

**SUPREME COURT of KOSOVO**

**Supreme Court of Kosovo  
Ap.-Kz. No. 276/2011  
Prishtinë/Priština  
28 February 2012**

**IN THE NAME OF THE PEOPLE**

The Supreme Court of Kosovo held a panel session pursuant to Article 26 paragraph (1) of the Kosovo Code of Criminal Procedure (KCCP), and Article 15.4 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (LoJ) on 24 November 2009 in the Supreme Court building in a panel composed of International Judge Gerrit-Marc Sprenger as Presiding Judge and Kosovo National Judges Emine Mustafa, Valdete Daka, Avdi Dianj and Marije Ademi as panel members,

And with Holger Engelmann as Court Recorder,

In the presence of the

Defense Counsel Av. B. [REDACTED] M. [REDACTED] for the defendant H. [REDACTED] I. [REDACTED],

Defense Counsel Av. J. [REDACTED] M. [REDACTED] for the defendant B. [REDACTED] I. [REDACTED],

In the criminal case number AP-KZ 276/2011 against the defendants:

H. [REDACTED] I. [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

B. [REDACTED] I. [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

In accordance with the Verdict of the first instance District Court of Mitrovice/Mitrovica in the case no. P. No. 84/08, dated 31 March 2011 and registered with the Registry of the District Court of Mitrovice/Mitrovica on the same day, the defendants were found guilty of the following criminal offenses:

H. [REDACTED] I. [REDACTED]

[i] Because on 21 May 2008 around 15:30 hrs, acting as a group, in the parking lot of EMONA Market in Vushtrri/Vucitrn, delivered without an authorization dangerous

narcotic substance marihuana with the aim of selling it, so that following the meeting that the defendant B [redacted] I [redacted] together with B [redacted] K [redacted] had with the buyer named G [redacted] in Dardani neighborhood, namely at Santea bars, they agreed to carry out the sales at EMONA Market. When they arrived at EMONA Market, B [redacted] K [redacted] and B [redacted] I [redacted] met with G [redacted] again and G [redacted] gave 1800 EURO to the defendant, so he could bring him two kilograms of marihuana. The B [redacted] I [redacted] contacted the H [redacted] I [redacted] by phone and, no later than after five minutes, having taken a cab, H [redacted] I [redacted] and S [redacted] S [redacted] arrived at restaurant EMONA. Then S [redacted] used the same cab to go to the Municipal Assembly building in Mitrovica/Mitrovica, stepped out of the car and received a black bag from unknown people, which contained two kilograms of narcotic substances (marihuana) and six plastic bags weighing 22.2 grams. Using the same cab, S [redacted] returned to EMONA restaurant in Vushtrri/Vucitrn, and handed the bag containing the narcotics over to the defendant H [redacted] I [redacted] who forwarded it to the buyer G [redacted], from whom he received 1800 EURO. The police intervened immediately during the exchange and apprehended the defendants. The police confiscated two kilos and 6 small plastic bags of marihuana from the defendant H [redacted] I [redacted] [...].

By doing so, the accused H [redacted] I [redacted] committed and is criminally liable for the criminal offence of **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances** contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK;

[ii] Because on 21 May 2008 around 15:30 hrs the accused H [redacted] I [redacted] had a weapon COLT Pistol 7.65 mm, serial number 42340, made in Germany, containing 5 bullets, with him in the parking lot of EMONA Market in Vushtrri/Vucitrn.

By doing so, the accused H [redacted] I [redacted] committed and is criminally liable for the criminal offence of **Unauthorized Ownership, Control, Possession or Use of Weapons** contrary to Article 328 paragraph 2 of the CCK.

**Therefore, he was convicted as follows:**

The accused was sentenced for the criminal act of **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances** contrary to Article 229 paragraph 2 as read with paragraph 4 item I of the CCK to a term of imprisonment of three (3) years and for the criminal act of **Unauthorized Ownership, Control, Possession or Use of Weapons** contrary to Article 328 paragraph 2 of the CCK to a term of imprisonment of one (1) year. The First Instance Court the built an aggregate sentence of three (3) years and six (6) months according to Article 71 paragraph 1 and 2 items (2) of the KCCP.

The time spent in detention on remand or house arrest from 21 May 2008 until 03 July 2009 was set out to be credited pursuant to Article 73 paragraph 1 of the CCK.

**B [redacted] I [redacted]**

Because on 21 May 2008 around 15:30 hrs, acting as a group, in the parking lot of EMONA Market in Vushtrri/Vucitrn, delivered without an authorization dangerous narcotic substance marihuana with the aim of selling it, so that following the meeting

that the defendant B [REDACTED] I [REDACTED] together with B [REDACTED] K [REDACTED] had with the buyer named G [REDACTED] in Dardani neighborhood, namely at Santea bars, they agreed to carry out the sales at EMONA Market. When they arrived at EMONA Market, B [REDACTED] K [REDACTED] and B [REDACTED] I [REDACTED] met with G [REDACTED] again and G [REDACTED] gave 1800 EURO to the defendant, so he could bring him two kilograms of marihuana. Then B [REDACTED] I [REDACTED] contacted the H [REDACTED] I [REDACTED] by phone and, no later than after five minutes, having taken a cab, H [REDACTED] I [REDACTED] and S [REDACTED] S [REDACTED] arrived at restaurant EMONA. Then S [REDACTED] used the same cab to go to the Municipal Assembly building in Mitrovica/Mitrovica, stepped out of the car and received a black bag from unknown people, which contained two kilograms of narcotic substances (marihuana) and six plastic bags weighing 22.2 grams. Using the same cab, S [REDACTED] returned to EMONA restaurant in Vustrri/Vucitrn, and handed the bag containing the narcotics over to the defendant H [REDACTED] I [REDACTED] who forwarded it to the buyer G [REDACTED] from whom he received 1800 EURO. The police intervened immediately during the exchange and apprehended the defendants. The police confiscated two kilos and 6 small plastic bags of marihuana from the defendant H [REDACTED] I [REDACTED] and three small bags of marihuana from the defendant B [REDACTED] I [REDACTED].

By doing so, the Accused B [REDACTED] I [REDACTED] committed and is criminally liable for the criminal offence of **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances** contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK;

Therefore, he was convicted to one (1) year of imprisonment for the criminal act of **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances** pursuant to Article 67 paragraph 1 item ii of the CCK, while the time spent in detention on remand or house arrest from 21 May 2008 until 23 September 2009 was set out to be credited pursuant to Article 73 paragraph 1 of the CCK.

Whilst the defendant B [REDACTED] I [REDACTED]; who had pleaded guilty in front of the Trial Court, did not appeal the 1<sup>st</sup> Instance Judgment, The Defense Counsel of the accused H [REDACTED] I [REDACTED] timely filed an appeal dated 30 June 2011 and received by the registry of the District Court of Mitrovica/Mitrovica according to the registration stamp on 08 June 2011 against the Verdict. It was asserted that the punishment imposed upon the accused was to be challenged and the most lenient punishment possible be imposed instead.

With regards to the defendant B [REDACTED] I [REDACTED] The District Public Prosecutor of Mitrovica/Mitrovica timely filed an appeal on 06 July 2011 and challenged the 1<sup>st</sup> Instance Judgment regarding the punishment imposed as being too lenient. It particular it was asserted that the 1<sup>st</sup> Instance Court had taken into consideration mainly mitigating circumstances, whilst all aggravating aspects of the deed had been left aside.

Regarding the defendant H [REDACTED] I [REDACTED] the District Public Prosecutor of Mitrovica/Mitrovica filed an "opinion" on 18 July 2011 asserting the Court of 1<sup>st</sup> Instance had not fully taken into consideration all aggravating circumstances and that therefore the appeal of the Defense had to be rejected and the punishment to be increased by the Supreme Court.

The OSPK, with a response, dated 27 December 2011 and registered with the Registry of the Supreme Court of Kosovo on 29 December 2011 did not lose a word regarding the District Prosecutor's appeal as to the defendant B [REDACTED] I [REDACTED] but supported the legal position of the District Public Prosecutor of Mitrovica/Mitrovica to reject the appeal of the Defense regarding the defendant H [REDACTED] I [REDACTED] as ungrounded.

Based on the written Verdict in case P. No. 84/08 of the District Court of Mitrovica/Mitrovica dated 31 March 2011 (filed with the Registry of that Court on the same day), the submitted written appeal of the defendant as submitted through his Defense Counsel, together with an analysis of the applicable law, the Supreme Court of Kosovo, following the deliberations on 28 February 2012, hereby issues the following:

#### JUDGMENT.

The appeal of the defense counsel filed on behalf of the defendant H [REDACTED] I [REDACTED] is rejected as ungrounded. H.I.

The appeal filed by the District Public Prosecutor with regards to the decision on punishment against B [REDACTED] I [REDACTED] is approved. The judgment of the District Court of Mitrovicë/Mitrovica P. No. 84/2008, dated 31 March 2011, is modified. A punishment of 3 years imprisonment is imposed against the defendant B [REDACTED] I [REDACTED].

The judgment of the District Court is affirmed in the remaining parts.

#### REASONING

##### Procedural History

On 19 June 2008, the District Public Prosecutor of Mitrovica/Mitrovica filed an Indictment (PP nr.66/08) and charged the defendant H [REDACTED] I [REDACTED] together with two other defendants with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK (Count I), because on the 21 May 2008 around 15:30 hrs in the parking lot of EMONA Market in Vushtrri/Vucitrn and acting as a group with others he allegedly had in unauthorized possession several small plastic bags prepared for packing narcotics for the purpose of selling them, as well as a bag containing twenty (20) seeds of marihuana for the purpose of cultivating them. Moreover, H [REDACTED] I [REDACTED] alone was charged with Unauthorized Ownership, Control, Possession or Use of Weapons pursuant to Article 328 paragraph 1 of the CCK, because on occasion of the respective date, time and place he allegedly has used a weapon (7.62 mm Colt pistol, serial number 423400, made in Germany, containing 5 rounds of

bullets) in that he shot several times in the direction of an intervening police officer, until the latter had managed to take the gun away from his hand.

Through the same Indictment the defendant B [REDACTED] I [REDACTED] was charged with Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 230 paragraph 1 of the CCK, because allegedly on occasion of the respective date, time and place the defendant in his own house yard and being short of authorization, has cultivated for the purpose of selling a substance (namely 12 leaves of cannabis) in a flower vase, that has been announced as dangerous (the substance, not the vase).

EULEX Judges took over the case on 02 August 2009.

On 22 November 2010 the Indictment was confirmed by the Confirmation Judge, who dismissed the Indictment against one of the co-defendants and severed it regarding another co-defendant due to his absence, but confirmed it regarding the defendants H [REDACTED] I [REDACTED] and B [REDACTED] I [REDACTED].

The Main Trial against H [REDACTED] I [REDACTED] and B [REDACTED] I [REDACTED] commenced on 30 and 31 March 2011 before a panel of EULEX Judges.

In the session on 31 March 2011 the District Public Prosecutor amended the charge against H [REDACTED] I [REDACTED] regarding Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 *paragraph 2* of the CCK (Count II.2), so that – when the 1<sup>st</sup> Instance Court arrived to decide upon the guilt and possible punishment of the two defendants, the charges against them were modified as follows:

H [REDACTED] I [REDACTED] was charged with Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK (Count I), Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 paragraph 1 of the CCK (Count II.1) and with Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 paragraph 1 of the CCK (Count II.2).

B [REDACTED] I [REDACTED] was charged with Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 230 paragraph 1 of the CCK, as outlined in the original Indictment.

H [REDACTED] I [REDACTED] pleaded guilty to the charge of Count I of the Indictment (Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK) and to the charge of Count II.2 of the Indictment (Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 *paragraph 2* of the CCK). The guilty plea was accepted by the Court.

The District Public Prosecutor withdrew the charge of Count II.1 of the Indictment (Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 230 paragraph 1 of the CCK) against H [REDACTED] I [REDACTED].

The challenged Judgment was orally rendered on 31 March 2011 and served to the parties between 27 and 28 June 2011.

Whilst the defendant B [REDACTED] I [REDACTED] did not challenge the Judgment, the Defense Counsel of the defendant H [REDACTED] I [REDACTED] timely filed an appeal dated 30 June 2011 and received by the registry of the District Court of Mitrovica/Mitrovice according to the registration stamp on 08 June 2011 against the Verdict, stressing the punishment of being too high.

With regards to the defendant B [REDACTED] I [REDACTED] the District Public Prosecutor of Mitrovica/Mitrovice timely filed an appeal on 06 July 2011 and challenged the 1<sup>st</sup> Instance Judgment regarding the punishment imposed as being too lenient.

With regards to the defendant H [REDACTED] I [REDACTED] the District Public Prosecutor of Mitrovica/Mitrovice wrote an "opinion" that does not contain any date but was filed on 18 July 2011, criticizing that the punishment would be too low, but leaving the evaluation under the discretion of the Supreme Court.

The OSPK, with a response dated 27 December 2011 and registered with the Registry of the Supreme Court of Kosovo dated 29 December 2011 proposed to reject the appeal of the Defense on behalf of the defendant H [REDACTED] I [REDACTED] as unfounded but – thus technically qualifying the document of the Public Prosecutor of Mitrovica/Mitrovice as an appeal – to approve the appeal of the Public Prosecutor as founded and modify the Judgment of the District Court of Mitrovica/Mitrovice P. No. 84/08, dated 31 March 2011 regarding the decision on criminal sanctions. The part of the defendant B [REDACTED] I [REDACTED] was not addressed by the OSPK.

## FINDINGS OF THE COURT

### **Decision on the punishment**

The only aspect of the 1<sup>st</sup> Instance Judgment as challenged by both, the Defense Counsel of defendant H [REDACTED] I [REDACTED] and the District Public Prosecutor of Mitrovica/Mitrovice with regards to both defendants, H [REDACTED] I [REDACTED] and B [REDACTED] I [REDACTED] is the decision on punishment.

In both cases the Supreme Court of Kosovo finds that whatsoever violation of the Law as done by the 1<sup>st</sup> Instance Court was committed in favour of the two defendants.

### **As to the defendant H [REDACTED] I [REDACTED]**

The Defense, according to his appeal, is of the opinion that the 1<sup>st</sup> Instance Court did not take into consideration all mitigating circumstances existing in favour of the defendant H [REDACTED] I [REDACTED] as there are in particular the fact that he never before had violated the Law, that he deeply regrets the commission of the respective criminal offence and

therefore has promised the Court that he never would do this again and finally that he is the sole provider of his family.

The District Public Prosecutor, according to his "opinion", has asserted that the 1<sup>st</sup> Instance Court had taken into consideration only the mitigating, but not any aggravating circumstances, speaking to the detriment of the defendant. In particular, the offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK would be listed under Article 229 paragraph 4 of the CCK, which is why it would become aggravated. Moreover, it would be unclear from the Judgment why the Court took the view that a low percentage of THC in the confiscated drugs somehow reduces its potency. Finally, the Court had disregarded the crucial fact that the drugs failed to reach the consumers only because of the pro-active intervention of police.

The Supreme Court of Kosovo at first finds that only the document as submitted by the Defense Counsel technically can be qualified as an appeal, timely filed against the challenged 1<sup>st</sup> Instance Judgment and proposing a different and more lenient punishment for the defendant H■■■■ I■■■■. In difference to that, the document submitted by the District Public Prosecutor, which is not even called "appeal" but "opinion" does not contain any clear proposal but leaves it under the discretion of the Supreme Court to modify the punishment imposed upon the defendant. Only in the interest of a complete legal assessment it needs to be stressed that even if the document of the Public Prosecutor would be considered an "appeal", it clearly would be belated. Whilst the challenged Judgment was served to the parties on 30 June 2011, the document of the District Public Prosecutor was filed with the District Court of Mitrovica/Mitrovica on 18 July 2011, which is not within the deadline of 15 days after service as provided by Article 389 paragraph 1 of the KCCP. Therefore, in the case at hand the principle of restriction of *reformatio in pejus* applies in favour of the defendant and to the result that at least no higher punishment can be imposed upon him than the one as foreseen by the appealed Judgment.

However, the appeal of the Defense – although allowed by the law – is completely unfounded and without merits.

The decision on the punishment is fair and well balanced in accordance with the law.

As to the concerns raised by the Defense, the Supreme Court finds that the 1<sup>st</sup> Instance Court has taken into consideration all mitigating aspects in favour of the defendant H■■■■ I■■■■. The Court has considered the fact that the defendant was not previously convicted, which of course an expression is of "*his past conduct [...within which...] he never had violated the law*", as stressed by the Defense. The Court also has considered the guilty plea of the defendant and in this context – although not explicitly mentioned in the Judgment – of course also taken note of the defendant's regret. The fact that the defendant H■■■■ I■■■■ is the sole provider of his family refers to "*the personal circumstances of the perpetrator*" as to be taken into consideration by the trial court in accordance with Article 64 of the CCK. However, this solely cannot be considered a mitigating circumstance, since his life conditions have been well known to the perpetrator already at the time when he has committed the criminal offences at hand. These circumstances in particular cannot lead to the result that just because of the

support needs of a family; a perpetrator avoids his well-deserved punishment as provided by the law. The life circumstances of H [REDACTED] I [REDACTED] are sufficiently considered by the fact that the punishment imposed to him is almost at the lowest level possible in accordance with the law.

Despite that the Public Prosecutor based upon a wrongful reception of the 1<sup>st</sup> Instance Judgment has mistakenly stressed that the defendant H [REDACTED] I [REDACTED] had been sentenced "to three and half years imprisonment for the offence under Article 229 paragraph 4 {1} CCK, and one year imprisonment for the possession of weapon under Article 328 {2} CCK", whereas in fact he as was sentenced "to 3/three/years of imprisonment for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances [and] to 1/one/year of imprisonment for the criminal act of Unauthorized Ownership, Control, Possession or Use of Weapons" and an "aggregate punishment [of] 3/three/years and 6/six months of imprisonment, pursuant to Article 71 paragraph 1 and paragraph 2 item ii of the CCK", the material concerns of the prosecution cannot be taken into further consideration with respect to the principle of *reformatio in pejus*.

As to the defendant B [REDACTED] I [REDACTED]:

The District Public Prosecutor in Mitrovica/Mitrovica asserted that the Trial Court failed to consider the aggravating circumstances of the criminal offence as committed by the defendant B [REDACTED] I [REDACTED] and to weight them appropriately. In particular, the 1<sup>st</sup> Instance Court had not properly assessed the fact that B [REDACTED] I [REDACTED] has committed a criminal offense that must be subsumed under Article 229 paragraph 4 of the CCK, and therefore represents and aggravated form of the commission of that crime as such, being armed with a punishment frame of fine and at least three years of imprisonment. Moreover, the Court had erroneously considered certain aspects of the personal history of the defendant and of the criminal offence in question as mitigating circumstances. This in particular would refer to the Court's allegation that the defendant was never convicted before, whilst in fact according to a document titled *Official Memorandum – Criminal Background Check*. Which the latter had been made available to the Court and the parties; he was previously convicted of the offense of DPPO (Disturbance of Public Peace and Order) in a case with the registration number 2007-BD-1050. Also, it would be unclear how the alleged low concentration of Tetrahydrocannabinol (THC) in the confiscated drugs have led the Court to the opinion that this must be considered as mitigating circumstance in favour of the defendant. From the fact that the forensic analysis had failed to quantify the percentage of THC in the drugs, this cannot necessarily lead to the allegation that this percentage is low. Moreover, the fact that the drugs never have been distributed to their final consumers is based exclusively upon the immediate and proactive intervention of police, which is why on opinion of the District Prosecutor this cannot be considered in favour of the defendant. Also it would not be reasonable to consider that the drug addiction of the defendant speaks in his favour as a mitigating circumstance. There would be no reason to assume that B [REDACTED] I [REDACTED] would facilitate the sale of 1,800 EURO worth of drugs without expecting some benefits, either by way of cash or supply of drugs.

The Supreme Court finds that the majority of reasons as stressed by the Public Prosecutor do not necessarily lead to an increased punishment for the defendat B [REDACTED] I [REDACTED] since their aggravating character cannot be clearly established.



In particular, the 1<sup>st</sup> Instance Court was not mistaken considering the fact that the defendant had no previous convictions. In the context given, only convictions from other criminal offences can be considered as aggravating circumstances to the detriment of the defendant, whilst in the case at hand the defendant B [REDACTED] I [REDACTED] was convicted for Disturbance of Public Peace and Order, which is a Minor Offence only but not a crime.

Also the fact that the forensic analysis has failed to establish the concentration of THC in the confiscated drugs, cannot be interpreted to the detriment of the defendant. In the context given it can be left open whether or not the 1<sup>st</sup> Instance Court would have been obliged to ask for an additional forensic analysis regarding the THC concentration. At least the fact that the 1<sup>st</sup> instance Court has alleged a low concentration of THC in the drugs is in compliance with the principle of *in dubio pro reo*.

The fact that the drugs have not reached the market just because of the immediate intervention of police, of course, cannot be used as an argument in favour of the defendant. Nevertheless, it at least cannot be considered to the detriment of the defendant that in this way the results and negative effects of his deeds have been significantly diminished.

As to personal life circumstances of the defendant, in particular regarding his alleged drug addiction, agrees with the Public Prosecutor that the defendant B [REDACTED] I [REDACTED] most likely would not have facilitated the sale of 1,800 EURO worth of drugs without expecting some benefits, either by way of cash or supply of drugs. Therefore, his drug addiction cannot necessarily be considered just as mitigating circumstance, as this was done by the 1<sup>st</sup> Instance Court.

However, the Supreme Court of Kosovo agrees to the position of the District Public Prosecutor of Mitrovice/Mitrovica as laid down in the appeal, that the defendant B [REDACTED] I [REDACTED] has acted as member of a group and that for this reason his actions need to be subsumed under Article 229 paragraph 4 of the CCK, which the latter is armed with a minimum punishment of fine and imprisonment of at least three years. No extraordinarily mitigating circumstances are lined out by the 1<sup>st</sup> Instance Court in order to justify a lowering of the imposed punishment under the minimum limits, as defined by the Law.

Moreover it needs to be considered as an aggravating circumstance that the amount of distributed and confiscated drugs is more than 2 kilograms, which is not a small amount at all.

Last but not least it needs to be taken into consideration that the drug-related contributions of B [REDACTED] I [REDACTED] as a member of a group are of a quite similar weight as the ones of the defendant H [REDACTED] I [REDACTED]. This is why the Supreme Court of Kosovo finds that the relation between the punishments imposed to H [REDACTED] I [REDACTED] as one of the other co-perpetrators of the drug distribution needs to be set in relation with the punishment imposed to the defendant B [REDACTED] I [REDACTED].

The Supreme Court therefore finds that a minimum punishment of three (3) years of imprisonment pursuant to Article 229 paragraph 4 of the CCK for the contributions of B [REDACTED] I [REDACTED] keeps the balance with the same (separate) punishment as imposed to the defendant H [REDACTED] I [REDACTED].

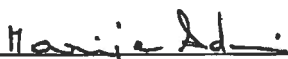
In total, it is established that the First Instance Court, in accordance with the framework of possible punishments given by the relevant laws, has imposed proper separate punishments to both, the Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances contrary to Article 229 paragraph 2 as read with paragraph 4 item i of the CCK and the Unauthorized Ownership, Control, Possession or Use of Weapons contrary to Article 328 *paragraph 2* of the CCK. Both separate punishments are within the frames provided by the respective legal provisions and the aggregate sentence is built in compliance with Article 71 of the KCCP.

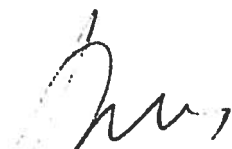
Taking also into consideration the level of social risk of the commission of criminal offenses as well as the level of responsibility of the defendant, the latter is very well served with the aggregate sentence as was imposed.

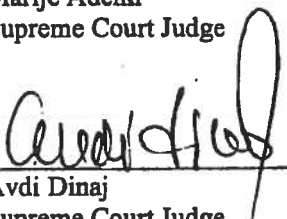
For the foregoing reasons the Supreme Court decided as in the enacting clause.

**Supreme Court of Kosovo**  
**AP.-KŽ. No. 276/2011**  
**Prishtinë/Priština**  
**28 February 2012**

**Members of the panel:**

  
\_\_\_\_\_  
Marije Ademi  
Supreme Court Judge

  
\_\_\_\_\_  
Valdete Daka  
Supreme Court Judge

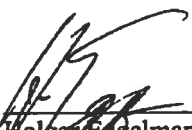
  
\_\_\_\_\_  
Avdi Dinaj  
Supreme Court Judge

  
\_\_\_\_\_  
Emine Mustafa  
Supreme Court Judge

**Presiding Judge:**

  
\_\_\_\_\_  
Gerrit-Marc Sprenger  
EULEX Judge

**Recording Clerk**

  
\_\_\_\_\_  
Holger Engelmann  
EULEX Legal Officer