

**DISTRICT COURT OF MITROVICË/A**  
**(Sitting in the Supreme Court building, Pristina)**  
**P. no. 02/12**  
**20 September 2012**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICË/A, sitting in the Supreme Court building, Pristina**, in the trial panel composed of EULEX Judge Andrew Hatton, as Presiding Judge, and local Judge Beqir Halili and EULEX Judge Nuno Madureira as panel members, with the participation of Chiara Tagliani, EULEX Legal Officer, and Dukagjin Kerveshi, National Legal Advisor, as Recording Officers, in the criminal case against:

**J. P.**, born on            in T., Serbia, father's name N. P., mother's name M. P., mother's maiden name O., S. nationality, residence in            ,            Municipality, retired police officer, monthly income of a pension of 538.00 Euro, secondary school education, not married, no children, currently in detention on remand            , currently detained in Pristina detention centre,

charged in the Indictment SPRK PPs No: 41/2010, dated 10<sup>th</sup> November 2011 (and confirmed in its entirety by a ruling dated 20th January 2012) with:

**count 1:** smuggling of goods, contrary to article 273 (1) of the Criminal Code of Kosovo (CCK), punishable by a fine or by imprisonment of up to three years;

**count 2:** tax evasion, contrary to article 249 (1) and (2) of the CCK, punishable by a fine and by imprisonment of six months to five years when the obligation provided for in paragraph 1 of the article where payment has been evaded exceeds the sum of 15,000 Euro;

**count 3:** fraudulent evasion of import duty and excise tax, contrary to article 298 of the Customs and Excise Code (Code No. 03/L-109), punishable by a fine and imprisonment of six months to five years where the amount of import duty or excise tax evaded exceeds 15,000 EUR;

**count 4:** money laundering, in violation of Section 10.2 of the UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5<sup>th</sup> February 2004 (as amended), punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence;

**count 5:** organised crime contrary to article 274 (1) and (2) of the CCK, punishable by a fine up to 250,000 EUR and by imprisonment of at least seven years;

**count 6:** unauthorized ownership, control, possession or use of weapons contrary to article 328 (2) of the CCK, punishable by a fine of up to 7,500 EUR or imprisonment of one to eight years.

After having held the main trial hearings open to the public on 15, 21, 22, 28 June, 19, 23, 27, 30 July, 11, 14, 17 & 20 September 2012, all in the presence of the Accused **J. P.**, his Defence Counsel Zivojin Jokanovic, and EULEX Public Prosecutor Jonathan Ratel, Charles Hardaway and Andrew Carney, after the trial panel's deliberation and voting held on 17-20 September 2012, pursuant to Article 392 Paragraph (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, his Defence Counsel and the EULEX Public Prosecutor issues the following:

## **JUDGMENT**

### **COUNT 1**

The Accused **J. P.**, personal data as above, is

### **FOUND NOT GUILTY**

**Because** it was not proven beyond a reasonable doubt that the accused **J. P.** between and committed on the territory of Kosovo the offence of Smuggling of Goods by transporting goods, namely, fuel, diesel and base oil, into Kosovo without authorisation or license, through the companies R., S., G. G. D. T., J. T., M. P. and/or other fuel companies by trucks driven into the north of Kosovo to gas stations in , and , in co-perpetration with J. R. and S. D. and other members of a criminal group.

**THEREFORE**, the accused **J. P.** is

### **ACQUITTED**

**of committing the criminal offence of smuggling of goods, contrary to article 273 (1) of the Criminal Code of Kosovo (CCK)**

### **COUNT 2**

The Accused **J. P.**, personal data as above, is

### **FOUND NOT GUILTY**

**Because** it was not proven beyond a reasonable doubt that the accused **J. P.** between and in the territory of Kosovo, in co-perpetration, committed the offence of Tax Evasion by providing false information or omitting information regarding the income or other relevant facts for the assessment of taxes tariffs or contributions of his Money Exchange shop, Street, , and that of the companies R., S., G. G. D. T., J., T., M. P. and/or other fuel companies and gas stations including a gas station located in , Municipality, nicknamed the “ ”, and “ ” gas station, ; or substantially contributing to the commission by concealing the profits of the offence, with the intent that he or other members of a criminal group, including J. R. and S. D., evade partially or entirely the payment of taxes, tariffs or contributions provided by the law.

**THEREFORE**, the accused **J. P.** is

## **ACQUITTED**

**of committing the criminal offence of tax evasion, contrary to article 249 (1) and (2) of the CCK.**

### **COUNT 3**

The Accused **J. P.**, personal data as above, is

## **FOUND NOT GUILTY**

**Because** it was not proven beyond a reasonable doubt that the accused **J. P.** between        and on the territory of Kosovo committed in co-perpetration the offence of Fraudulent Evasion of Import Duty and Excise Tax by knowingly committing or substantially contributing to the commission of the fraudulent evasion of import duty or excise tax chargeable on goods, namely fuel, diesel and base oil, transported into Kosovo through the companies R., S., G. G. D. T., J., T., M. P. and/or other fuel companies and distributed by gas stations in        , and        , by providing false information or omitting information regarding the imported goods or other relevant facts for the assessment of taxes and/or concealing the profits of the offence made by J. R. and S. D. or other members of the criminal group.

**THEREFORE**, the accused **J. P.** is

## **ACQUITTED**

**of committing the criminal offence of fraudulent evasion of import duty and excise tax, contrary to article 298 of the Customs and Excise Code (Code No. 03/L-109).**

### **COUNT 4**

The Accused **J. P.**, personal data as above, is

## **FOUND GUILTY**

**Because** it was proven beyond a reasonable doubt that the accused **J. P.** between        and on the territory of Kosovo committed the offence of Money Laundering by knowing that certain property, namely cash , was the proceeds of criminal activity, and which property was in fact proceeds of crime (arising from the smuggling of goods and tax evasion through fuel companies R., S., G. G. D. T., J., T., M. P. and fuel stations in the        of Kosovo) he then:

- (i) Converted, and transferred, the property for the purpose of concealing the nature, source, location, disposition, movement or ownership of the property;
- (ii) converted or transferred the property for the purpose of assisting persons – namely, J. R. and S. D. and others– who were involved in the commission of the criminal offences that produced the property (smuggling of goods and tax evasion) to evade the legal consequences;
- (iii) converted or transferred, the property with the purpose of promoting the underlying criminal activity (smuggling of goods and tax evasion); and

(iv) acquired, possessed and used the property .

**THEREFORE**, the accused **J. P.** is

**CONVICTED**

**of committing the criminal offence of money laundering, in violation of Section 10.2 of the UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5<sup>th</sup> February 2004 (as amended).**

**COUNT 5**

The Accused **J. P.**, personal data as above, is

**FOUND GUILTY**

**Because** it was proven beyond a reasonable doubt that the accused **J. P.** between and on the territory of Kosovo committed the offence of Organized Crime by committing the serious crime of Money Laundering, as part of an organized criminal group consisting of J. R., S. D., M. R., M. R. and other unidentified persons.

**THEREFORE**, the accused **J. P.** is

**CONVICTED**

**of committing the criminal offence of organised crime contrary to article 274 (1) of the CCK.**

**COUNT 6**

The Accused **J. P.**, personal data as above, is

**FOUND GUILTY**

**Because** it was proven beyond a reasonable doubt that the accused **J. P.** between and on the territory of Kosovo committed the offence of Unauthorized Ownership, Control, Possession or Use of Weapons, by owning, controlling or possessing a weapon, namely a pistol, model , caliber mm, with serial number , magazine and ( ) bullets of caliber mm, found in a drawer at the “ ”, , by EULEX Police during the search of , without a valid Weapon Authorization Card f.

**THEREFORE**, the accused **J. P.** is

**CONVICTED**

**of committing the criminal offence of unauthorized ownership, control, possession or use of weapons contrary to article 328 (2) of the CCK.**

THEREFORE the Accused **J. P.** is

### **SENTENCED**

As follows:

**Count 4:** 4 (FOUR) YEARS IMPRISONMENT and a fine of 1000 Euros

**Count 5:** 8 (EIGHT) YEARS IMPRISONMENT and a fine of 1000 Euros

**Count 6:** 1 (ONE) YEAR IMPRISONMENT

Pursuant to Article 71 of the CCK, **J. P.** is hereby sentenced to an aggregated punishment of **9 (NINE) years imprisonment and a fine of 2000 Euros.**

Pursuant to Article 73(1) of the CCK any time served in detention as well as any period of deprivation of liberty related to the criminal offence shall be included in the punishment of imprisonment passed by the Panel. It therefore follows, in law, that if there was such a period of detention or deprivation of liberty related to this matter it shall be automatically deducted from the sentence imposed. Specifically, the time between \_\_\_\_\_ until the verdict becomes final will be deducted from the sentence.

Pursuant to Article 328 Paragraph (5) of the CCK, the following articles are confiscated:

- \_\_\_\_\_ pistol, model \_\_\_\_\_, calibre \_\_\_\_\_ mm, serial number \_\_\_\_\_, \_\_\_\_\_ magazine for that pistol and ( ) bullets of that calibre.

Pursuant to Article 60 Paragraph (1) and (2) of the CCK the following articles are confiscated:

- \_\_\_\_\_ car, registration number \_\_\_\_\_
- \_\_\_\_\_ car, registration number \_\_\_\_\_
- 14,040 Euros recovered from the Defendant on his arrest on \_\_\_\_\_
- 210 RSD recovered from the Defendant on his arrest on \_\_\_\_\_

The Accused **J. P.** shall reimburse the costs of these criminal proceedings pursuant to Article 102(1) of the CPCK with the exception of the cost 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 Art 100(2) of the CPCK.

### **REASONING**

#### **1. Procedural background**

- 1.1 On \_\_\_\_\_, the Prosecutor issued a Ruling on Initiation of an Investigation in case No. PPS 41/2010 against several suspects, including J. R., who is still at large.
- 1.2 On \_\_\_\_\_, the Prosecutor issued a Ruling on Expansion of the Investigation to S. D. who is also still at large.
- 1.3 On \_\_\_\_\_, EULEX Police with the assistance of KFOR, conducted searches named as “\_\_\_\_\_”. Evidence obtained during this operation led the Prosecutor to issue a Ruling on Expansion of the Investigation to the Defendant in this case, **J. P.**, on 28<sup>th</sup> March 2011.
- 1.4 After having extended the investigation on \_\_\_\_\_ the EULEX Pre-Trial Judge granted an Order for Arrest and an Order for Search both on \_\_\_\_\_, following the Prosecutor’s applications.
- 1.5 On \_\_\_\_\_ EULEX police conducted the so-called operation “\_\_\_\_\_” which resulted in the arrest of the Defendant. Since then the Defendant has been in detention on remand.
- 1.6 On \_\_\_\_\_ the Pre-Trial judge granted the extension of the investigation until \_\_\_\_\_.
- 1.7 The Confirmation Hearing was held in the Supreme Court Building, Pristina, on 29 December 2011, in the presence of the Defendant, his counsel and the EULEX Public Prosecutor. The Confirmation Judge confirmed the Indictment and declared all of the evidence admissible.
- 1.8 The Rulings of the Confirmation Judge were not the subject of appeal.
- 1.9 The Main Trial was held in public on the 15, 21, 22, 28 June, 19, 23, 27, 30 July, 11, 14, 17 & 20 September 2012, all in the presence of the Accused **J. P.**, his Defence Counsel Zivojin Jokanovic, and EULEX Public Prosecutors Jonathan Ratel, Charles Hardaway and Andrew Carney.

## **2. Competence of the Court**

- 2.1 Pursuant to Article 23 Paragraph (1) of the CPCK, District Courts have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.
- 2.2 The charges in this case concerned 'Smuggling of goods', Article 273 Paragraph (1) of the CCK, which is punishable by a fine or by imprisonment of up to three years; 'Tax evasion', Article 249 Paragraphs (1) and (2) of the CCK, which is punishable by a fine and by imprisonment of six months to five years when the obligation provided for in paragraph (1), whose payment has been evaded, exceeds the sum of 15.000 EUR; 'Fraudulent evasion of import duty and excise tax', Article 298 of the Customs and Excise Code, which is punishable by a fine and imprisonment of six months to five years where the amount of import duty or excise tax evaded exceeds 15,000 EUR; 'Money laundering', in violation of Section 10.2 of the UNMIK Regulation No. 2004/2 on the Deterrence of

Money Laundering and Related Criminal Offences, adopted on 5<sup>th</sup> February 2004 (as amended), which is punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence; 'Organised crime', Article 274 Paragraphs (1) and (2) of the CCK, which is punishable by a fine up to 250,000 EUR and by imprisonment of at least seven years; and finally, 'Unauthorized ownership, control, possession or use of weapons', Article 328 Paragraph (2) of the CCK, which is punishable by a fine of up to 7,500 EUR or imprisonment of one to eight years. Thereby, the requirements under Article 23 Paragraph (1) of the CPCCK are satisfied.

- 2.3 Pursuant to Article 27 Paragraph (1) of the CPCCK, territorial jurisdiction is proper with the Court in the district where a crime is alleged to have been committed. According to the Indictment, the criminal offences occurred in places which are under the territorial competence of the District Court of Mitrovicë/a, namely in the area in the of Kosovo ranging from the municipality of (including the of and ), to the of itself. Thus, pursuant to Article 27 Paragraph (1) of the CPCCK, the District Court of Mitrovicë/a has the territorial competence to adjudicate upon this case.
- 2.4 Considering the Indictment PPS. No 41/2010 filed by the Special Prosecution Office of the Republic of Kosovo (SPRK) and in accordance with Article 3.2 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053), EULEX Judges have jurisdiction and competence over the case. On 14 February 2011 the EULEX Head of Justice issued a Decision, supported by a clarification of the same Decision issued on 13 May 2011, on the change of venue of pre-trial hearings against the Defendant **P.** thereby transferring proceedings from Mitrovicë/a District Court to the Supreme Court premises in Prishtinë/Priština. The Decision was reached taking into consideration the sensitivity of the case, the refurbishment works ongoing at that time at the Mitrovicë/a Courthouse and, in particular, the potential for unpredictable reactions from the local population in the north of Kosovo (see decision Ref no 2011-JC-0275). The pressing security reasons justifying such Decision remained in force also throughout the Confirmation and the Main Trial proceedings.
- 2.5 The panel was composed of EULEX Judge Andrew Hatton, acting as Presiding Judge, local judge Beqir Halili and EULEX Judge Nuno Madureira as panel members. All three judges are assigned to the District Court of Mitrovicë/a. None of the parties objected to the composition of the panel.

### **3. List of evidence presented**

- 3.1 During the course of the main trial the following witnesses were heard:
- 3.1.1 E. Sch. on 21 & 22 June 2012
  - 3.1.2 J. R. on 28 June 2012
  - 3.1.3 M. V. on 28 June 2012
  - 3.1.4 G. W. on 19 July 2012
  - 3.1.5 D. V. on 27 July 2012

- 3.2 All statements within the binder of statements of the following witnesses were agreed by the prosecution and the defence in their entirety and were considered to have been read into the record of the proceedings:
- 3.2.1 B. S.
  - 3.2.2 M. S.
  - 3.2.3 N. R.
  - 3.2.4 S. A.
  - 3.2.5 S. S.
  - 3.2.6 I. M.
  - 3.2.7 A. D.
  - 3.2.8 D. M.
  - 3.2.9 B. S.
- 3.3 A significant amount of documentary evidence was admitted as material evidence. The full list is set out in the document entitled “motion to admit written evidence: key documents” dated 27 July 2012. The details do not need to be repeated in this judgment as they are fully set out in that document. The motion was granted on 27 July 2012 without any challenge from the defence.

#### **4. Overview of the proceedings**

- 4.1 The Defendant entered pleas of not guilty to all six counts on the Indictment when invited to enter his pleas, both at the Confirmation Hearing and at the commencement of the Main Trial.
- 4.2 The Court heard live evidence from a EULEX Police Officer (Sch.), a EULEX Customs Officer (W.), a EULEX Investigating Officer (V.) and two civilian witnesses. All of the remaining witness statements were agreed by the defence and deemed to have been read into the record. All of the documentary evidence collected and presented by the Prosecution and set out in the “motion to admit written evidence: key documents” dated 27 July 2012 was admitted in evidence without challenge from the defence.
- 4.3 The Defendant did not give evidence during the trial nor did he make any statement to the court except to address the court briefly when exercising his right to have the final word.
- During the course of the trial (on 23 July 2012) admissions were orally made on behalf of the Defendant that the sums evaded in each of counts 2 and 3 exceeded 15,000 Euros.
- The Defendant answered questions of the police and the Prosecutor during the course of the investigation (16, 21, 30 June and 23 September 2011). Put simply, he said that he ran a currency exchange business on Street in the of , he confirmed that he regularly exchanged money for J. R. (whom he referred to as “M.” or “the D.”) and S. D. (whom he referred to as “D.”) either directly or through others sent on their behalf or by collecting it himself from staff at a fuel station, he said that he never asked where the money came from although he said that he guessed it was from the fuel trade (p.106 of the interviews) and at one point (p.101 of the interviews) said that “he [it is not clear whether the Defendant is referring to R. or D. but he is clearly referring to one of them] wanted to exchange money for his gas station”. He denied any knowledge of the pistol at count 6. He said, during interview, that the answers he



had given during the interview process were 99% truthful. He confirmed his handwriting upon and ownership of certain significant documents and notebooks recovered during the course of the searches. Further details appear elsewhere in this document.

- 4.4 There was no real or significant challenge by the defence to any of the evidence adduced by the prosecution during the course of the trial. Even where witnesses were called to give evidence there was little, if any, challenge to the accuracy of the testimony given.

In essence, therefore, the defence appeared to accept the entirety of the prosecution case except the conclusions the prosecution invited the court to draw of the Defendant's conduct and involvement. The real issue in the trial, therefore, was whether the Defendant was involved in any of the offences at counts 1 to 6 inclusive and, if so, whether he was knowingly involved. Those points where specific issue was taken by the defence will be highlighted in the course of this reasoned judgment.

That approach by the defence is entirely understandable in all the circumstances and had two direct consequences: firstly, it allowed the trial to be conducted with more expedition than would otherwise have been the case and, secondly, it allows the Panel to present this reasoned judgment in a more condensed form than would otherwise have been the case.

## **5. Summary of the presented evidence**

- 5.1 It was the prosecution case, unchallenged by the defence and within the general knowledge of the Panel, that in the        part of Kosovo there are two particular border/boundary points with Serbia named, respectively, Gate 1 (at        ) and Gate 31 (at        ). For political reasons which are beyond the scope of this reasoned judgment and which did not require scrutiny during the course of the trial, the customs procedure at those gates is fundamentally different from the procedure at other border/boundary points around the perimeter of Kosovo. The standard procedure at most gates is that Kosovo Customs staff are present to allow or refuse the clearance of goods and to collect the appropriate customs duties. Kosovo Customs officers are, however, not present and do not operate at the aforesaid Gates 1 and 31.
- 5.2 Since February 2009 EULEX Customs officers have been present at Gates 1 and 31 but their role is limited and very different from that of their Kosovo counterparts at other border/boundary points. EULEX Customs officers only register goods entering Kosovo; that is done by copying or scanning the invoices and other associated paperwork. The collection of customs duties is not done at the border/boundary line, but rather, at the Kosovo Customs station which is located in South Mitrovica and which is staffed by Kosovo Customs. The driver of any vehicle passing through the gates 1 and 31 customs point which is carrying goods required to be the subject of customs examination and/or the payment of duties is told, both orally and in writing (in all appropriate languages), of the need to proceed directly from the border gate to the Kosovo Customs terminal in South Mitrovica.
- 5.3 The investigation in this case began in October 2009. It began, principally, as an investigation into an individual named Z. V. and into organised crime in the        of Kosovo. Over time, the investigation specifically concentrated on the importation into Kosovo of fuel products. It was apparent from an early stage that few, if any, of the

vehicles importing fuel products into Kosovo via Gates 1 and 31 were attending, as they were required to do, at the Kosovo Customs terminal in the        of        ; they were instead proceeding to one of a number of fuel stations or storage facilities in the        of Kosovo, mainly in the        area, and there discharging their cargoes.

5.4 The EULEX Customs Officers at gates 1 and 31 would, as previously stated, take copies of the appropriate documents as the vehicles entered Kosovo via those two gates. A simple comparison was therefore possible of that data with the data held at the Kosovo Customs terminal in the        of        as to what items were declared. An issue raised by the defence was as to the accuracy of the invoices and other such documents shown by the drivers of the vehicles to the EULEX Customs Officers. Put simply, if the driver of a fuel tanker produced documents declaring that the vehicle was carrying, for example, 30,000 litres of diesel was it appropriate to infer that the tanker was, in fact, carrying 30,000 litres of diesel or may it have been carrying something else or, alternatively, more or less diesel or, indeed, carrying nothing at all. We will turn to our conclusions on that issue in due course.

5.5 As the investigation developed, the investigators became aware of a series of companies and named individuals who appeared to be involved in the importation of fuel products into Kosovo without declaration at the Kosovo Customs terminal in        .

The investigation focused on the following named individuals:

- J. R.
- S. D.
- M. R.
- M. R.

The investigation focused on the following companies:

- S.
- R.
- G. G.
- D. T.
- J. T.
- M. P.

The investigation focused on the following locations of significance:

- A fuel station in        village,        (with no apparent name but given the name “        ” by the Police, a name which has thereafter been used in this case)
- A fuel station approximately 300 metres from Gate 31 (within Kosovo) named “        ”
- A storage facility in        ,        , given the name “the warehouse” by the Police, a name used thereafter in this case

5.6 Edward Schelkens (live evidence 21/22 June):

He gave evidence as follows:

the proper procedure in relation to gates 1 and 31 is that the driver has to present all the documents to a EULEX Customs Officer and then proceed to the customs terminal and pay excise duty and tax. The customs terminal for gates 1 and 31 is not at the border but in        . EULEX officers who are at the gates make copies of all documents needed at the borders and then order the driver to proceed to the terminal in        .

south. The drivers also receive this information in writing. That would be the normal procedure.

Due to the situation, most of the drivers didn't clear the goods in terminal but just disposed of the fuel in different fuel stations in the of Kosovo.

The documents which are copied are the invoices, the driver's driving licence but EULEX doesn't do physical inspections of the trucks. This information is mentioned on the invoices: the company from whom the goods were purchased, the quantity, the destination and the value of goods.

Any duty and any tax would be assessed at the terminal. When the trucks entered Gates 1 and 31 the data were taken and stored in a database; at the same time customs in the kept a database on clearance of goods. So it's simple to find out which goods have not been cleared if you compare the data of these databases. In these two databases we compared only the fuel. This resulted that a lot of companies were not reporting the goods.

The position could be summarised thus: that there were many companies involved in this but the investigation focused on companies that had largest volumes.

He said they consulted Kosovo Business Registry Agency KBRA and also the Business Registry to discover ownership and found links with J. R..

Some businesses were registered in Kosovo and Serbia but not necessarily under the same name and others were registered in Serbia only not in Kosovo.

*The details of the registration of the companies were set out but those details need not be set out in this judgment]*

He said that the investigation also undertook some surveillance work of J. R. beginning in October 2010. "We discovered his contact with S. D. and his connection with Fuel Station in which we called Station as it is painted in . This is the name given to the station during the investigation. It confirmed visits to Commercialna Banca, which mostly happened after the visit of Mr D. in the morning and it gives information about fuel trucks and about contacts with different suspect". Those included brothers R. (M. and M.) from and also contacts with J. P.. "Additionally it allowed us to make connection with other fuels stations and to the trucks of the companies which were used to conduct the import. Whenever a truck was seen during unloading we checked with customs about the load and the destination and also the name of the company. We identified the warehouse, it is actually a piece of land close to the Station on which are installed several big tanks above the ground. It became clear that this facility was used to mix fuel because we noticed in the imports that most of them were base oil but also huge volumes of dilutes, all kind of cheap derivate. It is obvious that they mix this to get something similar to diesel."

"The surveillance would keep an eye on station whilst passing by, or at the warehouse which I mentioned and occasionally see that trucks were unloading so that pipes were connected with the trucks and tanks underground. Or unloading on the warehouse where the tanks are above the ground and which is obvious. They were seen unloading near Gate 31 in . Our surveillance identified smaller distribution trucks supplying smaller station."

One of the people noted during the surveillance was S. D.. "We identified where he lived in , the car he was driving, contacts he had with J. R., J. P. in his house. Our idea was that S. D. was leading the operations and J. R. was the front man who owned the companies. We also noticed that he was driving this expensive type . He occupied a nice house in and he obviously had no professional occupation at all."

“Except for surveillance we had no other possibilities to investigate this in a normal routine but it was clear that meetings took place at his house in the morning before going to the places where they were instructed to go.”

He said that at those meetings, other persons, including R. and **J. P.** would attend at D. house

As to **P.**, he said: “We noticed him on three occasions in contact with D. and R. or one of them and after we identified him we did some background checks and we found out that he was running an exchange kiosk in . We found out that he had been intercepted 2-3 times entering Kosovo with large amounts of money. We got this from Incident Reports from KP, those are in the report.”

“By the time we decided to search the kiosk, it was gone, it disappeared. But it was confirmed by the surveillance that it was there and existed. The surveillance confirmed that it was always unoccupied and not opened.”

“On 15 February we set up operation and we had to search R. house, S. D. premises. A search order for lilac station was issued since it was identified as the spot where everybody met and we hoped to find all the records there.

A lot of documents were recovered.

*[the prosecution then adduced a list of documents. No issue was taken by the defence about those documents]*

He was asked whether there were any documents recovered from D.’s house related to **J. P.**. He confirmed that there was one document, an envelope with a note on it, ‘10,000 Euros given to **P.** on 6 June 2010.’ “**P.** is clearly the Defendant here.”

He was asked to provide an overview as to what was seized from Station during the operation. “We seized huge number of binders and documents there. The most important things we found was the book-keeping for Station which was the distribution point. Books with expenses given to the Defendant or money taken by S. D. and Mr R. and also books regarding fuel stations in and . Also, books regarding payments to drivers for transport. We found a lot of binders with invoices for J. T. and these companies and a lot of notes and things. Also the stamp from R. C., a pistol with bullets and magazine and leather holster was found. We found all the books with book-keeping and in one of these books it’s mentioned the daily sales and receipt and also ‘given to **P.**’ and the sum given to him which was put into excel spread sheet. The notebook which is mentioned has an abstraction on it and covers a period of almost 5 months from 16 September 2010 to 20 February 2011; if you calculate what was given to **P.** during that period we get the sum of 28,128,227 euros. If we have some totals and if I remember well it was a total of different books, it was over half a million. This is only a partial view as obviously the total is more.” Referring to evidence of bribes being paid, he said “one of the books was for the expenses and payments made to drivers and what was spent on each trip on food and salaries and also what was spent on police and customs. It refers as well as to police officers to customs in Serbia and customs in Kosovo.”

(The documentary evidence revealed more details of the gun referred to by the witness and showed that during the 15 February search the Police found in a drawer at the “”, , a weapon, namely model pistol, caliber mm, manufactured in , with serial number , magazine and ( ) bullets of caliber mm. Further, the pistol and the holster were subjected to DNA analysis. The Defendant's DNA was recovered from the gun and holster.)

He then spoke of Operation in May 2011. “We searched the house of the Defendant in in where he occupied a part of barracks that was part of the refugee camps previously. At that occasion we searched the that he was

driving and ....We recovered a lot of notebooks, written notes, bank statements on different transactions.

*[those documents were referred to, again without any issue from the defence]*

He confirmed that the Defendant was examined on four occasions, all in the presence of defence counsel (16, 21, 30 June and 23 September 2011).

He confirmed that the details of the allegations concerning the six companies were to be found as follows: S. at paragraphs 67-71 in the Indictment; R. at paragraphs 75-77 inclusive; G. G. at paragraphs 78-80 inclusive; D. T. at paragraphs 83-85 inclusive; J. T. at paragraphs 89-92 inclusive; and M. P. at paragraph 94. The defence confirmed that they were happy that the documents referred to in those paragraphs were taken as read and that there was no challenge.

In cross-examination he was asked: are you aware of any evidence within the paperwork generated that there is anything to suggest the Defendant was a direct importer, transporter or user of the fuel products? He replied, “No, we never accused him of being involved of the actual imports or organising imports. As far as we could establish the individual roles of everyone, the Defendant was mostly exchanging Euros received from the different fuel stations into Serbian dinars. Since the invoices obviously had to be paid in dinars for the Serbian companies and further on it was clear that he was depositing the money in the different bank accounts of the different companies from which he had bank account numbers in his notebooks. We also found in his seized , a lot of blank pre-signed and stamped bank statements for that purpose“.

5.7 J. R. (live evidence 28 June):

Confirmed that he owned the land and the fuel station referred to as “ ”, having bought it in about 2001. There are three fuel tanks there of sizes 50,000(l), 30,000 (l) and 15,000 litres which he built, each having access to one pump although one is for LPG.

J. R. took over the business from him, paying 500 Euros per month in rent to lease the entire property, a sum which was always paid on time and in cash. The witness was unsure when that arrangement began but it was clearly some time ago.

He confirmed that he would see J. R. at the P. Station from time to time.

He also said that he would see S. D. at the fuel station but infrequently. He believed that D. owner the land referred to as “the warehouse” near to the “lilac” fuel station.

He confirmed that the rental arrangement was still in place, that he still received 500 Euros per month but he was not sure who was now running the business since he no longer saw R. or D..

5.8 M. V. (live evidence 28 June):

Confirmed that he knew J. R. and S. D.. He also confirmed that he is a professional truck driver and had worked for R in that capacity since about 2008 or 2009.

He would drive a 25,000 – 30,000 litre truck full of base oil to , having loaded at refineries in and at severally privately owned outlets in , all in Serbia. He would do that once or twice or even three times per week, he said, and there were at least two other drivers doing the same thing for R..

Having crossed the border at gate 1 or 31 he would report to EULEX staff, he said and hand over his documents. He would then drive to the “ ” fuel station and unload his load there. He would be helped there by other people working for R.. “J. would instruct me when I would go for loading and employees would tell me that I should

drive to get the cargo.” He would also unload his load at premises nearby (“the warehouse”) when there was not enough room at the “ fuel station.

He said that he had seen R. and D. together several times when he was unloading at “ ” fuel station. He said that he did not know D.’s role and that D. did not give him instructions. He said that he had not seen either of them since the Police operation on 15 February 2011.

He was paid 150 Euros and later on it was 120 Euros per month, he said.

He was asked: “Can you tell me whether there were occasions when the quantity of the cargo was lower than in the tax documents?” He replied: “No. I can guarantee that.”

5.9 G. W. (live evidence 19 July):

Told the court that he had held several positions in Customs, starting at the Gates, then at the EULEX Customs HQ and later as Customs investigator.

“At Gate 1 and Gate 31 we register the cargo of commercial vehicles, the in and outgoing commercial shipments, the name of the driver, the trader, number-plates of trucks, number of invoices, the supplier, the amount, type and value of the goods. Then we give advice to the drivers how to proceed to Customs Terminal in for customs clearance. EULEX Customs have full executive powers at Gate 1 and Gate 31 but we have no means to makes drivers go to Customs ....The majority don’t [register at Customs], especially if their destination is the Municipalities...If the goods are destined for the Municipalities, no shipments show up in Kosovo Customs Terminal.”

He said that the drivers are advised in the Serbian language, as 99 % are Serbian, but that the EULEX Customs Officers also give written instruction in the 3 languages and use language assistants to make sure the drivers understand.

He said that he compared data from 01 March 2010 until 14 February 2011 from EULEX records at gates 1 and 31 with those at the customs terminal. Not one single fuel truck reported to the customs terminal, he said.

He confirmed that EULEX Customs Officers were not able to check whether the contents of a vehicle corresponded with the details appearing on the documents shown to them by the driver.

5.10 D. V. (live evidence 27 July):

EULEX Investigator. Ground commander during the searches of “ ” P. Station and the houses of S. D. and J. R. which all took place simultaneously on 15 February 2011. He confirmed surveillance evidence of meetings between the Defendant and J. R. on 20.10.2010, between S. D. and P. on 15.12.2010 and all three of them together on 26.10.2010.

6. **Witness statements read into the record**

The remaining witnesses were agreed by the defence at the hearing on 23 July, a position which was confirmed and clarified on 14 September.

6.1 N. R. (statement undated but likely 15.2.11)

Said he worked at the fuel station in , (“ ”) as a driver for the company R.. He was paid 300 Euro per month and given the money by another employee at the fuel station. The company is owned by a man he knows only as “M.”. His job was to transport fuel which he would load at either the “ ” station or in the depot nearby (“the warehouse”) which he said was also owned by “M.”. He would

deliver the fuel to other fuel stations in the area including one at , one at the entrance of , “ ” in and one in .

6.2 D. M. (statement dated 15.2.11)

Said he worked at the “lilac” fuel station working for J. company. He transported fuel from Serbia (and Bosnia) to . Someone told him, he said, that he did not have to go to the Customs. He was paid 120 Euro per load and was paid by someone at the fuel station.

He confirmed that “M.” owned the company R. and that J. R. is “M.”.

6.3 S. A. (statement dated 15.2.11)

Said he worked at the fuel station in , (“ ”). He said his boss was S. D. and it was D. who paid him for working there. The takings of the business were given to D.. He said that D. co-operated with J. R. who ran the company S..

When asked about the gun recovered by the Police from within a drawer at the “lilac” fuel station on 15 February, he said some 20 days earlier D. had attended at the fuel station with a friend of his, P.. He said P. had left the gun there, in the drawer, saying that it was because there was a checkpoint on the way to and that he would return for the gun.

He said that D. also rents the “ ” fuel station at and that money from that fuel station had been brought to “ ” by other employees for D. to collect.

He said that “ ” received two or three 30,000 litre deliveries of diesel each week.

He said that J. R. is known as “M.” and “d.”.

6.4 A. D. (statement dated 10.3.11)

Said he was employed by J. R. as a tanker driver for S. company. He was paid either by R. or an employee at the “ ” fuel station. He received his instructions from R. and would collect fuel – always base oil - in Serbia and deliver it to “ ” or “the warehouse” or “ ” in . He would travel through gate 31 and would not visit Kosovo customs.

6.5 B. .S. (statement dated 16.3.11)

Said that he was employed by J. R. at “ ” fuel station selling fuel. He said that both R. and D. collected the money from the fuel station.

6.6 I. M. (statement dated 16.3.11), M. S. (statement dated 17.5.11) and B. S. (statement dated 17.5.11)

Did not advance the case for either party nor did they add anything of relevance to the issues before the court.

6.7 S. S. (statement dated 4.11.11)

A money exchanger who confirmed that he had exchanged money with the Defendant and that the Defendant had a money exchange shop in Street . When asked about a total of 292,330.00 Euro paid into one of his bank accounts by the Defendant (in 48 transactions) he said that it was as a result of him exchanging money for the Defendant, for which activity he made a small profit.

**7. Defendant investigative hearings before the Special Prosecutor**

7.1 He told the Special Prosecutor that he ran a currency exchange business from a kiosk in . He said that he did not have a licence to trade in that way. He said that he exchanged money for J. R. (whom he referred to as the D. and “M.”) and S. D., who told the Defendant that he had been sent by R.. “I have nothing to do with where they were buying or selling fuel”. When R. first came to him he said he wanted to exchange money “for his gas station”, said the Defendant. He said that R. sometimes sent other people with money to exchange: “they said ‘I was sent by the D.’”. Sometimes R. would call him, he said, to arrange the collection of the exchanged currency.

The Defendant confirmed that the notebooks recovered by the police were his and said that he had recorded all of the transactions.

He said that had R. and D. not trusted him they would not have continued to do business with him. He confirmed that he had R.’s identity card at his home when the Police searched it.

He had 14,000 Euros in his possession on his arrest. He said that money belonged to R. and he was to exchange it for him.

When shown surveillance photographs of himself arriving at D.’s home and at “the warehouse” and the “lilac” fuel station, he said he was just passing by at the time.

He said he never asked where the money came from, “I guessed the fuel trade”. When asked whether he cared where the money came from, he said it was not his business. “I wasn’t interested to ask, I was just interested to make some money and it was their business”.

S. belonged to R., he said, and he dealt with S. money for R..

He said that the car he owned had been obtained from R. for 11,500 Euros but that he still owed 5,000 Euros for it.

He was told that an analysis of some documents from “ ” fuel station showed that almost 550,000 Euros in cash had been given to the Defendant in a three month period. He said it had not been given to him all at once.

He confirmed that he was known as “P.”, he confirmed ownership of the notebooks recovered from his home and his cars and he confirmed that references within the notebooks to “D.” were to D..

He confirmed that he had a list of company names and bank account numbers and said “this is a list of the companies together with their business accounts and they gave these names of the companies along with accounts to me because they came to me, they announced their arrival, I would exchange money to them and then pay it to the bank account.” (the list is extensive and includes M. P., G. G., J., S., D. T.).

He said that R. had disappeared after the 15 February 2011 Police activity but that he continued to receive instructions from Raskovic and to exchange money for him but he had had no contact with D. since that time.

He confirmed that “a few times” he had collected the money which he was to exchange from the fuel station or returned the exchanged money there. He did it without receipts.

He denied having anything to do with the gun recovered from the fuel station.

He said at one point “I can guarantee that I am giving you 99% truthful answers”. “The money belonged to a circle [*the word cycle is typed but later properly referred to as circle*] of people who I was dealing with. These people had confidence in me and they would give me money so I was dealing with other people’s money.”

In the final interview he was asked about an SMS message from R. asking him to pay 17,800 Euros into the account of D. T. and he was asked why he received that message. He replied: “He is my manager...”



He agreed that he exchanged money for M. R. and M. R. (referred to as the B. brothers). He agreed that the documents showed that he had paid money into a M. P. account for one of them.

## **8. Documentary Material evidence**

8.1 The documentary material evidence was contained in a significant number of binders (approximately 25).

As stated at para 3.3 above, the full list of key documents is set out in the document entitled "*MOTION TO ADMIT WRITTEN EVIDENCE: KEY DOCUMENTS*" dated 27 July 2012. The details do not need to be repeated in this judgment as they are fully set out in that document. The motion was granted on 27 July 2012 without any challenge from the defence.

## **9. Factual and Legal Findings**

### **9.1 counts 1, 2 & 3**

(a) Having reviewed and analysed the evidence, the Panel considered that counts 1, 2 and 3 could be seen as being fundamentally linked with each other.

(b) The Panel was satisfied beyond reasonable doubt on the evidence available to it that a criminal group was involved in the smuggling into Kosovo of fuel products and the associated evasion of tax, import duty and excise tax.

(c) Put in general terms, it was entirely clear to the Panel that a criminal group which included as its members J. R., S. D. and a number of others ran and controlled, as an organised criminal group, several companies involved in the importation of fuel, several fuel stations and storage facilities and a distribution network.

(d) Specifically, the Panel was satisfied beyond reasonable doubt, on the basis of what it considered to be overwhelming evidence, that the following was proved:

- i. J. R. and S. D. were working together and had others working for them, all as part of a criminal group. The Panel found considerable evidence to that effect, in particular the Defendant himself confirmed that during the course of the investigation when questioned by the Special Prosecutor;
- ii. R. and D. and those working for them had effective day-to-day control of, amongst other things, the following companies: R., S., G. G., D. T., J. T. and M. P.. None of those companies had the appropriate licence to import, or to trade in, fuel or fuel products;
- iii. Those six companies, some being more active than others, were involved in the importation of fuel and fuel products into Kosovo from Serbia, via gates 1 and 31, over the period covered by counts 1, 2 and 3 of the Indictment (namely, 21 May 2009 to 16 May 2011). The documents copied by EULEX Customs at the Gates were considered by the Panel to be accurate; there was evidence given by a driver (V. – para 5.8 herein) that the documents were always accurate and the Panel had no reason to doubt the accuracy of the documents;

- iv. R. and D. and those working for them had effective day-to-day control of, amongst other things, the following sites: the fuel station in \_\_\_\_\_, (with no apparent name but given the name “\_\_\_\_\_” by the Police), a fuel station approximately 300 metres from Gate 31 (within Kosovo) named “\_\_\_\_\_”, a storage facility in \_\_\_\_\_, \_\_\_\_\_, given the name “the warehouse” by the Police;
- v. The fuel and fuel products referred to at (iii) above, were delivered to the sites referred to at (iv) above or to other sites under the control of R., D. and the criminal group;
- vi. The fuel and fuel products referred to at (iii) above, were sold from the sites to which they were delivered or were subsequently transported to other locations and sold;
- vii. The fuel and fuel products referred to at (iii) above, were *smuggled* into Kosovo from Serbia, i.e. the six companies referred to at (ii) above, under the control of the criminal group, did what is described in Article 273 of the CCK, namely, without authorization or licence traded or otherwise transported goods into Kosovo. The Panel was satisfied beyond reasonable doubt that the fuel and fuel products were imported into Kosovo by companies operating without the appropriate authorization or licence;
- viii. The financial affairs of the six companies referred to at (ii) above and of the fuel station in \_\_\_\_\_, \_\_\_\_\_ (with no apparent name but given the name “\_\_\_\_\_” by the Police) and of the fuel station approximately 300 metres from Gate 31 (within Kosovo) named “\_\_\_\_\_”, all under the control of the criminal group as set out above, so far as their importation of the fuel and fuel products referred to at (iii) above were concerned, were conducted in such a way that the criminal offence of tax evasion, as alleged at count 2 of the Indictment, was proven beyond reasonable doubt - false information was provided or true information was omitted regarding the income or other relevant facts for the assessment of taxes, tariffs or contributions. The figure involved exceeded 15,000 Euros (as admitted by the defence);
- ix. The smuggled importation of fuel and fuel products (as found proved at (vii) above) gave rise to the commission of the criminal offence of the fraudulent evasion of import duty and excise tax as alleged at count 3 of the Indictment. False information was provided or information omitted regarding the imported goods or other relevant facts for the assessment of taxes and/or profits of the offence made by J. R. and S. D. or other members of the criminal group were concealed. The figure involved exceeded 15,000 Euros (as admitted by the defence);
- x. The prosecution filed a “*motion on final calculation of tax evasion and fraudulent evasion of import and excise tax: counts two and three of the Indictment*” dated 10 September 2012 and later that same date filed an “*addendum to motion on final calculation of tax evasion and fraudulent evasion of import and excise tax: counts two and three of the Indictment*”. The

motion was admitted in evidence without any challenge from the defence and thus by agreement between the Court and the parties.

Based on that (unchallenged) document, which the Panel considered to be an accurate calculation representing the relevant documents within the binders (save that there is an error in the final figure as calculated by the prosecution), the Panel was satisfied beyond reasonable doubt that the following facts were proved:

- x.1 the total value of excise duties and VAT evaded on the basis of fuel and fuel products imported using the company S. during the period of the Indictment (but actually between 21 May 2009 and 12 February 2011) was: 3,598,299.72 Euros (three million, five hundred and ninety eight thousand two hundred and ninety nine Euros and seventy two cents);
- x.2 the total value of excise duties and VAT evaded on the basis of fuel and fuel products imported using the company R. during the period of the Indictment (but actually between 27 June 2009 and 16 December 2010) was: 377,225.61 Euros (three hundred and seventy seven thousand two hundred and twenty five Euros and sixty one cents);
- x.3 the total value of excise duties and VAT evaded on the basis of fuel and fuel products (in this instance just diesel) imported using the company G. G. during the period of the Indictment (but actually on 25 January 2010) was: 30,957.50 Euros (thirty thousand nine hundred and fifty seven Euros and fifty cents);
- x.4 the total value of excise duties and VAT evaded on the basis of fuel and fuel products imported using the company D. T. during the period of the Indictment (but actually between 1 January 2011 and 16 May 2011) was: 510,642.40 Euros (five hundred and ten thousand six hundred and forty two Euros and forty cents);
- x.5 the total value of excise duties and VAT evaded on the basis of fuel and fuel products imported using the company J. TRADE during the period of the Indictment (but actually between 26 June 2010 and 13 May 2011) was: 5,286,471.40 Euros (five million, two hundred and eighty six thousand four hundred and seventy one Euros and forty cents);
- x.6 the total value of excise duties and VAT evaded on the basis of fuel and fuel products imported using the company M. P. during the period of the Indictment (but actually between 1 January 2010 and 13 May 2011) was: 876,592.94 Euros (eight hundred and seventy six thousand five hundred and ninety two Euros and ninety four cents);

x.7 The total sum evaded in the circumstances outlined in paragraphs x.1 to x.6 inclusive was: 10,680,189.57 Euros (ten million, six hundred and eighty thousand, one hundred and eighty nine Euros and fifty seven cents [*a figure slightly different than that calculated by the Prosecution*])

x.8 That was significant offending over a significant period of time which caused a significant loss to Kosovo.

(c) Although the Panel was satisfied beyond reasonable doubt of the matters set out above, it was *not* satisfied that there was evidence of the direct involvement of the Defendant or of his involvement in co-perpetration (under Article 23 of the CCK) in the activities referred to at counts 1, 2 and 3 of the Indictment. As will appear below, the panel was entirely satisfied that the Defendant was a member of the criminal group detailed above, but he had a specific role to perform as a member of that group and there was insufficient evidence for the Panel to be sure that he played any direct role or any role in co-perpetration in the actual smuggling, the evasion of tax or the evasion of import duty or excise tax.

He played a role, a very significant role, in the criminal group, but the evidence available to the Panel led the Panel to be satisfied beyond reasonable doubt of the involvement of the Defendant in other aspects of the criminal enterprise rather than on those aspects of the criminal enterprise giving rise to counts 1, 2 and 3: hence the guilty verdicts on counts 4 and 5 (of which the details follow below).

(d) Accordingly, the Panel found the Defendant not guilty on counts 1, 2 and 3.

(e) There was, however, a further feature of count 2 which the Panel needed to consider. It was alleged as part of count 2 that:

“Between \_\_\_\_\_, **J. P.** on the territory of Kosovo committed the offence of Tax Evasion by providing false information or omitting information regarding the income or other relevant facts for the assessment of taxes tariffs or contributions of *his Money Exchange shop*, \_\_\_\_\_”.

The Panel considered that there was some evidence of the Defendant running a money exchange shop from a kiosk on \_\_\_\_\_, \_\_\_\_\_. The Panel was not satisfied that the Prosecution had properly indicated or explained how that aspect of count 2 was put or advanced any real evidence on that matter. Accordingly the panel was not satisfied of the Defendant’s guilt on that particular aspect of count 2.

## 9.2 count 4

(a) As indicated above, the Panel was satisfied beyond reasonable doubt on the evidence available to it that a criminal group was involved in the smuggling into Kosovo of fuel products and the associated evasion of tax, import duty and excise tax.

(b) The Panel was satisfied beyond reasonable doubt that the criminal group included as its members J. R., S. D. and a number of other individuals, in sufficient numbers and in such circumstances as to make it an organized criminal group pursuant to Article 274 Paragraph (7) of the CCK.

(c) The Panel was satisfied beyond reasonable doubt that this Defendant, **J. P.**, was a significant, important, active and long-standing member of that criminal group and was satisfied of that on the basis of the following evidence:

- (i) There was surveillance evidence of meetings between the Defendant and R. (20 October 2010), between the Defendant and D. (15 December 2010) and between all three of them (26 October 2010). He was sufficiently close to and trusted by R. that R. left his identity card with the Defendant (it being recovered from the Defendant's home during the search following his arrest);
- (ii) The Defendant admitted during his interviews with the Special Prosecutor that he regularly exchanged currency for R. and D., who he said were working together, and others working for them. He was, he said, working for a circle of people who had confidence in him.
- (iii) He further admitted that he was trusted in the exchanging of money by R. and D.. The Panel concluded that since their activities were almost entirely criminal, it is inconceivable that they would trust the exchange – the laundering - of such significant sums of money to someone who was not complicit in the enterprise. They would risk the loss of significant amounts of money by using someone who was not complicit.
- (iv) He further admitted that he was told at the beginning that the money exchange was for R.'s "gas station". Additionally, he said that "he guessed" the money was from the fuel trade. He further admitted actually collecting money from the " " fuel station. He clearly knew, concluded the Panel, that the money was from the fuel trade.
- (v) The Panel was entirely satisfied that it was generally known to all those living in Kosovo, and in particular those of Serbian ethnicity living in the north (such as the Defendant), that Kosovo Customs were not effective on the border between Kosovo and Serbia at the points known as gates 1 and 31, that commodities – and in particular fuel and fuel products – were regularly imported over the border without recourse to the Customs facilities in . It was known that fuel was consistently cheaper in the north of Kosovo than in the south as a result of that;
- (vi) In the notebooks which the Defendant acknowledged were in his handwriting there were repeated references to the payment of sums of money to Police Officers and border staff. A legitimate, lawful business would not be required to make such payments;
- (vii) In interview the Defendant admitted continuing to deal with R. even after he knew that R. had fled the area following the Police raids on 15 February 2011. The flight of R. was, concluded the Panel, an indication that R. was criminally involved in the matters being investigated by the

Police, that investigation involving searches of fuel stations including “ ” fuel station. The fact that the Defendant continued to deal with R. thereafter was taken by the Panel as a clear indication that the Defendant was voluntarily and extensively involved in the criminal enterprise;

- (viii) The Defendant processed very significant amounts of money on a frequent and regular basis. He did so against the background set out in (i) to (vii) above. The evidence relating to the processing of money showed the following:

Documents recovered by the police from the “ ” fuel station showed:

payments to the Defendant (sometimes referred to as “P.” – in interview he conceded that he was known by that nickname) over a period of 4 ½ months of just short of 550,000 Euros (five hundred and fifty thousand),

payments to the Defendant over a four month period of 28,000 Euros (twenty eight thousand) ,

payments to the Defendant over a five month period of just less than 40,000 Euros (forty thousand),

payments to the Defendant over a five month period of just in excess of 128,000 Euros (one hundred and twenty eight thousand),

Documents recovered by the police from the D.’s house included an envelope which bore the words “10,000 €I gave to P. 06.06.2010”.

Documents recovered by the police during the search of the Defendant’s home and two cars included:

A large number of bank transfer documents allowing monies to be paid into bank accounts,

Documents showing significant depositing of money by the Defendant into bank accounts,

When taken together with the evidence of the Defendant having a list of the bank account details of a variety of companies (including five of the six referred to elsewhere in this document), the Defendant’s admissions during interview of him paying money into bank accounts and his acceptance that R. (“he is my manager...”) sent him a text message telling him to pay 17,800 €into the D. T. account, it was taken by the Panel as a clear indication that he was significantly involved in the movement of money for R., D. and those working with them.

The precise figure of the money exchanged, transferred and deposited by the Defendant has not been calculated and the Panel concluded could not reasonably be calculated. The Panel was sure beyond reasonable doubt of the following:

It was a very large amount of money measured in millions of Euros. The Prosecution, at paragraph 143 of the Indictment, put

the figure at in excess of 9,000,000 Euros (nine million) based on 305 transactions which can clearly be attributed to the Defendant. Further precise calculation is unnecessary. This figure is sufficient for the present purposes of the Panel, it is a figure which was never disputed or challenged by the defence and it is a figure which accorded with the documentary evidence.

- (d) During interviews with the Special Prosecutor the Defendant did not seek to deny that he had handled very large sums of money for R. and D., sometimes through other people involved with them. During the course of the main trial, there was no challenge by the defence to the documents, their provenance or their contents. The Panel had no difficulty, therefore, in accepting the accuracy of the evidence referred to in the foregoing paragraphs. In effect, the prosecution evidence was accepted by the defence, the only issue being challenged by the defence was whether or not the Defendant was knowingly involved in a criminal enterprise.
- (e) Based on all of the matters set out in paragraph 9.2 herein and the evidence of the criminal enterprise itself referred to elsewhere in this document, the Panel was satisfied beyond reasonable doubt that the Defendant was knowingly and criminally involved in the laundering of the proceeds of the illegal fuel operations conducted by other members of a criminal group of which he was a willing and active participant.  
The Panel was satisfied beyond reasonable doubt that the Defendant was guilty of committing the criminal offence of money laundering, in violation of Section 10.2 of the UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5th February 2004 (as amended).  
The Panel was satisfied that over the period alleged in the Indictment he:  
Converted, and transferred cash for the purpose of concealing the nature, source, location, disposition, movement or ownership of it;  
converted or transferred the cash for the purpose of assisting persons – namely, J. R. and S. D. and others – who were involved in the commission of the criminal offences that produced the property (smuggling of goods and tax evasion) to evade the legal consequences;  
converted or transferred, the cash with the purpose of promoting the underlying criminal activity (smuggling of goods and tax evasion); and  
acquired, possessed and used the cash.

### 9.3 count 5

- (a) Count 5 alleged organized crime: “whoever commits a serious crime as part of an organized criminal group shall be punished...” Article 274 Paragraph (1) of the CCK.  
Article 274 Paragraph (7) item 3) of the CCK defines “serious crime” as an offence punishable by imprisonment of at least four years.

Money laundering, the offence at count 4 of the Indictment, is punishable by a sentence of imprisonment of up to ten years. Accordingly, money laundering is a “serious crime” for the purposes of Article 274 of the CCK.

- (b) Article 274 Paragraph (7) item 2) defines ‘organized criminal group’ 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.

Article 274 Paragraph (7) item 4) defines ‘structured group’ as “a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.”

The Panel was satisfied beyond reasonable doubt, in view of all of the evidence previously referred to, of the following:

- That the Defendant was a member of a structured group
- That structured group comprised three or more persons, including R., D. and many others who performed a variety of roles (including drivers, fuel station attendants and others)
- That structured group was *not* formed ‘for the immediate commission of an offence’
- That structured group existed for a period of time and acted 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.

- (c) In view of the findings of the Panel as set out in Paragraph 9.2 and 9.3 herein, the Panel was satisfied beyond reasonable doubt that:

- (i) The Defendant had committed the serious crime of money laundering,
- (ii) He had done so as part of an organized criminal group

The panel was therefore satisfied beyond reasonable doubt of the Defendant’s guilt on count 5 of the Indictment.

#### 9.4 count 6

- (a) The Panel was satisfied beyond reasonable doubt, on the clear evidence adduced by the prosecution and unchallenged by the defence, of the following facts:

- (i) That during the search of the “ ” fuel station on the Police recovered from within a drawer a weapon, namely, a model pistol of calibre mm, manufactured in , with serial number , magazine and ( ) bullets of calibre mm,
- (ii) The pistol and the holster were subjected to DNA analysis. The Defendant’s DNA was recovered from the pistol and holster. The Defendant had therefore been in contact with the pistol and holster,
- (iii) That the evidence of S. A. (paragraph 6.3 herein) was both truthful and accurate – that the Defendant had left those items in the drawer some days before the Police search of ,



- (iv) That the Defendant did not possess a valid weapon authorization card at the material time.

(b) Accordingly, the Panel was satisfied beyond reasonable doubt that the Defendant was guilty of the offence alleged at count 6 of the Indictment, namely, unauthorized ownership, control, possession or use of weapons, in violation of Article 328 Paragraph (2) of the CCK. The Panel varied the dates of the Indictment to reflect the evidence of S. A. and found the relevant dates to be 25 January to 15 February 2011.

## 10. Sentencing

### 10.1 general issues

When imposing a criminal sanction, the Court must bear in mind both the *general* purpose of punishment, i.e. the need to suppress socially dangerous activities by deterring others from committing similar acts, and the *specific* purpose, i.e. to prevent the offender from re-offending.

The Panel came to the conclusion that only by imposing the sentences which were imposed in this case would those purposes be achieved. The panel evaluated all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the CCK whilst remaining within the limits provided for by law.

### 10.2 count 4 (money laundering)

The panel found the following *aggravating features*:

- The Defendant committed the offence of money laundering over a substantial period of time (approximately two years),
- A very significant amount of money was laundered by the Defendant during that period (in excess of 9 million Euros);
- The money laundering happened frequently and regularly,

The Panel found the following *mitigating features*:

- The Defendant was a man of good character with no criminal convictions,
- The prosecution had always indicated a belief that the Defendant's personal profits from his involvement in the offences were small. The Panel accepted that analysis.

The panel was aware that the penalty for the offence was imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

The Panel concluded that the appropriate sentence was one of four years imprisonment and a fine of 1,000 Euros, bearing in mind all of the matters referred to above.

### 10.3 count 5 (organised crime)

The panel found the following *aggravating features*:

- The Defendant committed the offence over a substantial period of time (approximately two years),
- The offending involved a very significant amount of money,
- The Government of Kosovo lost a significant amount of revenue as a result of the activities of the organised criminal group of which the Defendant was a member.

The Panel found the following *mitigating features*:

- The Defendant was a man of good character with no criminal convictions,
- The prosecution had always indicated a belief that the Defendant's personal profits from his involvement in the offences were small. The Panel accepted that analysis.

The panel was aware that the penalty for the offence was a fine up to 250,000 EUR and imprisonment of **at least** seven years.

The Panel concluded that the appropriate sentence was one of eight years imprisonment and a fine of 1,000 Euros, bearing in mind all of the matters referred to above.

#### 10.4 count 6 (possession, etc. of weapon)

The panel found the following *aggravating features*:

- The Defendant was part of a criminal group at the time of his unauthorised possession of the weapon,
- The weapon had obviously been in his possession in public areas,

The Panel found the following *mitigating features*:

- The Defendant was a man of good character with no criminal convictions,
- The gun had been in the place where it was found for 20 days or so and there was no evidence to suggest it was carried constantly or regularly.

The panel was aware that the penalty for the offence was a a fine of up to 7,500 EUR or imprisonment of one to eight years.

The Panel concluded that the appropriate sentence was one of twelve months imprisonment, bearing in mind all of the matters referred to above.

#### 10.5 Aggregate

Following the provisions of Article 71 of the CCK, the Panel fixed an aggregate penalty of nine years imprisonment and a fine of 2,000 Euros which the panel considered properly reflected the combination of offending set out in counts 4, 5 and 6.

#### 10.6 Payment of fine

Pursuant to Article 391 Paragraph (2) of the CPCK, the fine of 2,000 Euros shall be paid by the Defendant within 6 (six) months of the verdict becoming final.

## 11. Confiscation of Items

Pursuant to Article 328 Paragraph (5) of the CCK, the following articles are confiscated:

pistol, model , calibre mm, serial number ,  
magazine for that pistol and ( ) bullets of that calibre.

As the Panel was satisfied that the legal provisions were satisfied, pursuant to Article 60 Paragraph (1) and (2) of the CCK the following articles are confiscated:

car, registration number  
car, registration number  
14,040 Euros recovered from the Defendant on his arrest on  
210 RSD recovered from the Defendant on his arrest on

## 12. Costs

The Defendant **J. P.** shall reimburse the costs of these criminal proceedings pursuant to Article 102 Paragraph (1) of the CPCK with the exception of the cost 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.

Prepared in English, an authorized language

Andrew J. Hatton  
Presiding Judge

Beqir Halili  
Panel Member

Nuno Madureira  
Panel Member

Chiara Tagliani  
Recording Officer

### Legal Remedy:

The parties have the right to appeal against this verdict to the Supreme Court, through the District Court of Mitrovicë/a, within fifteen (15) days of the day the copy of this judgment has been served on them, pursuant to Article 398 Paragraph (1) of the CPCK.

