

**DISTRICT COURT OF MITROVICA**  
**P. nr. 36/2010**  
**23 February 2011**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA**, in the trial panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Jonathan Welford-Carroll and Caroline Charpentier as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer in the criminal case against;

\_\_\_\_\_ and \_\_\_\_\_ charged, according to the Indictment of the Special Prosecutor PPS. Nr. 23/2010 dated 13 July 2010 and filed with the Registry of the District Court of Mitrovica on 16 July 2010, as confirmed by Ruling KA. Nr. 56/2010 on Confirmation of the Indictment dated 07 September 2010, with the following criminal offences;

- **Organized Crime**, contrary to Article 274 Paragraph (3) of the Criminal Code of Kosovo (CCK),
- **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) and Paragraph (4) Item 1) of the CCK,

\_\_\_\_\_ and \_\_\_\_\_ charged, according to the above-mentioned Indictment PPS. Nr. 23/2010, as confirmed by Ruling KA. Nr. 56/2010 on Confirmation of the Indictment dated 07 September 2010, with the following criminal offences;

- **Organized Crime**, contrary to Article 274 Paragraph (1) of the CCK,
- **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) and Paragraph (4) Item 1) of the CCK,

After having held the main trial hearing in public on 08 and 09 December 2010, 04 and 05 January 2011, and 01, 02, 03, 10, 11 and 22 February 2011, all in the presence of the accused \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, their Defence Counsel Mahmut Halimi, Adem VOKSHI (replaced by Bedri Miftari on 22 and 23 February), Kole Ramaj and Xhelal Hasani, and EULEX Public Prosecutor Adebayo Kareem, after the trial panel's deliberation and voting held on 23 February 2011, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), on 23 February 2011 pronounced in public and in the presence of all the Accused, their Defence Counsel, and the EULEX Public Prosecutor the following

## VERDICT

**The Accused** [REDACTED] no nickname, son of [REDACTED] and [REDACTED], born on [REDACTED] 1957 in [REDACTED], Kosovo, of Albanian ethnicity, resident of [REDACTED], married, father of four adult children and the fifth child age 17 living in the same household without own income, highest education high school, car mechanic with income of 300-500 Euro per month when employed, of average economic status, no previous conviction, in detention on remand since 22 February 2010;

**The Accused** [REDACTED], nickname [REDACTED], son of [REDACTED] and [REDACTED] born on [REDACTED] 1975 in [REDACTED] municipality Zhupanja, Croatia, of Bosnian ethnicity, citizen of Bosnia and Hercegovina, resident of [REDACTED] divorced, father of four children ranging from 6 months to 14 years of age, highest education elementary school, car mechanic with income of 1000 Euro per month, of average economic status, previously convicted in Croatia of Illegal Transfer of Persons Across State Border, in detention on remand since 03 February 2010;

**The Accused** [REDACTED], no nickname, son of [REDACTED] and [REDACTED] born on [REDACTED] 1991 in [REDACTED] Kosovo, of Albanian ethnicity, resident of [REDACTED], married, father of one child age 1 year, lives with parents in the same household, unemployed without own income, highest education primary school, of poor economic status, no previous conviction, in detention on remand from 03 February 2010 until 21 April 2010, since then in house [REDACTED] detention.

are

## FOUND GUILTY

- **because** between October 2009 and 03 February 2010, they, as part of an organized group, in distinguished roles took part in the transportation, distribution and selling for profit of several shipments of narcotic substances, delivered from Albania to Kosovo, then through Serbia with the destination of Bosnia and Hercegovina. The Accused [REDACTED] had a leading organizational role in the group whereby he was the coordinating link between the two unknown Albanian members of the group [REDACTED], the accused [REDACTED] and the accused [REDACTED]. The two Albanians brought marijuana in unknown quantity to the Accused [REDACTED] residence in Mitrovica, [REDACTED] where [REDACTED] and [REDACTED] measured and wrapped it in smaller packages, then put them in larger bags, and took them to the garage of the house from where two unknown male persons took and delivered them by different cars to an unknown destination. On 03 February 2010, 26.449 kgs of cannabis (marijuana) and 4.342 kgs of a light brown powder substance containing a mixture of Acetaminophen (Paracetamol) and Caffeine that can be used as mixture to Heroin and drugs of Opiate group were found. Furthermore, traces

of heroin were found on a digital scale, a sieve and a strainer confiscated from the home of [REDACTED]. The total quantity of the transported drugs remains unknown.

By doing so, the Accused [REDACTED] committed and is criminally liable for the criminal act of

**Organized Crime**, contrary to Article 274 Paragraph (3) of the Criminal Code of Kosovo (CCK) and **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) and Paragraph (4) Item 1) of the CCK;

The Accused [REDACTED] and [REDACTED] committed and are criminally liable for the criminal act of

**Organized Crime**, contrary to Article 274 Paragraph (1) of the CCK and **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) and Paragraph (4) Item 1) of the CCK.

The Accused [REDACTED], nickname [REDACTED], daughter of [REDACTED] and [REDACTED], born on [REDACTED] 1988 in [REDACTED] Bosnia and Hercegovina, resident of [REDACTED], of Bosnian ethnicity, citizen of BiH, single, with one child of 6 months of age, highest education secondary school, student with no income, supported by parents, of average economic status, no known previous conviction, in detention on remand since 03 February 2010;

is

### FOUND NOT GUILTY

- because it was not proven that she was part of the organized group that committed the criminal offence or that she participated in any way in the distribution, transportation or selling of the drugs.

Therefore, pursuant to Article 390 Item 3) of the Criminal Procedure Code of Kosovo (CPCK) the accused [REDACTED] is acquitted of the charges of

**Organized Crime**, contrary to Article 274 Paragraph (1) of the CCK and **Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances**, contrary to Article 229, Paragraph (2) and Paragraph (4) Item 1) of the CCK.

The Accused [REDACTED] is

**SENTENCED**

- to eight /8/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Organized Crime
- to three /3/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances

The aggregate punishment is determined in **ten /10/ years of imprisonment and a fine of 51.00 Euro**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The time spent in detention on remand since 22 February 2010 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The Accused [REDACTED] is

**SENTENCED**

- to seven /7/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Organized Crime
- to three /3/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances

The aggregate punishment is determined in **eight /8/ years of imprisonment and a fine of 51.00 Euro**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The time spent in detention on remand since 03 February 2010 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The Accused [REDACTED] is

**SENTENCED**

- to three /3/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Organized Crime
- to two /2/ years of imprisonment and a fine of 50.00 Euro for the criminal act of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances

**The aggregate punishment is determined** in four /4/ years of imprisonment and a **fine of 51.00 Euro**, pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The time spent in detention on remand from 03 February 2010 until 21 April 2010 and the time spent in house detention since 22 April 2010 is to be credited pursuant to Article 73 Paragraph (1) of the CCK.

The 26.449 kgs of cannabis and the 4.342 kgs of light brown powder substance containing mixture of Acetaminofenin/Paracetamol and Caffeine, the 7,530 Euro and the 230 BiH Marks seized from the Accused [REDACTED] are hereby confiscated pursuant to Article 60 Paragraph (1) of the CCK and Article 494 Paragraph (1) of the CPCK.

The 1,600 Euro seized from the Accused [REDACTED] shall be returned to [REDACTED]

The Accused [REDACTED], the Accused [REDACTED] and the Accused [REDACTED] shall reimburse their parts of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCK.

Pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subparagraphs 1 through 5 of the CPCK, the necessary expenses of the Accused [REDACTED] and the remuneration and necessary expenditures of her defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

## REASONING

### A. Procedural Background

Indictment PPS nr. 23/2010 dated 13 July 2010 and filed with the District Court of Mitrovica by SPRK Prosecutor Suad Kuraja on 16 July 2010, charged the Accused [REDACTED] and [REDACTED] with Organized Crime in violation of Article 274, Paragraph (3) of the Criminal Code of Kosovo (CCK) and Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotics in violation of Article 229, Paragraph (4), Subparagraph (1) as read with Paragraph (2) of the CCK. The Accused [REDACTED] and [REDACTED] were charged with Organized Crime in violation of Article 274, Paragraph (1) and Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotics in violation of Article 229, Paragraph (4), Subparagraph (1) as read with Paragraph (2) of the CCK. The Indictment was confirmed on 07 September 2010.

## B. Competence of the Court

Under Article 23 Item 1) i) of the CPCK, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Each of the four Accused were charged with the criminal offences of Organized Crime and Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotics. A violation of Organized Crime under both Paragraph (1) and Paragraph (3) is punishable by a minimum sentence of seven years.

Under Article 27 Paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed. The Indictment in this case alleged that the Accused committed the criminal acts in the home residence of the Accused (redacted) located in Mitrovica municipality, which lies within the Mitrovica District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

Under Article 3.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors ("Law on Jurisdiction"), EULEX Judges have jurisdiction and competence "over any case investigated or prosecuted by the SPRK." This case was investigated and prosecuted by SPRK prosecutors, and the Indictment was filed by SPRK Prosecutor Suad Kuraja. The case was heard by local judges of the District Court of Mitrovica during the pre-trial stage. On 06 September 2010, acting upon requests for EULEX Judges by Defence Counsel Kole Ramaj and Adem Vokshi, the President of the Assembly of EULEX Judges decided to assign EULEX Judges to monitor the case which was heard before a local judge during the confirmation of the indictment stage. The Indictment was confirmed on 07 September 2010 by local judge Ali Kutllovci. EULEX Judge Christine Lindemann-Proetel monitored the proceedings. On 27 October 2010, acting on requests by Defence Counsel Kole Ramaj and the SPRK, and due to the inability of the local judges to hold main trial hearings in Mitrovica District, the President of the Assembly of EULEX Judges issued a decision to assign the case to EULEX Judges in the main trial phase. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

The panel was composed of EULEX Judge Hajnalka Veronika Karpati as Presiding Judge, and EULEX Judges Caroline Charpentier and Jonathan Welford-Carroll as panel members. There were no objections by the parties to the composition of the panel.

## C. Summary of Evidence Presented

During the course of the main trial the following witnesses were heard:

- (1) KP Officer (redacted) – 08 December 2010 and 11 February 2011
- (2) (redacted) – 09 December 2010
- (3) (redacted) – 09 December 2010
- (4) (redacted) – 01 February 2011

- (5) ██████████ – 10 February 2011
- (6) KP Officer ██████████ – 11 February 2011

On 01 February 2011, the minutes of the Crime Scene Inspection held on 05 January 2011 were read into the record.

On 01 February 2011, the following documents were read into the record:

- (1) KP Report signed by Officers ██████████, ██████████ (02 February 2010)
- (2) KP List of Confiscated Items by ██████████ (03 February 2010)
- (3) KP Memorandum by Officers ██████████ (05 February 2010)
- (4) KP Report on the Crime Scene Inspection (signed by Officer Arta Ferati on 04 February 2010)
- (5) KP Information Report signed by Officers ██████████ (28 May 2010)
- (6) SPRK Order to IPKO for metering of telephone numbers (23 March 2010)
- (7) Order for Metering of SMS Messages of the Suspects issued by Pre-Trial Judge Ferit Osmani (08 April 2010)
- (8) KP Memo to SPRK requesting issuance of order for metering of phone calls re phone number ██████████ (24 February 2010)
- (9) KP Official Memorandum by Officer ██████████ (12 April 2010) with metering record provided by IPKO
- (10) KP Official Memorandum by Officers ██████████ (23 April 2010) with metering record provided by IPKO
- (11) KP Report to the SPRK by Officers ██████████ (17 June 2010)
- (12) KP Criminal Examination Report (15 June 2010)
- (13) KP Report of expert Sokol Dedaj (24 June 2010)
- (14) Photo album by KP Officer Besim Osmani
- (15) KP report to the Directorate of Organized Crime by Officer ██████████ (24 February 2010)
- (16) KP Police Officer's Report by Officer ██████████ (05 March 2010)
- (17) Record of SMS text messages to/from Samir Pezerovic (22 April 2010)
- (18) Divorce verdict regarding ██████████ and his ex-wife
- (19) Apartment Lease (01 January 2010)
- (20) Statement of ██████████ and ██████████ regarding the purchase of a vehicle
- (21) Birth certificate of ██████████
- (22) Record of the Examination of Witness ██████████ (24 May 2010)
- (23) KP Police Report by Officer ██████████ regarding search of vehicle (19 February 2010)

On 11 February 2011, the following documents were read into the record:

- (24) SPRK Order to Covert Measures - Metering of Telephone Calls and SMS Messages regarding numbers belonging to ██████████ and ██████████ (07 April 2010)
- (25) SPRK Order to Return Items (22 June 2010)

On 22 February, the following documents were read into the record:

(26) KP Forensic Laboratory Additional Expertise Report (09 February 2011)

During the main trial session on 01, 02, 03 and 10 February 2011, the four Accused gave statements and answered questions.

#### D. Evaluation of Presented Evidence

1. [REDACTED]

On 08 December 2010, [REDACTED] pled guilty only to the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotics. In fact, it was [REDACTED] who voluntarily went to the police and confessed his involvement in drugs as well as implicating the other three co-accused. This occurred on 02 February 2010, at which time [REDACTED] agreed with the KP that he would contact the police the next time that the persons involved in the drug business brought drugs to his home. On 03 February 2010, [REDACTED] and [REDACTED] came to the [REDACTED] house and [REDACTED] called the police. All three were then arrested.

##### a. [REDACTED] s Prior Statements

After his arrest, [REDACTED] was interviewed twice by KP Officers and twice by SPRK Prosecutors.

On 04 February 2010, in the presence of his defence counsel [REDACTED] [REDACTED] stated to KP:

- On 01 February, [REDACTED] went voluntarily to the police to confess his involvement in drugs. He informed them that five kg of marijuana were in his house at that time which had been brought there by [REDACTED] [REDACTED] wife [REDACTED], and two Albanians named [REDACTED] and [REDACTED].
- During the previous three months, these persons had continuously brought marijuana and mix to the house and paid [REDACTED] for keeping it there. In total, approximately 500 kg of drugs were brought to his house and then transported to Serbia and Bosnia during this period. The Albanians transported the drugs in a Mercedes while [REDACTED] and [REDACTED] used a green Passat. [REDACTED] would perform the mixing of heroin using a sieve. [REDACTED] had also brought a digital scale for the purpose of measuring the drugs.
- On 03 February 2010, at approximately 17:30, [REDACTED] and [REDACTED] brought drugs in two suitcases to the house.

On 22 February 2010, in the presence of his defence counsel [REDACTED] [REDACTED] stated to KP:

- Three days after his father, [REDACTED], went abroad in late September/early October 2009, [REDACTED] convinced him to begin dealing illegal drugs. [REDACTED] would give [REDACTED] 30-50 euro in return for [REDACTED] making



- care of and keeping drugs in his home residence. Drugs were brought to the [redacted] house by two Albanians named [redacted] and [redacted] and [redacted]. [redacted] was "the main person" in the group.
- [redacted] and [redacted] would bring marijuana, and [redacted] was always present. [redacted] would drive his Jeep in front of the Albanians, who drove in a Mercedes with Albanian license plates. The drugs were kept in the trunk of the car. When they parked at the [redacted] house, [redacted] and [redacted] would carry the drugs inside while [redacted] would not enter.
  - [redacted] and [redacted] would bring heroin and prepare it at the [redacted] house; they would both weigh the substance, [redacted] would mix it, and then both of them would package it. When a new shipment of drugs was arriving, [redacted] would phone [redacted] and say "Get ready, tonight I will come and pick you up to play football." Then [redacted] would meet [redacted], [redacted], and the Albanians at coffeebar *Rus*.

On 12 March 2010, SPRK Prosecutor Ismet Ujkani interviewed [redacted] in the presence of his defence counsel [redacted]. [redacted] invoked his right to remain silent.

On 24 April 2010, SPRK Prosecutor Suad Kuraja interviewed [redacted] in the presence of defence counsel [redacted] and [redacted] stated the following:

- [redacted] proposed that [redacted] begin dealing in drugs at the end of 2009 when [redacted]'s father, [redacted], was abroad.
- The first time, [redacted] brought [redacted], [redacted], and two Albanians named [redacted] and [redacted] to [redacted]'s home. Before coming to the house, [redacted] phoned [redacted] and said "Get ready as we will go to play football" to alert him of their arrival. [redacted] and [redacted] came to the house in [redacted]'s Jeep while the Albanians drove a Mercedes with Albanian license plates. [redacted] took the drugs from the trunk of the Mercedes, [redacted] carried a small bag, and everyone entered the house except for [redacted] who drove away without entering. The bags contained approximately 30 kg of marijuana in packets with isolating adhesive tape. All five of them took the packets out of the bags. [redacted] and [redacted] opened the packets and repackaged them into smaller packets for approximately one hour. [redacted] and [redacted] counted the packets. [redacted] called [redacted] and told him to come and pick them up. After five minutes, [redacted] saw [redacted] drive up to his house in his [redacted] and [redacted] and [redacted] got into their Mercedes and followed [redacted] away. [redacted] and [redacted] finished the packaging and [redacted] put the packages back into the bags. [redacted] made a phone call to [redacted] and spoke in Bosnian language. They left the bags in the room and [redacted] locked the door. They went outside and after 7-10 minutes [redacted] arrived in his Jeep. [redacted] and [redacted] left with [redacted] in his Jeep. [redacted] was paid 50 euro by [redacted].
- [redacted] was the main person in the drug operation. [redacted] contacted [redacted] and informed him and [redacted] always acted according to [redacted] instructions. [redacted] also informed [redacted] and [redacted] told [redacted] that when [redacted] needed drugs, [redacted] called the people from Albania and ordered the drugs. Drugs were brought to [redacted]'s house on approximately ten different occasions, and each time [redacted] paid [redacted] 30-50 euro.
- The drugs were removed from [redacted]'s house by unknown persons who were directed by [redacted]. These persons would arrive in different vehicles and enter

the garage of ( )'s house. ( ) would bring the bags of drugs from the locked room into the garage and they would put it in the trunk of the car. Then the unknown persons would drive away and ( ) would phone ( ) to pick up himself and ( ) from ( )'s house. ( ) informed ( ) that the drugs would go through Serbia to Bosnia.

- ( ) brought heroin to ( )'s house on several times. ( ) was together with ( ) on almost all these occasions. ( ) drove a green Passat with foreign license plates.
- In total, approximately 500 kg of marijuana and heroin was brought to the ( ) home. ( ) bases this approximation on the measurements taken when ( ) and ( ) weighed the drugs.
- On the evening of 03 February 2010, ( ) phoned ( ) and said "Get ready because after 2-3 days I will come to play football." That night ( ) brought ( ) and ( ) to ( ) house, who brought with them marijuana. They carried it into the locked room, where there was already some marijuana which had been brought earlier by ( ) and ( ). They went downstairs where the rest of the ( ) family was present. At this time, ( ) phoned the police, as had been previously agreed.
- ( ) had decided to go to the police and confess because he felt he was sinking deeper into the issue of drugs and he wanted to get out of the business. His first child was born one week after ( ) was arrested.

While there may be some minute differences in these statements, they are in general very consistent and detailed.

#### b. ( ) Testimony

During the main trial on 03 and 10 February 2011, when ( ) gave a statement to the Court and answered questions he gave a different account of the facts. ( ) recanted part of his prior statements while affirming the rest. ( ) now alleged that 1) ( ) had no involvement in the drugs whatsoever, 2) there had been only one instance when drugs were brought to his house, and 3) KP Officers ( ) coerced him into making false statements in his prior interviews.

In detail ( ) testified that:

- ( ) was not involved with the drugs. ( ) had no dealings with ( ) other than an occasion phone call from ( ) asking about his father or wanting to speak to his brother ( ).
- Although ( ) could not recall how he met ( ) for the first time, he remembered seeing him in a café once or twice, and also playing "gur". He knew ( ) as the person who was always with ( ).
- After his father, ( ), had left Kosovo to go abroad, ( ) saw ( ) and ( ) with two unknown persons and they all had coffee together. The two persons introduced themselves as ( ) and ( ) and said they were from Albania. They ask him if he was interested in finding work and then offered to pay him money in exchange for leaving some things in his house. They told him they would leave "grass" and he said they could put it in a room in the second floor of his family home. It was agreed

that [redacted] and [redacted] would call [redacted] in two or three days to bring the grass and to give him some money. [redacted] thought that the "grass" was tea, not drugs, and he was not suspicious about it. They did not agree on how much they would pay [redacted] but [redacted] and [redacted] told him "you will make money out of this deal".

- Two or three days later, one of the Albanians called [redacted] and invited him to coffee. While drinking coffee, [redacted] and [redacted] informed him that they brought the grass and asked him again if he was willing to keep it in his house. They also instructed him that "you shouldn't tell anyone". [redacted] agreed and they drove to his house in the car belonging to the Albanians. They took two or three large black bags out of the trunk of the car which were filled with the grass. [redacted] led them into the house and they put the bags in a room on the second floor. [redacted] locked the door and they all went together back into the city in order to purchase a digital scale, bags, foils and gloves. The Albanians also asked for knives which [redacted] gave to them. The same night, they returned to the room in order to "pack the tea". They weighed it and packaged it in bags wrapped with foils. Then they paid [redacted] 50 euro and told him that either they or [redacted] would pick it up in after a few days. They left and [redacted] locked the room.
- The bags of "tea" remained in the locked room for approximately four months, during which time [redacted] did not have contact with [redacted] or [redacted].
- On 02 February 2010, [redacted] went to the police and spoke with KP Officer [redacted]. He informed Officer [redacted] about the bags of drugs in his house.
- [redacted] came to his house with [redacted] on the evening of 03 February 2010 in order to pick up the bags of drugs. [redacted] had not had any contact with them since they had coffee together before [redacted] and [redacted] brought the bags to the house. [redacted] phoned the police, as had been previously agreed, and the police came and arrested [redacted] and [redacted] that night.
- There was never 500kg of drugs in his house, but KP Officers [redacted] coerced him to say this in his previous statements.

The panel found that the information provided by [redacted] in his prior statements to police and the prosecutor was the full and truthful account, and that the new version which he presented to the Court during his testimony was not credible.

[redacted]s first new assertion that [redacted] had no involvement with the drugs

With respect to his first new assertion – that [redacted] was not involved at all in the drugs and that [redacted] had very limited contact with him during the months in question – this is neither believable nor supported by the other witness testimonies and the documentary evidence in the case file.

KP Officer [redacted] testified that [redacted] first mentioned the name [redacted] after having given a statement to the police on 04 February 2010. This was not contained in the Minutes of the Interview Suspect because it was stated after the interview had already been completed and [redacted] did not want to reopen the interview and give further statements because he had become concerned about his security.

Therefore the KP verbally informed the Public Prosecutor about this new information.<sup>1</sup>

This was corroborated by witnesses [REDACTED] and [REDACTED]. KP Officer [REDACTED] testified that [REDACTED] first mentioned the name [REDACTED] after they had concluded the formal suspect interview. Another KP Officer who was present had known that [REDACTED] was in fact [REDACTED] and the KP informed the Prosecutor verbally about this new information.<sup>2</sup> [REDACTED] testified that he was present at the 04 February interview as [REDACTED]. He recalled that after the interview had finished, [REDACTED] spoke with a KP Officer named [REDACTED] however [REDACTED] did not overhear the content of their conversation.<sup>3</sup> According to the minutes of the suspect interview, KP Officer [REDACTED] was present.

While for the reason given by the KP officer, the Minutes of the Suspect Interview dated 04 February 2010 do not mention either '[REDACTED]' or '[REDACTED] Ai', other documentary evidence supports the testimonies of the KP officers and [REDACTED]. On 22 February 2010, SPRK issued a request to Dubrava Detention Center to allow KP Officers to question [REDACTED] again. A KP Report by Officer [REDACTED] dated 24 February 2010 states that after [REDACTED] was interviewed on 04 February, he said that [REDACTED] was involved in the drugs and this was the reason that the police went to interview [REDACTED] a second time on 22 February 2010 in Dubrava Detention Center. Before the Court, Officer [REDACTED] confirmed that the reason for the request to Dubrava was to obtain further information from [REDACTED] about [REDACTED].<sup>4</sup>

Additionally, while there is no evidence that [REDACTED] was coerced by KP officers to make false statements against [REDACTED] (which is discussed in detail below), there is indeed evidence that [REDACTED] was influenced by the son of [REDACTED] to change his story and exonerate [REDACTED]. According to the KP Report to SPRK Prosecutor Suad Kuraja dated 17 June 2010, Officers [REDACTED] went to speak to [REDACTED] and were informed that he had been visited at his home by [REDACTED] (son of Accused [REDACTED]) and another person in the presence of his attorney at that time, [REDACTED]. [REDACTED] and his father [REDACTED] told KP that [REDACTED] and the other person "suggested to [REDACTED] that he alter his statement given earlier" with regard to the incrimination of [REDACTED]. On 10 February 2011, [REDACTED] was called to testify before the court. Also [REDACTED] answered specific questions about the meeting which occurred at the [REDACTED] house. [REDACTED] testified that the conversation during the meeting concerned the responsibility of [REDACTED]; [REDACTED] stated that his father [REDACTED] was innocent, [REDACTED] learned for the first time that it was [REDACTED] who had reported the case to the police, and the parties discussed having [REDACTED] change his statement. [REDACTED] and [REDACTED] then asked [REDACTED] to submit a motion to the SPRK for [REDACTED] to be interviewed again for this purpose. [REDACTED]

<sup>1</sup> Record of the Main Trial, 08 December 2010, p. 16-17, 19-20; See also Minutes from Interview of the Suspect, KP Regional Section for Investigation of Narcotics, 04 February 2010.

<sup>2</sup> Record of the Main Trial, 11 February 2011, p. 13.

<sup>3</sup> Record of the Main Trial, 10 February 2011, p. 15.

<sup>4</sup> Record of the Main Trial, 08 December 2010, p. 21.

<sup>5</sup> Attorney [REDACTED] was appointed *ex officio* and represented [REDACTED] from his arrest until the Confirmation Hearing, at which point attorney Xhelal Hasani was appointed *ex officio*.

█████ filed this request with SPRK on 16 June 2010<sup>6</sup>, however the request was refused.

Furthermore, █████'s explanation of why he first incriminated █████ is not credible. During his testimony, █████ claimed that he had earlier incriminated █████ because he had asked █████ to engage attorney █████ as his defence counsel and █████ was not able to do this.<sup>7</sup> The Court does not find this explanation credible. Both █████ and █████ testified that █████ was a long-time friend of the family, and █████'s sister was the █████ neighbor.<sup>8</sup> █████ also testified that he knew █████ very well.<sup>9</sup> In view of the tight family bonds which exist between family friends in Kosovo, and in light of the evidence of pressure placed on █████ to change his story, it is simply not believable that █████ would be motivated to incriminate a long-time family friend in such serious criminal allegations by the mere fact that this friend was unable to facilitate the hiring of █████ as his defence counsel.

The Court also notes that there is evidence establishing that there was a significant amount of phone contact between █████ and █████ testified that he had no dealings with █████ and that █████ would phone sometimes but only to ask about his father, █████ or to speak to his brother █████. Yet the records on metering of phone calls between █████ and █████ show that there was indeed a great deal of contact between the two Accused during the critical period. There was a total of 62 calls between █████ and █████ on their mobile phones in the two month period before █████ arrest, during which time █████ was out of Kosovo.<sup>10</sup> While this does not evidence criminal behavior in and of itself, it does negate █████'s testimony regarding the limited amount of contact he had with █████.

*█████'s second new assertion regarding the amount of drugs involved*

With regard to the second new assertion in the testimony of █████ – that there had only been one instance when drugs were brought to his house – the Court finds this assertion also not to be credible.

█████ consistently stated in his prior interviews and his testimony that the first time drugs were brought into his house was at the end of September or the beginning of October in 2009, when his father █████ left Kosovo for Switzerland. It was established by the testimonies and documentary evidence that █████ went to the police to report the drugs approximately four months later, on 02 February 2010.

To accept █████'s new assertion, the Court would have to believe that two Albanian persons whom █████ had just met brought over 26 kg of marijuana to his house and left it there for four months without any contact between █████ and the Albanians or any of the co-Accused. Then, on 03 February 2010, without any prior notice, █████

<sup>6</sup> Submission dated 16 June 2010, Prosecutor's Binder III-1, p. 221 (in English).

<sup>7</sup> Minutes of the Main Trial, 03 February 2011, p. 17.

<sup>8</sup> Minutes of the Main Trial, 09 December 2010, p. 7-8 (testimony of █████); Minutes of the Main Trial, 03 February 2011, p. 30 (testimony of █████).

<sup>9</sup> Minutes of the Main Trial, 01 February 2011, p. 18.

<sup>10</sup> IPKO metering of phone calls made by and received on mobile number █████ (belonging to █████) from 08 December 2009 until 03 February 2010.

[redacted] and [redacted], who do not speak or understand the Albanian language, turned up at his house out of the blue in order to pick up those same drugs. It is simply not credible that persons involved in the drug trade would abandon this amount of marijuana in the house of a virtual stranger for several months.

According to [redacted]'s prior statements, there were several occasions when drugs were brought into his house and taken out of his house, and he estimated that the total drugs amounted to approximately 500 kg. [redacted] gave a detailed description of how the drugs were picked up from his house by unknown persons who would drive into his garage and put the drugs in the trunk of their car.

Furthermore, as the only drug which was found and confiscated from the [redacted] house on 03 February 2010 was marijuana, [redacted]'s new testimony does not explain how traces of heroin were found on the digital scale, plastic sieve and metal strainer which were also confiscated from the room where the drugs were kept.<sup>11</sup> The forensics evidence proves that there had been drugs – specifically heroin – brought to the [redacted] house on at least one other occasion.

Therefore, the panel found that drugs were brought to the [redacted] house on more than one occasion. However, neither the actual number of occasions nor the total amount of drugs which transited through the house could be determined.

*[redacted] third new assertion that the police pressured him to make false statements*

Lastly, with regard to the third new assertion by [redacted] – that he was coerced into making false statements by the police – both KP Officers underwent rigorous questioning before the Court regarding whether either of them had exerted any pressure on [redacted] during any of the KP interviews, either to incriminate any particular person or to exaggerate the amount of drugs, and all these questions were answered in the negative.<sup>12</sup> The Court found the Officers to be credible. In addition, [redacted] was represented by defence counsel [redacted] at all the prior interviews before police and prosecution. [redacted] confirmed in his testimony that he was present at all such times and that [redacted] was not under any pressure.<sup>13</sup> The Court is satisfied that the KP Officers did not put any pressure or influence on [redacted] to make any of the statements he gave during his police interviews.

### **c. Conclusions Regarding [redacted]'s Statements**

For all of the above reasons, the Court finds that the prior statements of [redacted] given on 04 and 22 February 2010 and on 24 April 2010 represent the accurate account of events. The testimony provided live before the Court shall be taken as fact only insofar as it corroborates the prior statements. The new assertions made by [redacted] in his testimony shall be disregarded.

<sup>11</sup> KP Forensics Lab, Additional Expertise Report, 09 February 2011.

<sup>12</sup> Record of the Main Trial, 11 February 2011, p. 2-4, 7 (testimony of [redacted]), 10-12 (testimony of [redacted]).

<sup>13</sup> Record of the Main Trial, 10 February 2011, p. 10-11.

## 2. Evidence Corroborating [REDACTED] Statements

The existence and structure of an organized criminal group which possessed, transported and distributed narcotics for profit was explained in detail by [REDACTED] in his prior statements and live testimony. He provided the Kosovo Police and the Prosecution with the names of the members of the group and described the roles of each member, the process in which narcotics were transited through his home in Mitrovica, and the overall goal of the group.

[REDACTED]'s statements are corroborated by the phone metering records, the narcotics and narcotics paraphernalia which were confiscated from the [REDACTED] house on 03 February 2010, and the forensics expertises.

The metering records show that there was constant phone contact between [REDACTED] and [REDACTED] and between [REDACTED] and [REDACTED] from December 2009 until the arrests on 03 February 2010. [REDACTED] was the link between [REDACTED] and unknown members of the group from Albania, and each member of the group would maintain phone contact with [REDACTED] and not with each other. The large number of calls – 127 calls between [REDACTED] and [REDACTED] and 62 calls between [REDACTED] and [REDACTED] over a period of 52 days – could not be reasonable explained as casual contact or betting tips.

In addition, there emerges a pattern of phone calls during certain days which provide support for [REDACTED]'s testimony that [REDACTED] organized the delivery of drugs to his home, contacted [REDACTED] to process the drugs there, and coordinated the pick up of the drugs. For example, on 23 December 2009 the following calls were made at the indicated times:

11:06:49	[REDACTED] calls [REDACTED]
11:07:24	[REDACTED] calls [REDACTED]
11:13:28	[REDACTED] calls [REDACTED]
11:15:21	[REDACTED] calls [REDACTED]
11:26:24	[REDACTED] calls [REDACTED]
12:48:35	[REDACTED] calls [REDACTED]
13:25:06	[REDACTED] calls [REDACTED]
15:31:33	[REDACTED] calls [REDACTED]
15:40:13	[REDACTED] calls [REDACTED]
15:42:24	[REDACTED] calls [REDACTED]
15:42:34	[REDACTED] calls [REDACTED]
15:49:27	[REDACTED] calls [REDACTED]
15:52:52	[REDACTED] calls [REDACTED]
16:32:46	[REDACTED] calls [REDACTED]
17:55:27	[REDACTED] calls [REDACTED]
17:55:28	[REDACTED] calls [REDACTED]
18:12:16	[REDACTED] calls [REDACTED]
18:40:39	[REDACTED] calls [REDACTED]
18:49:02	[REDACTED] calls [REDACTED]
19:46:49	[REDACTED] calls [REDACTED]
19:47:21	[REDACTED] calls [REDACTED]
22:02:22	[REDACTED] calls [REDACTED]
22:03:23	[REDACTED] calls [REDACTED]

It is clear from the timings of the calls that on that day, [redacted] was coordinating something between [redacted] and [redacted]. This pattern can also be seen on other days when [redacted] would receive one phone call from one member of the group and then would immediately contact another member of the group. For example, on 22 December 2009 [redacted] called [redacted] at 21:52:50 and then [redacted] called [redacted] at 21:56:26; On 14 January 2010 [redacted] calls [redacted] at 20:02:59 and then [redacted] calls [redacted] at 20:04:36; On 15 January 2010 [redacted] calls [redacted] at 08:19:03 and then [redacted] calls [redacted] at 08:19:50 later the same morning [redacted] calls [redacted] at 08:40:32 and then [redacted] calls [redacted] at 08:45:43.

Furthermore, 26.449 kgs of cannabis (marijuana) and 4.342 kgs of a light brown powder substance were confiscated from the room on the second floor of the house.<sup>14</sup> The powder substance was found to be a mixture of Acetaminophen (Paracetamol) and Caffeine, which is known to be used to mix with heroin and opiates.<sup>15</sup> Police also confiscated a digital scale, two knives, a grill fork, a pair of scissors, a screwdriver, a plastic sieve and a metal strainer from the same room. Traces of marijuana containing THC were found on the digital scale, knives, fork, scissors and screwdriver, while traces of heroin were found on the sieve and strainer.<sup>16</sup>

3. [redacted]

On 22 February 2010, [redacted] was interviewed by KP Officers [redacted] and invoked his right to remain silent. However, on 13 April 2010, in the presence of his defence counsel Mahmut Halimi, [redacted] stated the following to the SPRK Prosecutor:

- He had known [redacted] for 3-4 years, having met him in Tuzla, BiH. [redacted] arrived in Kosovo with [redacted] five or six months prior to his arrest because he was running away from his first wife. [redacted] visited [redacted] twice in his apartment in Pristina; The first time with his son to have coffee and the second time in January 2010 with [redacted] to discuss obtaining a Croatian visa for [redacted]. He would often meet [redacted] and [redacted] in order to play cards and gamble, but he "rarely" had telephone conversations with [redacted].
- [redacted] had no contact in person or via the phone with [redacted], and had never been to the [redacted] house.
- [redacted] had no contacts in person or via the phone with any persons in Albania.
- [redacted] had only one phone, with the number [redacted].
- On 03 February 2010, [redacted] was at Tiffany restaurant when [redacted] called him [redacted] and [redacted] then came to Tiffany. [redacted] insisted that [redacted] take them to [redacted]'s house to discuss the Croatian visa and that he

<sup>14</sup> KP Criminal Examination Report, 15 June 2010.

<sup>15</sup> KP Report of Expert Sokol Dedaj, 24 June 2010.

<sup>16</sup> KP Forensic Laboratory Additional Expertise Report, 09 February 2011.



drive them there with his new vehicle. [REDACTED] dropped them off 50 meters from the house and did not get out of the car or enter the [REDACTED] house.

- On 05 or 06 February 2010, [REDACTED] met [REDACTED] in Café Lori and informed him that [REDACTED] had been arrested and [REDACTED] had been caught with drugs in his house. He asked [REDACTED] to engage lawyer Mahmut Halimi as a defence counsel for [REDACTED]. [REDACTED] declined to assist [REDACTED] and told him never to call him again. This conversation occurred in front of [REDACTED].

On 01 February 2011, [REDACTED] testified before the Court by giving a short statement and answering questions. In sum, he testified that:

- The number [REDACTED] belongs to [REDACTED] and not [REDACTED].
- During the period of October 2009 to February 2010, he only spoke on the phone to [REDACTED] once or twice in January 2010. Otherwise, he only spoke on the phone to [REDACTED]'s brother, [REDACTED], or to [REDACTED]. He had personal contact with [REDACTED] only once when he gave him a lift in his car some time in December 2009.
- Although he admitted having other mobile phone numbers in the past, he could only recall the number [REDACTED].
- Hazir has spoken regularly to persons in Albania since 1999.
- With regard to his contact with [REDACTED], [REDACTED] first testified that during the year 2009-2010, he was only in phone contact with [REDACTED] during [REDACTED].<sup>17</sup> When confronted with metering records from the phone company which showed phone calls between his number and [REDACTED]'s number, he testified that they spoke regularly on the phone to discuss betting and gambling.<sup>18</sup>
- At around noon on 03 February 2010, [REDACTED] and [REDACTED] met [REDACTED] at Tiffany Restaurant. [REDACTED] wanted to discuss the visa issue with [REDACTED]. [REDACTED] called [REDACTED] some time between 14:00-16:00 hrs. [REDACTED] told him that he was at home and wanted to speak to [REDACTED]. [REDACTED] drove [REDACTED] and [REDACTED] to [REDACTED] house in his own car while they left their car at Tiffany because [REDACTED] wanted to see [REDACTED] new car. This is the only occasion when [REDACTED] as taken [REDACTED] and [REDACTED] to the house. [REDACTED] dropped them off on the road where [REDACTED] was waiting outside. He learned that [REDACTED] and [REDACTED] had been arrested when [REDACTED] phoned him around 18:00-19:00 hrs on that day.
- After the three other co-accused had been arrested, [REDACTED] contacted [REDACTED] and asked him to engage [REDACTED] as defence counsel for [REDACTED] because [REDACTED] was arrested with [REDACTED]'s friend [REDACTED]. [REDACTED] told him that he could only pay to engage attorney Halimi for one day. [REDACTED] witnessed this conversation. Later that same day, in Café Lori,

<sup>17</sup> Record of the Main Trial, 01 February 2011, p. 21.

<sup>18</sup> Record of the Main Trial, 02 February 2011, p. 3.

stold that he had been in contact with KP Officer [REDACTED] and warned him that the police would search his house on Monday.

The Court found both the prior statement and the testimony of [REDACTED] not to be credible and to be inconsistent with each other and with the documentary evidence in the case file.

It is clear that during the investigation and the trial, [REDACTED] was attempting to hide or downplay his phone contacts with the other co-Accused. When [REDACTED], as interviewed by the SPRK, he claimed that he only had one mobile phone ([REDACTED]).<sup>19</sup> When confronted with this during his testimony, he claimed he could not remember any of his other mobile phone numbers and that he had lost the phones "somewhere in the car".<sup>20</sup> However, IPKO records show that [REDACTED] was in possession of at least three mobile phone numbers, all of which he was using regularly during the months prior to the arrests.

The phone records show that there was a significant amount of contact between [REDACTED] and the co-Accuse [REDACTED] and [REDACTED].

As noted above, there were 62 phone calls between [REDACTED] and [REDACTED] during the approximate 2-month period prior to [REDACTED]'s arrest. During the month of December 2009 alone, there were 31 calls between [REDACTED] and [REDACTED].<sup>21</sup> This directly contradicts [REDACTED]'s prior statement that he did not have any contact with [REDACTED], and his testimony before the Court that he spoke to [REDACTED] on the phone only once or twice. When questioned further about these calls, [REDACTED] testified that he was calling [REDACTED] and [REDACTED] and that the number belonged to [REDACTED].<sup>22</sup> However, it was established that during that period (until 15 January 2010), [REDACTED] was out of Kosovo in Switzerland.<sup>23</sup>

The phone records also show that during the time period of 13 December 2009 to 03 February 2010 (the date when Samir was arrested), there were 127 phone calls between [REDACTED] and [REDACTED].<sup>24</sup> This directly contradicts [REDACTED]'s prior statement that he "rarely" had telephone conversations with [REDACTED]. When confronted during his testimony with the inconsistency and the metering records, [REDACTED]'s explanations were unsatisfactory. [REDACTED] was questioned extensively by Judge Jonathan Welford-Carroll regarding the phone calls between him and [REDACTED] during the period of December 2009 to January 2010.<sup>25</sup> [REDACTED] claimed that he spoke to [REDACTED] on the phone during this time only about gambling and

<sup>19</sup> Record of Hearing of Defendant [REDACTED], PRK Prosecutor Suad Kuraja, 14 April 2010, Prosecutor binder II, p. 238.

<sup>20</sup> Record of the Main Trial, 01 February 2011, p. 19-21.

<sup>21</sup> IPKO metering of phone calls made by and received on mobile number [REDACTED] (belonging to [REDACTED]) from 08 December 2009 until 03 February 2010.

<sup>22</sup> Record of the Main Trial, 02 February 2011, p. 8.

<sup>23</sup> Record of the Main Trial, 09 December 2011, p. 7 (testimony of [REDACTED]); Record of the Main Trial, 03 February 2011, p. 19 (testimony of [REDACTED]); Report of Border Police Station regarding deportation of [REDACTED] from Switzerland to Kosovo dated 15 January 2010 at 15:20.

<sup>24</sup> IPKO metering of phone calls made by and received on mobile number [REDACTED] (belonging to [REDACTED]) from 13 December 2009 until 03 February 2010.

<sup>25</sup> Record of the Main Trial, 02 February 2011, p. 19-21.

that they "normally did this in the afternoon".<sup>26</sup> However, the IPKO metering records show that there were calls at all times of the day and night, including as early as 08:19 on 15 January 2010 and as late as 01:39 on 16 December 2009 and 01:44 on 23 December 2009.<sup>27</sup>

The Court also noted the contradiction in [redacted] statements regarding whether he had made international phone calls to a number in Albania. During his interview with the Prosecutor, [redacted] claimed that he had no personal or phone contact with any person in Albania. During his testimony, he stated the opposite - that he had regular phone contact with persons living in Albania. When questioned about these phone calls, [redacted] stated that during his statement to the Prosecutor he did not remember that he regularly called Albania<sup>28</sup>; that the number he called belonged to his friends, [redacted] (although he could not recall the phone number)<sup>29</sup>; and that he called his friends in Albania only during holidays and birthdays<sup>30</sup>. Yet the phone metering records show that [redacted] made and received a total of 63 phone calls to several different phone numbers in Albania during the period of 14 December 2009 to 03 February 2010. Furthermore, witness [redacted] testified that the family had only one mobile number - [redacted] - and one landline number ending in [redacted]. Neither of these numbers appeared on the metering records.<sup>31</sup> [redacted] also testified that they would receive 3-4 calls per year from [redacted].

[redacted] was also attempting to downplay his relationship with [redacted]. In his prior statement he claimed that he had "never" been to the [redacted] home. During his testimony he stated that he was not friends with [redacted], but that he knew the [redacted] family only as the neighbors of his sister. However, [redacted] testified that [redacted] and [redacted] has been friends for 5-6 years, that [redacted] had helped [redacted] go abroad in the past, and that [redacted] had come over to their house many times. In addition, the phone metering records show that there were 40 phone calls between [redacted] and [redacted] during the three weeks between 15 January 2010 (when [redacted] was deported back to Kosovo) and the arrests on 03 February 2010.<sup>33</sup>

For all these reasons, the Court found the statements and testimony of [redacted] not to be credible.

#### 4. [redacted]

[redacted]'s testimony before the Court on 02 February 2011 and his prior statement to the Prosecutor on 13 April 2010 are fairly consistent regarding his following version of the facts:

<sup>26</sup> Record of the Main Trial, 02 February 2011, p. 19.

<sup>27</sup> IPKO metering of phone calls made by and received on mobile number [redacted] (belonging to [redacted]).

<sup>28</sup> Record of the Main Trial, 02 February 2011, p. 10.

<sup>29</sup> Record of the Main Trial, 01 February 2011, p. 20.

<sup>30</sup> Record of the Main Trial, 02 February 2011, p. 11.

<sup>31</sup> Record of the Main Trial, 01 February 2011, p. 5-6.

<sup>32</sup> Record of the Main Trial, 01 February 2011, p. 8.

<sup>33</sup> IPKO metering of phone calls made by mobile number [redacted] (belonging to [redacted]) and by mobile number [redacted] (belonging to [redacted]).

- [redacted] met [redacted] approximately five years before in Bosnia and Herzegovina. When he came to Kosovo with [redacted] in August or September of 2009, [redacted] met with [redacted] and they became friends. They had phone contact during which they discussed card games and gambling. These conversations could consist of three, four or five consecutive phone calls. [redacted] and [redacted] would gamble together almost daily, usually starting around 13:00 and lasting sometimes until midnight, 01:00, or even 03:00. [redacted] was present only once or twice during the gambling, and most of this time she stayed in their hotel in Mitrovica.
- [redacted] and [redacted] moved to Pristina around the first week of January 2010. [redacted] therefore, he stopped going to betting shops with [redacted] by 03 January 2010. [redacted] came to their flat in Pristina on two occasions in mid-January 2010; once to ask for payment of the gambling debt which [redacted] owed [redacted] and a few days later with [redacted] to inquire about obtaining a warranty letter from [redacted] in order to get a visa for Croatia.
- On 03 February 2010, [redacted] and [redacted] went to Mitrovica in order to pay their car insurance. They agreed spontaneously to meet [redacted] at Tiffany Restaurant. [redacted] asked [redacted] to go to the home of [redacted] in order to discuss the visa issue. They went in [redacted] car as [redacted]'s request and left their car parked at Tiffany. They arrived at the [redacted] home around 17:40 and [redacted] dropped [redacted] and [redacted] off in the street and drove away.
- Inside the [redacted] home, [redacted] spoke to [redacted] about the visa issue. Afterwards, [redacted] asked [redacted] whether he was interested in drugs. [redacted] said he was not, and [redacted] then asked if he knew someone in Bosnia who would be interested in drugs. [redacted] again said no and then decided to leave. He called a taxi, however the police arrived and arrested him before they could leave.

For the same reasons which the Court did not believe [redacted]'s explanation that the large number of phone calls between himself and [redacted] consisted of discussions on betting, the Court also does not find [redacted]'s statement credible. [redacted] claims that the numerous phone calls between himself and [redacted] were all about gambling. Yet this is simply not realistic if the Court accepts [redacted]'s own testimony that he gambled together with [redacted] almost daily, from 13:00 until late night. If the two men were together gambling in the betting shops during all this time, why was it necessary for them to phone each constantly and at all times of day and night as indicated on the phone metering records?

Furthermore, as explained above, the Court found [redacted]'s admissions incriminating himself, [redacted] and [redacted] to be truthful. [redacted]'s statements are corroborated by other evidence, which is discussed in detail in section E below. [redacted]'s testimony contradicts [redacted]'s statements without offering any credible explanation or support for his version of the facts.

[redacted] also contradicts [redacted]'s account of the evening of 03 February 2010. According to [redacted], [redacted] requested that he drive them to the [redacted] house so that he could see [redacted]'s new car. [redacted] testified that it was [redacted] who asked that he drive them to the

house. In either case, it is strange if not unbelievable that [REDACTED] could go to [REDACTED] house at the request of [REDACTED] as a favor to [REDACTED] and then [REDACTED] would simply drop [REDACTED] and [REDACTED] in the street without entering the house. Considering further that [REDACTED] had left his vehicle behind at Tiffany Restaurant, and according to his testimony had never been to the [REDACTED] home before, it is even more strange that [REDACTED] would abandon [REDACTED] there, telling him that he could pick him up later only if he happen to be nearby.<sup>34</sup> Perhaps most suspicious is [REDACTED]'s testimony that after being arrested at the [REDACTED] house, he made no effort at all to contact [REDACTED] when according to [REDACTED]'s story, the only reason he was in the house, and therefore the only reason he was arrested, was because of [REDACTED]'s request to assist [REDACTED] with the visa.

For all these reasons, the Court found [REDACTED]'s testimony not to be credible.

5.

[REDACTED] pled 'not guilty' to both charges and testified that neither she nor [REDACTED] were involved in any way with drugs.

The Court has strong suspicion that [REDACTED] was indeed also involved in the criminal activity. Firstly, according to [REDACTED] [REDACTED] participated directly in the preparation and packaging of the marijuana which was stored in his house. Secondly, given that she had no family or friends in Kosovo, the Court believes that in the very least, she was present with [REDACTED] when he engaged in the illegal activity. Were it true that she stayed alone in the hotel most of the time, as [REDACTED] testified, it is odd that according to the metering records, there are no phone calls or SMS messages between [REDACTED] and [REDACTED].

Nevertheless, without any corroborating evidence, the testimony of one co-Accused is not sufficient to convict another co-Accused. There were no drugs found on [REDACTED] when she was arrested. Nor were any traces of drugs found in her vehicle, a Passat with license plate 362-M-468.

Therefore, the Court must acquit [REDACTED] of both charges.

#### **E. Factual Findings**

Upon the evidence presented during the course of the main trial, and in accordance with the findings on credibility as described above, the Court considers the following facts as proven:

Between October 2009 and 03 February 2010, [REDACTED] and [REDACTED] were members of an organized criminal group, along with other unknown persons from the Republic of Albania. The aim of the group was to transport, distribute and sell narcotic substances for profit. Narcotics were brought from Albania to Kosovo, and then taken through Serbia with the destination of Bosnia and Herzegovina. [REDACTED] acted as the organizational leader of the criminal

<sup>34</sup> Record of the Main Trial, 02 February 2011, p. 37.

group by coordinating the actions between [redacted], and other unknown members of the group. [redacted] and two Albanian members of the group called [redacted] and [redacted] would each communicate directly with [redacted] by mobile phone in order to facilitate the criminal aim of the organized criminal group.

[redacted] directed [redacted] and two Albanians named [redacted] and [redacted] to bring marijuana containing tetrahydrocannabinol (THC) to the [redacted] house. [redacted] agreed to keep the drugs in a room on the second floor which he kept locked for a small payment of 30-50 euro per drug shipment. [redacted] would measure the drugs on a digital scale in that room and then repackage them into smaller bags. This occurred on more than one occasion, but it is not known on how many different occasions this occurred or the total quantity of drugs which passed through the [redacted] house. When the drugs were packaged, [redacted] contacted [redacted] who would arrange for the drugs to be collected. [redacted] would bring the drugs to the garage of the house and unknown male persons directed by [redacted] would pick up the drugs from the garage.

## F. Legal Qualification

### 1. Applicable Law

The criminal acts were committed between October 2009 and February 2010. At that time, the Criminal Code of Kosovo (CCK) which entered into force on 06 January 2009, was the applicable law. Pursuant to Article 2, Paragraph (1), the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator.

### 2. The Narcotics Charge

[redacted] and [redacted] were found guilty of the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances pursuant to Article 229 of the CCK. Paragraph (2) states:

Whoever, without authorization, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.

The Decision on the Establishing of the List of Narcotics<sup>35</sup> designates tetrahydrocannabinol (THC) as a narcotic.

The evidence established that [redacted] and [redacted] delivered and transported marijuana containing the narcotic substance THC to the home of [redacted], [redacted] with his knowledge and agreement. [redacted] provided a safe haven for the

<sup>35</sup> No. 1094, Federal Executive Council, 21 December 1978.

group to store and repackage the drugs. All three then participated in the transport of the drugs out of the [redacted] with the intent that the drugs be transported out of Kosovo to Serbia and Bosnia for distribution and sale.

Paragraph (4) of Article 229 states:

(4) When the offence provided for in paragraphs 1, 2 or 3 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by a fine and by imprisonment of three to fifteen years:

1) The perpetrator is acting as a member of a group.

In the present case, Article 4(1) is satisfied because, it was established that [redacted] [redacted] and [redacted] acted as an organized criminal group together with unknown Albanian persons (as explained in detail below).

### 3. The Organized Crime Charge

An organized criminal group is defined in Article 274 Paragraph (7) Item (2) CCK as:

A structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit.

The evidence established that for approximately four months between October 2009 and February 2010, [redacted] [redacted] and [redacted] acted in concert by organizing the transport of illegal drugs from Albania, through Mitrovica and onto Serbia/Bosnia and Herzegovina in order to obtain a financial benefit. The group was structured, with [redacted] acting as the organizing link, [redacted] providing the transportation and packaging of the drugs, and [redacted] providing a location for the drugs to be stored.

Item (3) of the same paragraph defines a "serious crime" as an offence punishable by imprisonment of at least four years. As noted above, the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances is punishable by one to eight years of imprisonment. Therefore, imprisonment of at least four years is possible and the offence qualifies as a serious crime.

Due to the structure and purpose of an organized criminal group, the criminal offence of Organized Crime may be committed in different manners and varying actions by each member of the group. Some members may hold a higher and more significant role than others, and the law foresees that those who hold a greater responsibility within the group be punished accordingly.

Article 274 Paragraph (3) CCK states:

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

The evidence established that [REDACTED] played the organizing role of the group and directed the activities of [REDACTED] and other unknown members of the group. Therefore, he is found guilty of Paragraph (3) of Article 274.

Article 274 Paragraph (1) CCK states:

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

The evidence established that both [REDACTED] and [REDACTED] committed the serious crime of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances while acting as part of an organized criminal group. Therefore, they were found guilty of Paragraph (1) of Article 274.

### G. Sentencing

When imposing the criminal sanction, the Court must bear in mind both the general purpose of punishment – to suppress socially dangerous activities by deterring others from committing similar criminal acts – and the specific purpose – to prevent the offender from re-offending. In the present case, the Trial Panel came to the conclusion that only by applying the imposed sentence of imprisonment would the above-mentioned double purpose be reached.

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the CCK, while remaining within the sentencing limits provided by law.

#### 1. (

With regard to [REDACTED] the panel took as mitigating circumstances the fact that he has no prior convictions. The Panel took as aggravating circumstances the duration of the offence which occurred continuously over several months and the fact that [REDACTED] led a juvenile [REDACTED] into criminal activity.

For the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances when committed as a group, the law foresees a punishment of a fine and imprisonment of three to fifteen years (Article 229 Paragraph (2) as read with Paragraph (4) of the CCK). Considering all the mitigating and aggravating circumstances, the Trial Panel imposed a punishment of a fine of 50.00 euro and three years of imprisonment for this criminal act.

For the criminal offence of Organized Crime when acting as an organizer or director of the activities of an organized criminal group, the law foresees a fine and imprisonment of seven to twenty years (Article 274 Paragraph (3) of the CCK). The



Trial Panel imposed a punishment of a fine of 50.00 euro and eight years of imprisonment for this criminal act.

As the Accused has committed two criminal acts, pursuant to the rules of calculation of a compounded sentence, the aggregate punishment must be higher than each individual punishment but not as high as the sum of the prescribed punishments. Therefore, the Court imposed an aggregate punishment of a fine of 51.00 euro and ten years of imprisonment pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The Accused has been in detention on remand since 22 February 2010. That period is to be credited to the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

## 2.

With regard to \_\_\_\_\_ the panel could find no mitigating circumstances to warrant consideration. The Panel took as aggravating circumstances the duration of the offence which occurred continuously over several months and his prior conviction on September 2007 in Croatia of "People Trafficking".

With regard to the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances when committed as a group, considering all the mitigating and aggravating circumstances, the Trial Panel imposed a punishment of a fine of 50.00 euro and three years of imprisonment.

With regard to the criminal offence of Organized Crime when acting as a member of an organized criminal group, the law foresees a fine and minimum imprisonment of seven years (Article 274 Paragraph (1) of the CCK). The Trial Panel imposed a punishment of a fine of 50.00 euro and seven years of imprisonment.

The Court imposed an aggregate punishment of a fine of 51.00 euro and eight years of imprisonment pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The Accused has been in detention on remand since 03 February 2010. That period is to be credited to the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

## 3.

With regard to \_\_\_\_\_ the panel took as mitigating circumstances his young age at the time of the offence, his guilty plea to the narcotics charge, and the fact that he went voluntarily to the police to turn himself in and provided details and evidence against the other co-Accused which enabled the police and prosecutor to conduct an investigation. The Panel took as an aggravating circumstance the duration of the offence which occurred continuously over several months

Pursuant to Paragraph (2) of Article 66 of the CCK, the Panel may impose a punishment below the sentencing limits provided for by law when there are particularly mitigating circumstances which indicate that the purpose of punishment can be achieved by imposing a lesser sentence. In this case, [redacted] act of voluntarily going to the police to turn in himself and others constitutes a particularly mitigating circumstance. Without this initial step by [redacted] the police and prosecution would not have been able to investigate the criminal acts. [redacted] knew that by going to the police, he would be incriminating himself, as well as a family friend, and that there would be consequences. He was motivated to change his criminal behavior by the pending birth of his first child and concern about what consequences his involvement in drugs could have on his new family. Therefore, the Panel decided to impose sentences for each criminal conviction which were lower than the minimum prescribed by law for the offence. However, this mitigation of the sentence is limited by Article 67, Paragraph (1) Item (2) of the CCK, which provides that for a criminal offence punishable by a minimum sentence of at least three years, the punishment may be mitigated to one year.

With regard to the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances when committed as a group, the law foresees a punishment of a fine and imprisonment of three to fifteen years (Article 229 Paragraph (2) as read with Paragraph (4) of the CCK).

With regard to the criminal offence of Organized Crime when acting as a member of an organized criminal group, the law foresees a fine and minimum imprisonment of seven years (Article 274 Paragraph (1) of the CCK).

Considering the particularly mitigating factors and pursuant to Articles 66 and 67 of the CCK, the Trial Panel imposed a punishment of a fine of 50.00 euro and two years of imprisonment for the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances and a punishment of a fine of 50.00 euro and three years of imprisonment for the criminal offence of Organized Crime.

Therefore, the Court imposed an aggregate punishment of a fine of 51.00 euro and four years of imprisonment pursuant to Article 71 Paragraph (1) and Paragraph (2) Items 2 and 4 of the CCK.

The Accused was in detention on remand from 03 February 2010 until 21 April 2010, and thereafter under house arrest since 22 April 2010. That period is to be credited to the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

#### **4. Mandatory Fines**

The three defendants convicted of the criminal offences were sentenced according to the mandatory guidelines in the CCK. For the criminal offence of Organized Crime, the CCK mandates a punishment both of imprisonment and a fine (Article 274, Paragraphs (1) and (3) of the CCK). The same is true for the criminal offence of

Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances (Article 229 Paragraph (4) as read with Paragraph (2) of the CCK). The Trial Panel strongly disagreed with the lawmaker that *both* a fine and imprisonment be imposed for each conviction in view of the serious sentences imposed and the economic statuses of the families of each accused. Therefore the panel imposed the absolute minimum fine allowed by law – 50.00 euro per individual criminal offence and 51.00 Euro as an aggregate punishment.<sup>36</sup>

#### H. Rejected Motions

On 08 December 2010, the Trial Panel rejected the motion of Defence Counsel Mahmut Halimi to declare the statement of witness [REDACTED] given to police on 15 March 2010 as inadmissible. The Panel found that [REDACTED] was not exempt from the obligation to testify under Article 160 Paragraph (1) Item 2, and therefore no such warning was required to have been given prior to the interview. The ruling was pronounced on 08 December, and a written ruling with detailed reasoning was also issued.

On 05 January 2011, the Trial Panel rejected the motion of Defence Counsel Mahmut Halimi to hear [REDACTED] as a witness due to the fact that he was the defence counsel of [REDACTED] during the pre-trial stage and therefore a privileged witness. However, later in the trial upon the motion of the Public Prosecutor and with the support and consent of [REDACTED], [REDACTED] was called and testified on 10 February 2011.

#### I. Confiscated Items

The 26.449 kg of cannabis and 4.342 kg of light brown powder substance (containing a mixture of Acetaminofenin/Paracetamol and caffeine) seized from the [REDACTED] house, and the 7,530 Euro and 230 BiH Marks (KM) seized from [REDACTED] are confiscated pursuant to Article 60 Paragraph (1) of the CCK and Article 494 of the CPCK.

Due to the acquittal of [REDACTED] of all charges, the 1,600 Euro seized from her shall be returned.

#### J. Costs

Having been convicted, [REDACTED] and [REDACTED], must each reimburse their part of the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK, with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the Court when such data is obtained pursuant to Article 100 Paragraph (2) of the CPCK.

Due to the acquittal of [REDACTED] of all charges, pursuant to Article 103 Paragraph (1) of the CPCK, the costs of criminal proceedings under Article 99

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<sup>36</sup> Article 39 Paragraph (1) of the CCK.

Paragraph (2) Subparagraphs 1 through 5 of the CPCK, her necessary expenses, and the remuneration and necessary expenditures of her defence counsel, as well as the costs of interpretation and translation shall be paid from budgetary resources.

**District Court of Mitrovica**  
**P. nr. 36/2010**

Prepared in English, an authorized language.

Tara Khan  
Recording Officer

Hajnalka Veronika Karpati  
Presiding Judge

Jonathan Welford-Carroll  
Panel Member

Caroline Charpentier  
Panel Member

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 Paragraph (1) of the CPCK.