hungary and detained. He returned to Kosovo on 1 June 2011. The arrangements for this travel were made by his father TA who had contacted a person named N from X. A sum of € 1400 was paid to N. The witness had talked to N on the phone a few days before he travelled on which occasion N explained the details of the trip to him. The number used by the witness was 04XX or 04XX.

The witness testified in court on 20 April 2012. He stated that on the day he left, he travelled by car to Gjilan. There he met the family who he was travelling with. They crossed the border on

foot and were taken by car to Subotica. Here he was hosted for some days and brought to a place near the border with Hungary. They crossed the border in the night on foot and were arrested in Hungary.

The witness stated that his previous statement was not read to him before he signed it. When confronted with his statement that he spoke once over the phone with N, the witness said the police insisted on this name.

The statement of this witness is supported by the technical evidence mentioned above. The witness did not give a reason as to why the police would have insisted on the name N when he was first interviewed. The court finds it unlikely that the police provided the witness with this name. The court finds the statement given to the police reliable.

#### **1.1.6 AD**

The witness gave a statement to the police on 12 July 2011 to the police and he testified in court 20 April 2012.

The court will not consider his statement because the statement is not supported by other evidence. Therefore the court cannot establish that the person through whom this witness went abroad is the defendant NI. The witness has never seen the defendant and only spoke to him on the phone twice before 19 September 2010. There are not metering results that show any contact between the telephone of the defendant and the telephone of this witness.

#### **1.1.7 NS**

The witness was interviewed by the police on 12 July 2011. He stated that his brother B is living abroad. He went illegally to Germany through a person named N from X. The witness thinks his brother had to pay € 2000 for the trip and € 300 to € 400 for the trip expenses. His brother paid the money to N before the trip.

On 20 April 2012 the witness testified in court. He stated that his brother B went to Germany. The witness does not know how he went. His brother discussed his trip on the telephone of the witness. The telephone number is 04XX. B paid € 2000 for the journey. The witness acknowledged that his signature is on his statement given to the police.

On 22 February 2011 a telephone call between the witness and NI was intercepted in which the witness asked the defendant if he is still working. The defendant confirms this and will call the witness later.

The statement of the witness is supported by other evidence. The court finds this witness reliable.

#### **1.1.8 BH**

During his questioning by the public prosecutor, the witness stated that he knows AB. He had contacted AB because he wanted to go abroad. The witness stated that AB told him that he would pay him € 100 euro per person if he would find people interested to go abroad. The witness acknowledged that he discussed with AB on 10 March 2011 the departure of a relative. According to the witness AB said to him that he had to pay € 2100 to get to Austria. His relative

had to pay the same price, but after she said it was too much AB said it would be settled after her arrival. AB had told the witness that people would go through Serbia. The telephone number of the witness is 04XX.

The witness gave his testimony in court on 7 June 2012. He stated that he knew AB from before. He had contacted him because he heard from other people that he could help him to go abroad. They had a coffee and discussed the price, but it was too high. A person by the name of AZ had the money and went abroad through AB. AB told the witness that he should let him know if he could find people that wanted to go abroad. When confronted with his previous statement the witness didn't remember that AB told him about the routes people were taking.

On 22 February 2011 a conversation between AB and BH was intercepted. BH said to AB that he called him on the other phone but that he did not respond, and informed him about a small family. The children are half price. There is also a neighbor's daughter. On 28 February 2011 BH says to AB that the number is rising to 9. On 7 March 2011 AB says to BH that they are waiting for Saturday. BH responds by saying that his cousin needs to go abroad. On 15 March 2011 AB complains that he cannot reach BH on his Ipko number and informs him the "she can go on the other side on Saturday".

On 14 March 2011 BH and AB discuss the situation of persons that were stopped in Hungary.

The statement that of the witness is supported by intercepted telephone calls.

The court finds this witness reliable.

### **1.1.9 SB**

The witness stated to the police on 30 September 2011 that he knows a person by name N from X who deals with smuggling of migrants. BSH, the son of his uncle made arrangements with N. N asked for € 1800-1900 and € 200 to have on him for traveling expenses. The witness brought BSH to Gjakova's bridge, where a person in a red golf took him towards Pristina. The witness warranted for the money that BSH father had to pay after BSH would have reached his destination.

The witness gave to the police as his telephone number 04XX.

The witness testified in front of the court on 7 June 2012. He stated he had contacts with NI about cars and tractors. His paternal cousin BSH was once present when he met NI. He doesn't know if they spoke afterwards. His cousin left Kosovo and had to pay about € 1500. When confronted with his previous statement the witness said that this was not overall correct. According to the witness he didn't say N asked for € 1800 – 1900, but these were probably the costs. The witness stated that he doesn't know if his cousin left Kosovo through N. He acknowledged that he contacted N through this number. He denied having said that he was the guarantor for the money BSH had to pay.

From the metering of telephone calls it results that there have been regular contacts between the telephone number used by the witness and NIs number between October 2010 and May 2011. On 18 February 2011 NI called the witness and informed about his brother. The witness on that occasion told NI that there is another person interested to go to Slovenia, but he doesn't have all

the money. NI replies that he cannot go without the money. On 20 February 2011 NI tells the witness to tell his uncle's son to be at Klina's bridge at Gjakova junction at 13 Hrs. At 13.09.14 N calls the witness who says that they are at the junction.

The first statement the witness gave to the police is supported by other evidence; the court finds this statement trustworthy, especially because the witness without a valid argument changed this statement.

#### **1.1.10 SP**

The witness gave a statement to the police on 19 August 2011 to the police and he testified in court 7 June 2012.

The court will not consider his statement because it does not contain specific information regarding one of the defendants.

#### **1.1.11 FT**

The witness was interviewed by the prosecutor on 19 August 2011. He stated that his uncle's son X was caught in Hungary when he travelled abroad. The witness had given a telephone number to X of a person through whom his brothers went abroad. The witness acknowledged he talked to NI about XT, before he gave X Ns telephone number. He doesn't remember if he ever spoke to HT about X or other persons that wanted to leave Kosovo.

The witness gave to the police as his telephone number 04XX.

The witness testified in court on 7 June 2012. He denied that he gave the number of a mediator to travel abroad to his cousin X. The witness knows NI because he sold him a cow, he doesn't remember he spoke to him about his cousin. According to the witness his brothers left Kosovo through legal ways. The witness denied that he heard from X that he was caught in Hungary. The witness doesn't remember he talked to HT about X, but he knows HT as a cattle merchant.

Telephone contacts between the witness and the defendant from 31 October 2010 and 10 May 2011 were established.

The witness did not provide sufficient arguments as to why the statement that was written down by the police was incorrect. The statement of the witness given to the police is supported by the results of metering and interceptions. Also the statement of XT is supportive to the statement of this witness. The court accepts the statement given to the police as trustworthy.

#### **1.1.12 RB**

When interviewed by the prosecutor on 31 August 2011, the witness stated that his son VA lives in Italy. He paid € 2000 for the trip. He travelled through Serbia, Hungary and Austria. From his son he received a telephone number that he should call if he didn't hear from his son. With his telephone number the witness has contacted this number and the person who answered admitted that he set people on a journey.

The witness gave to the police as his telephone number 04XX.

The witness gave his testimony in court on 9 July 2012. He stated that his son VA left abroad. His son left him a number to call in case of need. When the witness phoned this number the person on the other side told him that his son was fine. The number was 04XX.

The court finds the statement of this witness trustworthy.

#### **1.1.13 DG**

The witness was interviewed by the police on 15 July 2011. He stated that his brother BU had left for Slovakia about two years before. He had had a coffee with his brother and a N from X a few days before his departure. He realized that this person was the connection who helped his brother abroad. Later he contacted this N because he knew five other persons interested to go abroad. N didn't want to discuss this issue over the telephone.

The witness gave to the police as his telephone number 04XX.

The witness testified in court on 9 July 2012. According to the witness his brother BU had found a connection to go abroad through some friends. He met a person named N, but he doesn't know if this is the connection. He talked to N about selling cows. He doesn't remember to have spoken to N about people wanting to go abroad. The witness does not remember that he stated to the police that he had contacted N about people that were interested to go abroad.

On 26 March 2011 a conversation between the witness and NI was intercepted, in which the first one says that they have to meet urgently he had five things.

The court concludes that this conversation is the one the witness referred to in his statement to the police. The court finds this statement trustworthy, despite the fact that the witness did not confirm his previous statement. The witness did not give any reason as to why his statement given by the police was not written correct.

#### **1.1.14 BV**

The witness gave a statement to the police on 12 July 2011 to the police and he testified in court 9 July 2012.

The court will not consider his statement because it does not contain specific information regarding one of the defendants.

#### **1.1.15 BM and DRG**

These witnesses were heard on 10 July 2012. Both testified about the way the witnesses were heard. Some witnesses were heard at another location than the police station due to special circumstances. According to both witnesses, the questioning of the interrogated witnesses was done according to the applicable standards.

#### **1.1.16 AH**

This witness gave a statement to the police, which was read out on 10 July 2012.

The court will not consider this statement because the witness has no direct knowledge of the involvement of SB in the smuggling of migrants.

### **1.1.17 KM**

The statement of KM was with the consent of all parties considered to be read out on 9 July 2012. When interviewed by the public prosecutor on 16 September 2011 the witness stated that HB came to his shop one day. He told HB that he has a nephew who wants to go abroad. HB gave him the phone number of a person who is dealing with these issues. The witness gave to the police as his telephone number 04XX.

The statement of this witness is supported by the results of the metering of telephone calls. The court finds the statement trustworthy

### **1.1.18 RK**

The statement of RK given to the prosecutor on 16 September 2011 was with the consent of all parties considered to be read out on 9 July 2012. He stated that he knows NI. He heard NI was taking people abroad and contacted him for that reason. N gave him the number of a Serbian guy who could take the witness abroad. He spoke with this person about the price, but it was too high. The witness acknowledged a telephone call of 15 January 2011 where he also discussed the price with NI. N was a mediator.

The statement of this witness is supported by intercepted telephone calls. Therefore the court finds this witness trustworthy.

### **1.1.19 MN**

The statement of MN given to the police on 13 October 2011 was with the consent of all parties considered to be read out on 11 July 2012. He stated that he works as a bus driver for Bici com on a route from Gjakova to Vienna. He knows NI from X who is dealing with smuggling of migrants. According to the witness NI is dealing with these activities for 4 to 5 years.

The court will not consider the statement of this witness, because from the statement it is not clear how he came to know that NI is involved in the smuggling of migrants.

### **1.1.20 AR**

The statement of AR given to the police on 29 September 2011 was with consent of all parties considered to be read out on 9 July 2012. He stated he works as a taxi driver on the route Uglar-Gjilan. He stated that he was contacted by a BE from Bujanoc, telephone number 04XX, about the transportation of persons to the border zone with Serbia. He had had regular contacts with a BS from X region, who was driving a red Golf 2 and always wore a private security uniform. BS had brought approximately 17 times persons to the witness for transportations. The witness had also contact with AM for the same purpose. He brought to hem about 3 times persons for further transportation.

Pictures were shown to the witness, from whom he identified 3, AB, NI and BI, as persons who had brought persons to Gjilan for further transportation.

The witness gave to the police as his telephone number 04XX.

The court finds this witness reliable. He identified the persons he knows by name from pictures that were shown to him. He has his knowledge about the activities of the persons he named, because they brought persons to him for further transportation.

## **1.2 Other evidence**

### **1.2.1 Regarding NI**

#### *Intercepted phone calls on number 04XX (NI)*

The number of NI 04XX has been intercepted from 26 October 2010 until 30 April 2011. He talked on this number to potential migrants. On several occasions he referred them to an Ipko number, to discuss further details.

On 4 November 2010 N agreed that his number is given to someone who is looking for a person who could send him abroad. On 6 November 2010 he is asked how an agreement can be reached for two persons to Italy. On 3 December 2010 somebody asks N how much it will take to France, when N replies that he does not have a connection there. On 14 December 2010 N received a SMS which said: Hey N, I am A, we are in Subotica are we going to be departed tonight and reach agreement with them because I have no money. On 15 December the same person wrote: Hey N, I am A what's up, tell me by sms about our departure. On 1 January 2011 N is called by H, who asks him how much it will cost to take someone to Austria. On 9 January 2011 N instructs a person to be in Kieva at 3 o'clock because there will be a guy that will pick him up. On 13 January 2011 N was called by someone from Austria who had trouble with some documents. On 13 January 2011 N calls H, who asks him to take care of that relative. On 6 February 2011 N receives a phone call from AG from Swiss, who asks him if he is still dealing with that job as earlier. He is asking about the price and who will be waiting in Vienna. N replies that he still does this job, that the price is the same and that he has a friend waiting in Vienna. On 21 March N discusses on the phone with HB that there has been a defect on the trip and that over 20 persons were caught by the neighbors and that tomorrow in the evening they have arranged to go out and cross the borders.

On 23 February 2011 N talks with NA about a relative that did not reach his destination. N tells NA to contact M from Bujanovc because he is the key person for these matters, he manages these works. On 24 March 2011 NA calls N and tells him to talk to them to see if they can put this boy on a bus and if not to let them return him back, because they want to report me to the police. On 24 March 2011 N tells NA no to worry because he (third person) will be dispatched at the end of the week. On 31 March 2011 SK calls N and says to him that if NA does not call until 14.00hrs that everything is okay, he (N) will have a problem.

On 2 April 2011 N talks to RE who tells him that he is preparing tourist visas.

On 5 April 2011 BS gives to N his Ipko number. N tells BS to be on the bus and he will tell him where to go in Mitrovica.

On 9 April 2011 N says to VE there they are not in the position to go across because a problem had emerged and things were not okay that week. On 19 April 2011 N says to MU that he explained everything to him (third person) and that it will be a 12 day journey. MU says to send him earlier because he is expected at a workplace there.

#### ***Evidence received from the general prosecution office Republic of Albania***

##### *Intercepted telephone XX (AT/Albania)*

AT contacts N on his number 00XX on 2 October 2010 at 8.06AM. N tells AT that they were ambushed in Hungary. He says that one of yours is waiting for the other car, the other one was captured. At 3:35PM N tells AT that a car cannot go to take them because there are many policemen on the way. N says they are already in Hungary. In an earlier conversation AT is

asking for the name of the person who has been captured. At 7:29PM N is telling AT that they will return them back to Serbia and that they will be in the apartment in 30-40 minutes. On 3 October 2010 there is another contact. N tells AT that the boy is good in Subotica, they could not get him to Austria and brought him back to Subotica. On 4 October 2011 N asks AT a favor, to send € 300 to Subotica for them for bread. On 6 October 2010 N tells AT that they are leaving and will be there between 2 and 3. The Kosovo guy that is with them has the number. On 21 October 2010 N calls AT, who asks him when he is going to depart K and his friend AU. On 25 October 2010 N tells AT he (third person) took your guy and our guy to Italy. Another one went good to Subotica.

*Intercepted telephone XX (*

N is called by the owner of the Albanian telephone number XX on 15 October 2011, who calls him N. He asks him about three nephews. N says that one of them went by bus to Vienna and the other two will go on Saturday night.

*Intercepted telephone XX (PG/Albania)*

On 5 September 2010 PG calls N on his number 00XX. N tells him that they set off because there was a lot of control. Later that day N asks PG for the number of the one that is waiting and speaks Italian. He clarifies in a later conversation that he needs the number of the escort, who apparently is one kilometer ahead of the others. On 16 September PG send N a text message that they will set off tomorrow. On 19 September they discuss about people who were released and not escorted by the police. Later that day PG says to N that he will return them. He tells N to tell T to pick them up, because he said he would do so. PG says N to be careful. PG sends a sms to N asking him to speak to that woman and have L out, so that he can tell his family that he is safe and sound.

Apart from these contacts many more can be found with content that is related to taking people from one place to another.

*Metering results of telephone 04XX (NI)*

Between the end of December 2010 and May 2011 contacts were registered between this telephone number and the numbers of NA, BI and HB.

*Metering results of telephone number 04XX*

Between December 2010 and May 2011 142 contacts were registered between this telephone number and the telephone number of TB (04XX). Also regular contacts between the 04XX and numbers abroad, both incoming and outgoing were registered. Regular contacts between the 04XX and the number 04XX were registered.

*Disclosure of financial data report 8 August 2011*

On 4 December 2010 NI received € 1000 from BK in Belgium. On 12 December 2011 he sends € 500 to RA in Subotica Serbia.

BI received on his Pro Credit bank account € 896 salary and he deposited € 1400 to this bank account in the period from 2 September 2010 and 12 May 2011. He has send € 400 and € 800 to persons in Austria in March 2011. He has send € 2400 on 15 March 2011 to a person in Serbia.

### **1.2.2. Regarding NA**

#### *Intercepted phone calls on 04XX (NI)*

On 23 February 2011 N talks with NA about a relative that did not reach his destination. N tells NA to contact M from Bujanovc because he is the key person for these matters, he manages these works. On 24 March 2011 NA calls N and tells him to talk to them to see if they can put this boy on a bus and if not to let them return him back, because they want to report me to the police. On the same date NA talks to N about a person who is in Gjilan without a dime. On 31 March 2011 SK calls N and says to him that if NA does not call until 14.00hrs that everything is okay, he (N) will have a problem.

Significant is the conversation of 24 March 2011 at 10.30.55, in which NA informs NI that a boy has to be put on the bus, because “they want to go to the police and report me”. According to the defendant this was about a boy to whom he gave Ns telephone number.

#### *Metering results of telephone number 04XX (NA)*

Between October 2010 and April 2011 there is regular contact between NA and the Vala numbers of NI.

### **1.2.3 Regarding BI**

#### *Intercepted phone calls on 04XX (NI)*

On 6 April 2011 N is called by VB who asks him for BSs telephone number. VB asks N how much the transport to there is. N answers that he always pays him 50, but that it is easier for him to take a taxi.

#### *Metering results of telephone number 04XX*

Between November 2010 and April 2011 more than 30 (attempted) phone calls were made to and from the number of BI and the numbers of NI: 04XX and 04XX. Also contacts were registered between BIs number and the number 04XX, which was in use of NI.

### **1.2.4 Regarding the activities of HB**

#### *Intercepted phone calls 04XX (NI)*

On 13 April 2011 HB calls NI and tells him that he has a friend who knows many people interested to go abroad. His name is KM.

#### *Intercepted phone calls on 04XX (HB)*

On 7 May 2011 BAM calls HB and asks him if he can make a Schengen visa for a close relative. HB responds by saying that he cannot because they are delaying. On 14 May 2011 L calls HB about a family that wants to go to France or Sweden. According to HB they can only take them to Vienna, but that from Vienna there is no problem. On the same date HB tells II who calls him because he wants to get his son abroad, they could get him to Vienna.

#### *Metering results of telephone number 04XX (HB)*

Between this number and the number of KM (04XX) 19 (attempted) calls were registered in April and May 2012. Between this number and the telephone number of NI contacts have been registered between October 2010 and the beginning of May 2011.

### **1.2.5 Activities of AB**

#### *Intercepted phone calls on 04XX (AB)*

On 11 February 2011 AB is called by an unknown person who asks for the price to go Austria. AB says it is € 2000, but can be € 1800 for friends. Also the way of travelling is discussed. AB says they have to walk a little bit. On the same date

AB discusses another financial issue. He cannot decide, but has to ask somebody else. On 12 February 2011 AB talks to a friend on the phone and tells him that he is carrying visas with a friend, they give them visas to go to the west, adding that he is staying in Kosovo like a fool. On 8 March 2011 AB is called by an unknown person who asks him when they will go, if they have to wait a lot, if there is a need to sleep and if he has an apartment. On 25 March 2011 AB is called by an unknown person who asks him for the price for one person to be sent to Austria and he answers 1.8.

On 1 April 2011 AB discusses on the phone the whereabouts of a smuggled person. During this conversation AB says that S is member of the same smuggling net as he is.

### **1.2.6 Activities of TB**

#### *Evidence received from the general prosecution office Republic of Albania*

##### *Intercepted telephone number XX (AT /Albania)*

On 28 August 2010 AT sends a sms to TB (using telephone number 04XX) asking him if he wants this worker tomorrow on his side because they have again a dispatch. TB replies that he has two or three workers around Wednesday or Thursday

##### *Intercepted telephone number XX (PG/Albania)*

On 5 September 2010 PG sends the telephone number of AT through a text message to TB. On the same day TB sends a sms to AT asking him how he is, if he is all right. On 16 September 2010 PG sends a sms telling TB that he has one or two for the next day and how they are going to do it. On 2 November 2010 PG complaints that TB dispatched some already, but left his again with the Turks without dispatching.

##### *Metering results of telephone number 04XX*

Between December 2010 and May 2011 142 contacts were registered between this telephone number and the telephone number of TB (04XX). Also regular contacts between the 04XX and numbers abroad, both incoming and outgoing were registered.

##### *Results of Forensic expertise*

On an Ipko simcard, seized during the search of the house of BI the telephone number 04XX was saved under the name N. The number 04XX was saved under the name M.

## **2. Acquittal**

### *All defendants: organized crime*

The presented evidence does not lead to the conclusion that the defendants, formed an organized group with the intention to gain unlawful benefits from the smuggling of migrants.

NI was in contact with all the other defendants, except for AM and SB. Between the other defendants no contacts could be established. There is no evidence that shows that they were aware that other people were also in connection with NI regarding the smuggling of migrants. There is no evidence that the defendants were working in an organized way. The impression that rises from the file is that the persons who were in contact with NI, knew that he had contacts through which he was able to bring people out of the country. The court expects that he used the Ipko number to organize the travels of migrants and contacted his accomplices in other countries. The Ipko numbers have not been intercepted, it is not clear how exactly the arrangements were made.

*Defendant HBI: smuggling of migrants*

The telephone of the defendant has not been intercepted. According to intercepted phone calls on the telephone of NI, he spoke to him on several occasions between 3 February and 11 February 2011. He also contacted NI on 20 March 2011. It was not proven that he was in touch with any of the other defendants. The contacts between NI and HBI can be very well related to the departure of FBI, HBIs brother.

The court doesn't find the statement given by NI, that HBI received € 50 from the travel sum paid by his brother not trustworthy. NI did not give any reason as to why HBI got this money. The statement is not supported by any other evidence.

There is no sufficient evidence that HBI involved in the smuggling of migrants, nor that he was part of an organized group, involved in this. For this reason the defendant is acquitted.

*Defendant SB: smuggling of migrants*

The prosecutor in his closing arguments referred to telephone conversations extracted from interceptions of the defendant's telephone on 27 January 2011. These interceptions are not included in the case file and can therefore not be used as evidence. Even if they were included in the case file, these conversations are inadmissible evidence because they derive from interceptions based on a provisional order from the prosecutor which was not confirmed by the pre-trial judge within 24 hours of its issuance pursuant to article 258, paragraph 4 of the KCCP.

The defendant's telephone number 04XX was intercepted from 3 February until 4 March 2012. During this period no incriminating conversations were made by him.

The court was not able to find the 15 day report dated 27.01.2011 or 27.10.2010, mentioned by the prosecution which proves that SB used the telephone number 04XX. AB has stated in front of the court that this is his number and that he never gave it in use to SB there are no facts that contradict this statement. Therefore the court concludes that the phone number has not been used by SB

The statement given by IB is not supported by other evidence. It cannot be concluded that the S mentioned by him is SB.

There is no evidence that shows the defendant has been in contact with any of the other defendants.

The court could not find any evidence that the defendant was involved in the smuggling of migrants, nor that he was part of an organized group, involved in this. For this reason the defendant is acquitted.

*Defendant HT*

From the metering of telephone calls it derives that there were contacts between the telephone number of HT and the telephone numbers used NI on 1, 9, 13, 14, 15, 16 and 17 January 2011. From two of these contacts transcripts can be found in the case file. On 1 January 2011 at 12:17:34 HT calls NI and asks him how much it costs to take someone to Austria. This question is very unlikely to be asked by someone who is (involved in an organization which deals with) smuggling migrants. On 13 January 2011 HT asks NI to “take care of this relative”. These conversations implicate that a relative of HT was going abroad through NI, it does not prove that HT obtained any benefit of this trip.

The other contacts between NI and HT were apparently not related to the smuggling of migrants, because none of these contacts were incorporated in the case file.

Outside this period there were no contacts between the telephone numbers of NI and HT.

Unlike the prosecutor stated in his closing arguments no evidence could be found proving that the defendant has had continuous contact with the accused and other suspects.

The court could not find any evidence that the defendant was involved in the smuggling of migrants, nor that he was part of an organized group, involved in this. For this reason the defendant is acquitted.

*All defendants: aggravating circumstance*

From the statements made by the witnesses it cannot be concluded that the migrants were smuggled in a way that put their lives in danger or endangered their physical integrity. The fact that borders had to be crossed by foot during the night is not enough to establish this danger. This aggravated circumstance has not been proven.

*NI: unauthorized possession of drugs*

During the search of an old car in the yard of his house an amount of 2.02 grams of Cannabis was found. The defendant denied that he knew this drugs was in this car. The amount of drugs that was found doesn't indicate that the defendant was involved in selling drugs. Since there are no other indications that this is the case, it cannot be concluded that he had this drugs with the intention of selling these drugs.

*HB: unauthorized possession of a weapon*

During the search of the house of the defendant on 18 May 2011 a hunting rifle was found, for which the defendant could not present a valid Weapon Authorization Card. During the main trial the defendant presented a letter from the Ministry of Interior, containing a generic decision by which the validity of weapon permits was extended due to the entry into force of a new law on weapons. Through this letter validity of the weapon authorization card of the defendant was extended and valid at the time of the house search. The defendant therefore was in the possession of a weapon authorization during the period mentioned in the indictment.

That the defendant didn't present this document earlier, doesn't bring the court to another conclusion.

### **3. Factual Findings**

#### **3.1 Use of Ipko numbers**

On 27 January 2011 NI sends a sms to BS at number 04XX telling him to open up his Ipko because it is not working. On 2 February N receives a phone call from F who asks him if there is a change for Italy. N says he will call him back from another number. On 6 February 2011 at 13:55:09 hrs N receives a phone call from NM using phone number 04XX. N says that he will call him back from another number. A telephone call from 04XX to 04XX is registered on 6 February 2011 at 13:58:49 hrs.

HB calls NI on 22 February 2011 and tells him he has 3 or 4 ready for tomorrow. N asks him to call him on his ipko.

On 25 March N is called by a person unknown to him who says that he got the number from a friend for a job. N says he will call him back from his Ipko number.

On 5 April 2011 BS calls N and says that his ipko number is not functioning. N says he has another one which he will give to BS later. The metering of telephone calls shows that the use of ipko number 04XX was minimal after this date. On 5 April 2011 BS gives to N his Ipko number. N tells BS to be on the bus and he will tell him where to go in Mitrovica. On 13 April 2011 HB asks N if he can give his Ipko number to someone who knows many persons that want to go abroad, but that the ipko doesn't work. N says to him that he has another ipko number.

The court concludes that the ipko numbers were reserved for certain conversations. Looking at the nature of the conversations in which reference is being made to ipko numbers, these numbers were used for conversations about the smuggling of migrants and preparations for this activity. The content of the conversations is not known because these telephone numbers were not intercepted, although the numbers were none to the police.

#### **3.2 NI**

##### *Smuggling of migrants*

The defendant has not given a credible explanation for the intercepted telephone conversations mentioned above. Taking into consideration the other evidence, more specifically the statements made by the witnesses, the court concludes that these telephone conversations are about the smuggling of migrants.

Based on the evidence the court concludes that NI has been involved in this activities from an unknown date in 2009 until 18 May 2011. The witness DG stated that his brother went abroad through NI two years before 2011, when he was interviewed.

According to the statements of XT, AP, TA, EA, AD, NS, SB, DG and RK, the defendant discussed prices to be smuggled abroad. These varied from € 1400 to € 2000. In their statements some of the witnesses mentioned the travel route namely from Kosovo, via Serbia to Hungary and from there to other destination countries in Europe, France, Italy and Austria. All the persons involved in these conversations were Kosovo citizens. Among the persons smuggled were XT, OP, EA, BS. Beside these persons other persons who could not be identified have been

smuggled. The intent to obtain a financial benefit from of the illegal entry into a third state, derives from the prices that were asked from (potential) migrants.

It is suspected that the defendant used his Ipko number to be in touch with accomplices in other countries, because with this number he had many contacts with telephone numbers abroad. Interceptions were received from the Albanian police, which show that through his ipko number he had regular contacts with PG, AT and VH, about people wanting to leave Albania through Kosovo.

NI organized the travels for (potential) migrants and decided on prices and time tables. He instructed migrants about the journey and was in contact with the people who accompanied the migrants during their journey. From the way of travelling, many changes of vehicle, partially by foot, it has to be concluded that third countries like Serbia and Hungary were entered without compliance to the necessary requirements for legal entries into these states.

#### *Unlawful possession of a weapon*

During the search of his house two weapons were found, a Cervena Zastava serial number C-132079 and a gas revolver Ekol Tuna serial number ET 892018 and 4 bullets for this weapon. The defendant stated that he possessed this weapon since the war and that he did not have a valid weapon authorization for the weapon. The make and working of the weapons were established through an expertise report.

### **3.3 TB**

Based on the evidence assessed above, the court concludes that TB has been involved in the smuggling of migrants from an unknown date in 2010 until 18 May 2011. He was in contact with PG, AT and VH. The Albanian police investigated these three suspect. During this investigation their telephones were intercepted. Some transcripts of these conversations are quoted above.

The defendant when interviewed by the prosecutor acknowledged his involvement in the activities of NI. His explanation that he was only contacting the above named persons on behalf of NI is not credible, because contacts were established from an Ipko number which has been found in the telephone of one of the witnesses under the name of the defendant and NI used his own ipko number to contact these persons in Albania. When he was interviewed by the prosecutor the defendant acknowledged that he used number 04XX. His denial of this statement in main trial is not credible.

The metering results show many contacts between the Ipko numbers of the defendant and NI, and the ipko number used by the defendant and the number used by M, who according to an intercepted phone call from NI is also involved in the smuggling of migrants.

The defendant also used to safeguard money, until the migrant would have reached his decision. The statement made by the defendant in this regard is supported by the statement of TA. The court does not find the denial of both the defendant and the witness of their previous statement credible. They could not provide an acceptable reason why they signed their written statements, which were not conform the verbal statements they made.

The defendant made travel arrangements with accomplices abroad and played a vital financial role, by keeping money for migrants. It cannot be proven that the defendant was involved in the smuggling of migrants, named in the indictment. The intent to obtain a financial benefit from of the illegal entry into a third state, derives from the prices that were asked from (potential) migrants or discussed with them.

### **3.4 NA**

Although regular telephone contacts between NA and NI have been established during the period October 2010 and May 2011, the defendant denied knowing NI during his first interview with the prosecutor. After being confronted with the transcript of one interception, he stated that he gave Ns telephone number to someone who wanted to be smuggled.

The defendant did not provide a credible explanation for his initial denial of knowing NI. The court has taken this into consideration to the disadvantage of the suspect when evaluating the evidence. There was no need for the defendant to deny that he knew NI, if his contacts with him were about legal activities.

The fact that NI gave the defendant the ipko number of a person named M, who according to NI knows “about these things”, indicates the involvement of the defendant in the smuggling of migrants. Although other people also asked for the whereabouts of smuggled relative, to none of them NI gave the number of others to make inquiries. The telephone number of M was also found on a simcard, found in the house of BI.

The role of the defendant was to (actively) refer persons to NI, who had contacts to get people abroad. He was well aware of the illegal nature of their activities because he was afraid to be reported to the police.

### **3.5 HB**

There are many (attempted) contacts between NI and HB. In some of these contacts reference was made to contact through ipko numbers. Since the court concluded that the ipko numbers were used for conversations about smuggling activities, the court concludes that HB was also involved in these activities. This is also proven by the telephone interceptions, mentioned above.

The role of the defendant was to (actively) refer persons to NI, who had contacts to get people abroad. He is less involved than NI and TB.

### **3.6 AB**

The witness BH stated that he contacted the defendant to go abroad. The could not get to an agreement because of the price. Later the witness referred persons to the defendant, who arranged their departure. The witness RB called the telephone number of the defendant after his son had left to country. The witness AR recognized the defendant as one of the persons who used to bring persons to him for further transport. In an intercepted telephone conversation the defendant says to a friend that he is preparing visas. He also informs persons interested to go abroad about prices and ways of travelling. This proofs that he is well aware of the ins and outs of the smuggling activities.

From the evidence it can be concluded that the defendant was involved in the smuggling of migrants. There is no proof that he was cooperating with NI or any of the other defendants. His role was not on the highest level.

### **3.7 BI**

The witness AR recognized the defendant as a person who had brought persons to him for transport to Sllubice. Telephone contacts were registered between the defendant and NI. The court concludes that these contacts involved contacts about migrants, because the defendant also used to contact the ipko telephone number of NI. The results of disclosure of financial data show that the defendant received money from and sent money abroad. The explanation that his bank account has been used by a third person is not credible, the defendant provided no supporting material for this explanation. These transfers have to be related to the smuggling of migrants.

The court concludes that the defendant was involved in the smuggling of migrants. He acted in a more supportive way, undertaking small, but important tasks.

## **4. Sentences**

The following has been taken into account.

Smuggling of migrants is a violation of the right every state has, to control the entry of non-residents. Illegal migration can cause social problems in receiving states. Therefore the smuggling of migrants has to be prosecuted and offenders have to be punished.

The defendants have not been convicted before.

The court sees more major roles for the defendants NI and TB. They were in contact with persons abroad for a long period of time, NI from 2009 and TB at least from early 2010. The other defendants were less prominent and were more supportive to the activities of the actual organizers. They gave information to potential migrants and were brought migrants to places from where they were taken further.

Mitigating circumstances are found in the fact that some witnesses have stated that part of the payment had to be made after the migrant had arrived safely in the country of destination. There is no proof the defendants were actively looking for migrants, by promoting their activities.

The illegal possession of weapons is a threat to the safety of society. Illegal weapons therefore are to be confiscated

According to Article 73 (1) CCK the time served in detention/under house detention shall be calculated in the punishment.

The sentences imposed on the defendants are appropriate and needed.

## **5. Costs of the procedure**

Article 102 paragraph 1 of the KCCP reads, that the court will decide that the person who has been found guilty must reimburse the costs of the criminal procedure. In accordance with this article NI the convicted persons shall pay the costs of the proceedings. The provisions of Article 100 paragraph 2 of the KCCP shall be complied with and a separate ruling on the amount of the costs shall be issued.

The costs of the defendants SB, HT and HBI will be paid from the Kosovo budget, since they were acquitted of all charges.

**Recording Clerk:**

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**Christine Sengl**

**Presiding Judge:**

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**Cornelie Peeck**

**Panel Member:**

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**Naim Kurteshi**

**Panel Member:**

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**Rasim Behluli**

**Legal remedy:**

The Parties have the right to file an appeal against the judgment within fifteen (15) days of the day the copy of the judgment has been served to the Supreme Court of Kosovo through the District Court of Prizren pursuant to Article 398 Paragraph 1 of the KCCP.

Annex 1

- P1** Summary report on case P reference number 2010-DIOK-69 dated 17 May 2011 with attached CD
- P2** Police report on interception of telecommunications regarding phone number 04XX dated 10/11/2010
- P3** Police report on interception of telecommunications regarding phone number 04XX dated 26/11/2010
- P4** Police report on interception of telecommunications regarding phone number 04XX dated 8 December 2010
- P5** Police report on interception of telecommunications regarding phone number 04XX dated 20 December 2010
- P6** Police report on interception of telecommunications regarding phone number 04XX dated 17 January 2011
- P7** Police report on interception of telecommunications regarding phone number 04XX dated 1 February 2011
- P8** Police report on interception of telecommunications regarding phone number 04XX dated 15 February 2011
- P9** Police report on interception of telecommunications regarding phone number 04XX dated 1 March 2011
- P10** Police report on interception of telecommunications regarding phone number 04XX dated 4 April 2011
- P11** Police report on interception of telecommunications regarding phone number 04XX dated 20 April 2011
- P12** Police report on interception of telecommunications regarding phone number 04XX dated 3 May 2011
- P13** Police report on interception of telecommunications regarding phone number 04XX dated 18 February 2011
- P14** Police report on interception of telecommunications regarding phone number 04XX dated 4 March 2011
- P15** Police report on interception of telecommunications regarding phone number 04XX dated 18 February 2011
- P16** Police report on interception of telecommunications regarding phone number 04XX dated 4 March 2011
- P17** Police report on interception of telecommunications regarding phone number 04XX dated 19 March 2011
- P18** Police report on interception of telecommunications regarding phone number 04XX dated 4 April 2011
- P19** Police report on interception of telecommunications regarding phone number 04XX dated 20 February 2011
- P20** Police report on interception of telecommunications regarding phone number 04XX dated 7 March 2011
- P21** Police report on interception of telecommunications regarding phone number 04XX dated 22 March 2011
- P22** Police report on interception of telecommunications regarding phone number 04XX dated 24 October 2011
- P23** Police report on interception of telecommunications regarding phone number 04XX dated 18 October 2011
- P24** Report about the incoming and outgoing phone calls and SMS messages NO.2010DKKO069 of Kosovo Police, dated 1 December 2010 regarding phone numbers 04XX and 04XX including the CD attached to this report
- P25** Report about the incoming and outgoing phone calls and SMS messages NO.2010DKKO069 of Kosovo Police dated 13 June 2011 regarding phone numbers 04XX, 04XX, 04XX and 04XX, 04XX, 04XX including the CD attached to this report
- P26** Report about the incoming and outgoing phone calls and SMS messages NO.2010DKKO069 of Kosovo Police dated 29 June 2011 regarding phone numbers 04XX, 04XX, 04XX, 04XX, 04XX, 04XX and 04XX including the CD attached to this report
- P27** Report about the incoming and outgoing phone calls and SMS messages NO.2010DKKO069 of Kosovo Police dated 29.07.2011 regarding phone numbers 04XX, 04XX, 04XX and 04XX including the CD attached to this report
- P28** Letter for legal assistance of the Serious Crime Prosecution Office of the Republic of Albania, no. 380/2 dated 23 May 2011 including the transcripts attached to this letter on interception of telephones 04XX and 04XX
- P29** Financial investigation report No.13-DHKO/SHFI-2011/20 dated 8 August 2011
- P30** Search reports and certificates of temporarily confiscated items dated 18 May 2011
- P31** Photo documentation for all defendants
- P32** Expertise report Legal Science unit, chemical analysis dated 11 August 2011