DISTRICT COURT OF PRISHTINE/PRISTINA Case No.: **Ap.-Kz. 116/12**

Date: **3 December 2012**

THE DISTRICT COURT OF PRISHTINE/PRISTINA, in the second instance, in the Panel, composed of EULEX Judge Dean B. Pineles, presiding, Judge Rafet Haxhaj, and Judge Vehbi Kashtanjeva, panel members, assisted by EULEX Legal Officer Zane Ratniece, as a recording clerk, in the criminal case against the Defendant:

SZ, born on XX, in XX, place of residence in XX;

Charged according to the Indictment PP No. 2967-3/2009, dated 2 October 2009, as amended by the Prosecutor in the Main Trial on 21 October 2010 and 5 April 2011; and

By the Judgment of the Municipal Court of Prishtine/Pristina, P No. 1960/09, dated 7 April 2011 (hereinafter the '**Judgment**'), the First Instance Court:

REJECTED Counts 2, 6 and 8;

ACQUITTED the Defendant of

Sexual Abuse by Abusing Position, Authority or Profession, Art 200 (2) 1) of the Criminal Code of Kosovo (CCK) (Count 4); and

Accepting Bribes, Art 343 (1) CCK (Count 7); and

Found the Defendant GUILTY of:

Sexual Abuse by Abusing Position, Authority or Profession, Art 200 (2) 1) CCK (Count 1), and sentenced to six (6) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for three (3) years;

Attempted Sexual Abuse by Abusing Position, Authority or Profession, Art 20, 200 (2) 1) CCK (Count 3), so reclassified from the original charge of Mistreatment in Exercising Duties, Art 164 (1) CCK, and sentenced to four (4) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for three (3) years;

Accepting Bribes, Art 343 (1) CCK (Count 5), and sentenced to one (1) year and six (6) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for three (3) years;

Mistreatment in Exercising Duties, Art 164 (1) CCK (Count 9), so reclassified from the original charge of Abusing Official Position or Authority, Art 339 (2), (1) CCK, and sentenced to six (6) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for three (3) years;

Mistreatment in Exercising Duties, Art 164 (1) CCK (Count 10), and sentenced to four (4) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for three (3) years; and

SENTENCED the Defendant to the aggregate punishment of two (2) years and four (4) months imprisonment and the accessory punishment of prohibition of exercising public administration or public service for three (3) years;

NOW, the Second Instance Court ACTING upon the appeal filed by Defense Counsel Bajram Tmava on behalf of Defendant SZ, dated 1 August 2011, received in the First Instance Court on 9 August 2011 (the '**Appeal**'); and

AFTER considering the opinion of the District Public Prosecutor Agron Qalaj, dated 2 May 2012, filed in the Court on 4 May 2012; and

AFTER holding the session of the Panel, open to the public on 15 November 2012, in the presence of Defendant SZ, his Defence Counsel Bajram Tmava, and District Public Prosecutor Abdyrrahim Islami; and

AFTER the deliberation and voting held on 15 November 2012 and 3 December 2012; and

PURSUANT to Art 420 of the Kosovo Code of Criminal Procedure (KCCP)

renders the following

JUDGMENT

UPON APPEAL

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1. **COUNT 1**

The conviction for **Count 1**, **Sexual Abuse by Abusing Position, Authority or Profession**, Art 200 (2) 1) CCK, that 'in 2006, at the Obiliq Police Station, in his position of commander of the police station, by abusing his control over the employment of MP, police officer at the above station, during a meeting with her, grabbed the hand of MP for a sexual purpose and tried to kiss her on the lips, achieving to kiss her on the right cheek' is ANNULLED *ex officio* pursuant to Art 389 4), 425 KCCP, because the prosecution was barred due to expiry of the period of statutory limitation. Therefore **Count 1**, **Sexual Abuse by Abusing Position, Authority or Profession**, Art 200 (2) 1) CCK IS **REJECTED**.

2. **COUNT 3**

The Judgment in **Count 3**, **Attempted Sexual Abuse by Abusing Official Position**, Art 20 and 200 (2) 1) CCK is **MODIFIED** *ex officio* pursuant to Art 424 (4), 426 (1) KCCP. The obvious mistake in the wording of the Judgment 'May or June 2008' is modified to 'November or December 2008.' The factual finding now reads 'because in November or December 2008, at the Obiliq Police Station, in his position of commander of the Obiliq Police Station by abusing his control over the employment of VG, police officer at the above station, during a meeting with her took an immediate action to touch the shoulder of VG for a sexual purpose and to kiss her, not succeeding in completing his action'.

3. The Appeal filed by Defense Counsel Bajram Tmava **IS PARTLY GRANTED as follows**:

4. **COUNT 5**

The Judgment in **Count 5**, **Accepting Bribes**, Art 343 (1) CCK **IS MODIFIED** pursuant to Art 390 3), 420 (1) 4), 426 (1) KCCP. The Defendant **is ACQUITTED** of the **Count 5**, **Accepting Bribes**, Art 343 (1) CCK, because it was not proven beyond reasonable doubt that 'SZ in May or June 2008, in Obiliq, in his capacity of commander of the Obiliq Police Station and therefore of official person, accepted from BZ 500 Euros in order to perform, within the scope of his authority, an official act which he should not have performed - to give assistance to BZ in order to make BK leave the apartment belonging to BZ'.

5. **COUNT 9**

The Judgment in **Count 9**, **Mistreatment in Exercising Duties**, Art 164 (1) CCK **IS MODIFIED** pursuant to Art 403 (2) 2), 424 (1), 426 (1) KCCP. The conviction **IS RECLASSIFIED** to the original charge, **Abusing Official Position or Authority**, Art 339 (1) CCK, 'because from 2006 until 2009, at the Obiliq Police Station, the Defendant abused his official position of commander of the Obiliq Police Station, with the intent to cause psychological damage to KH, police officer at the above station, by saying to her on

several occasions ‘you are worth nothing, you do not know how to walk, you are a dirty thing’.

6. **SENTENCING**

Because Count 1 is rejected, and Defendant SZ is acquitted of Count 5, the total sentence is now fourteen (14) months imprisonment. The accessory punishment of prohibition of exercising public administration or public service for each of the **COUNT 3**, **COUNT 9** and **COUNT 10 IS MODIFIED** to two (2) years after the punishment of imprisonment has been served.

The aggregate punishment, pursuant to Art 71 (1), (2) 3), (3) CCK is determined twelve (12) months imprisonment, with credit for the period of time that Defendant spent in detention and house arrest from 27 August 2009 to 5 January 2010; and with accessory punishment of prohibition of exercising public administration or public service for two (2) years after the punishment of imprisonment has been served.

7. The Appeal filed by Defense Counsel Bajram Tmava **IS REJECTED** in the remaining part.

REASONING

I. Procedural history of the case.

1. On 24 August 2009, an initial criminal report was sent to the Office of the Municipal Public Prosecutor against Defendant SZ for the commission of the criminal offences.

2. On 27 August 2009, the Defendant was arrested and the Prosecutor filed in the Municipal Court of Prishtine/Pristina a motion to impose detention on remand against him. The

request was not granted and house arrest was imposed against the Defendant to be counted from the date of the arrest.

3. On 3 September 2009 a Summary Indictment was filed in the Municipal Court of Prishtine/Pristina, which Indictment was amended with new criminal offences on 9 September 2009. On 24 September 2009, the Confirmation of Indictment Judge returned the Summary Indictment to the Prosecutor, considering that the Prosecutor should conduct a proper investigation and then re-file the Indictment. On 2 October 2009 the Prosecutor re-filed the Indictment, charging the Defendant with ten (10) Counts.

4. On 15 October 2009, with the decision KA No. 274/09, the Confirmation of Indictment Judge Driton Muharremi confirmed the Indictment.

5. On 29 October 2009, the EULEX Prosecutor addressed the Office of the President of Assembly of EULEX Judges with a request that the case be assigned to EULEX Judges, which request was supported by the President of the Municipal Court of Prishtine/Pristina with the letter, dated 20 November 2009.

6. On 23 November 2009, a session was held at the Municipal Court of Prishtine/Pristina by the President of Assembly of EULEX Judges in order to evaluate whether the case should be taken over by EULEX Judges, following which a decision was made to assign the case to EULEX Judges.

7. On 18 October 2010, the Trial commenced. The Panel was originally composed of EULEX Judge Gianfranco Gallo, presiding, and the EULEX Judge Jonathan Welford-Carroll and Judge Elmaze Fazliu, panel members. After the preliminary formalities, the examination of the witnesses began.

8. On 21 October 2010, during the Trial session, the Prosecutor amended the Indictment as follows: The charges relative to the Counts 1 and 3 of the Indictment, originally classified as Sexual Abuse by Abusing Position, Authority or Profession, Art 200 **(1)** 1) CCK (sexual

act), were amended to Sexual Abuse by Abusing Position, Authority or Profession, Art 200 **(2)** 1) CCK (touching). The charge relative to the Count 10 of the Indictment, originally classified as **Abusing Official Position or Authority**, **Art 339 CCK**, was reclassified to **Mistreatment in Exercising Duties**, Art 164 (1) CCK.

9. In the session of 5 April 2011, the Prosecutor withdrew Counts 2, 6, and 8 of the Indictment, whereas the charge relative to Count 3 of the Indictment was reclassified from the original charge of **Mistreatment in Exercising Duties**, Art 164 (1) CCK to **Attempted Sexual Abuse by Abusing Official Position**, Art 200 (2) 1) CCK.

II. Appeal of the Defense. Admissibility. Jurisdiction.

10. Defense Counsel Bajram Tmava filed the Appeal on behalf of Defendant SZ, dated 1 August 2011, received in the First Instance Court on 9 August 2011. Pursuant to Art 398 (1) KCCP, an appeal against a judgment rendered at first instance may be filed within fifteen (15) days from the day a copy of the judgment has been served. However, the Panel is unable to establish the date on which the Defendant or Defense Counsel received the Judgment. There are no delivery slips attached to the Judgment in the case file attesting to service on the Defendant and Defense Counsel Bajram Tmava. However, the file contains a ruling rendered by the EULEX Presiding Judge Gianfranco Gallo acting in the First Instance, dated 11 November 2011, and issued in accordance with Art 407 (2) KCCP. According to the said ruling the Appeal shall be considered as filed timely owing to the lack of the delivery slips.

11. The Panel concurs with the finding of the EULEX Presiding Judge Gianfranco Gallo. Accordingly, there are no grounds for the present Court to dismiss the Appeal as belated pursuant to Art 421 KCCP. The Appeal is deemed to be filed timely, and therefore the Appeal will be examined on the merits.

12. Pursuant to Art 23 2) KCCP the present Court is competent to decide on the Appeal.

III. Grounds of challenge in the Appeal. The Prosecution response.

13. Defense Counsel Bajram Tmava filed a multi-pronged Appeal, claiming 'absolute violations'[1] of criminal procedure, essential violations of criminal procedure, and erroneous and incomplete determination of the facts. He requests that the Judgment of the First Instance Court be annulled and the case be returned for retrial. Listed immediately below are Defense Counsel's arguments in the order presented in his written Appeal:

A. 'Absolute violations' (treated by the Panel as 'substantial violations' pursuant to Art 403 KCCP):

1) Admission into evidence of the statements given to the Police by BK and NZ without the opportunity for cross-examination, contrary to Art 156 (2) KCCP, thereby resulting in a violation of Art 403 (1) 8) KCCP. This allegation relates to **Count 5**, **Accepting Bribes**. This issue is addressed in the First Instance Judgment at page 25.

2) The re-qualification of **Count 9** from a violation under Art 339 (1) CCK, **Abusing Official Position or Authority**, with the maximum punishment of one (1) year imprisonment, to a violation under Art 164 (1), **Mistreatment in Exercising Duties**, with the maximum punishment of three (3) years imprisonment. The Appeal contends that this amounts to a violation of Art 403 (1) 10) KCCP, because a

[1] The KCCP does not include the term 'absolute violations' of criminal procedure. Rather, the KCCP limits itself to 'substantial violations' pursuant to Art 403 KCCP. The Court will assume that Defense Counsel intends all 'absolute violations' to be 'substantial violations'. It is possible that Defense Counsel used the term 'absolute violations' simply to emphasize the seriousness of these alleged violations.

violation under Art 164 (1) CCK exceeded the scope of the original charge to the detriment of the Defendant. Also, the re-qualification occurred only after the conclusion of the Trial, and the Defendant did not have adequate opportunity to defend.[2] The re-qualification is discussed in the First Instance Court Judgment at pages 33 to 34.

B. Substantial violations:

1) The criminal report was filed without any investigation, and the Indictment was filed within three (3) days without any investigation, as outlined in the procedural history above. Defense Counsel argues that the Prosecutor should only file an indictment when he/she is satisfied that that the evidence is sufficient pursuant to Art 304 (1) KCCP. This issue is not discussed in the First Instance Court Judgment.

2) The Presiding Judge of the First Instance Court admitted new evidence at the beginning of the Trial, rather than follow the approved sequence. The new evidence included numerous documents handed over by MP and KB, the complaining witnesses in the Counts 1 and 10, respectively, as itemized on page 7 of the First Instance Court Judgment. This issue is not discussed in the First Instance Court Judgment. However, the issue is discussed in the Trial minutes of 18 October 2010, at pages 7 to 9.

3) The Injured Parties should have been examined as witnesses outside of the presence of the other Injured Parties pursuant to Art 164 (1) KCCP. This issue is discussed in the First Instance Court Judgment at page 36.

[2] Count 10, which originally charged a violation under Art 339 (1) CCK with regard to a different Injured Party, was amended early in the Trial to a violation under Art 164 (1) CCK, and this has not been challenged in the Appeal.

4) Improper questioning conducted by the Presiding Judge of the First Instance Court, which resulted in the Trial Panel being biased. This issue is not discussed in the First Instance Court Judgment.

5) The Defendant was not permitted to be excused for health reasons during certain sessions during which the testimony of BZ was heard in connection with **Count 5**. The Defense objected. Then, Defense Counsel Bajram Tmava walked out of the courtroom and declined to ask any questions, claiming that his client was too sick to follow the proceedings (*see* minutes of the Main Trial, 17 December 2010). At the next session on 21 January 2011, Defense Counsel Bajram Tmava asked to recall the witness for questioning, which was denied. This issue is discussed in the First Instance Court Judgment at page 24.

C. Erroneous and incomplete determination of the facts:

1) No elaboration or incorrect elaboration of the favorable testimonies of the Defense witnesses, or of the Defendant's explanations of possible motives of the Injured Parties, or of the Defendant's denial of any wrong doing.

2) Internal contradictions in the testimonies of each of the Prosecution witnesses, including each of the Injured Parties, which contradictions were not eliminated by confrontation.

3) Contradictions in the testimonies between/among the Injured Parties.

4) Contradictions between the Injured Parties' written statements and their Trial testimonies.

5) The testimonies of KH and KB, even taken at face value, do not make out a crime under Art 164 (1) CCK (Counts 9 and 10).

6) The Presiding Judge of the First Instance Court took over the questioning and coerced the witnesses into making incriminating statements.

7) The offense of Attempted Sexual Abuse by Abusing Position, Authority or Profession (Count 3) is said to have occurred in May-June 2008, whereas the Injured Party was not transferred to the Defendant's department until 2 July 2008.

8) BZ's testimony is internally inconsistent and inconsistent with that of AK (Count 5).

9) There was no plausible explanation of the fact there was no trace of the alleged transfer of money to the Defendant's wife by the Western Union (Count 5).

10) The allegedly fake kidnapping of KB should have been elaborated in connection with the Count 10.

11) The First Instance Court Panel gave no credence to the Trial statement of the Defendant or to the closing statement of the Defense Counsel.

14. In response to the Appeal the Prosecution filed their proposal, dated 4 May 2012, which was received in the Court on 4 May 2012. The Prosecution did not respond to the arguments raised by the Defense Counsel in the Appeal, but rather in one sentence asked that the Appeal be rejected and the First Instance Court Judgment affirmed.

15. In the session of the Panel on 15 November 2012, District Public Prosecutor Abdyrrahim Islami stood by the Prosecution proposal, dated 4 May 2012. In addition, the Prosecutor stated that in the event the evidence does not attest to any transfer of the funds *via* Western Union as claimed by the witness with regard to the Count 5, it would appear that the charge of Accepting Bribes cannot stand.

IV. Findings of the Court.

A. Preliminary considerations.

16. At the outset the Panel observes that some of the arguments by Defense Counsel are general in nature, and relate to the manner in which the Presiding Judge of the First Instance Court managed the Trial (e.g. bias, improper questioning). Other arguments relate to specific Counts of the Indictment, which the Panel will address first. However, before doing so, the Panel will address *ex officio* the question of whether the criminal law was violated to the detriment of the Defendant pursuant to Art 415 (1) 4) KCCP. More specifically, whether prosecution of Count 1 and the ensuing conviction were prohibited by the period of statutory limitation pursuant to Art 404 3) KCCP.

B. COUNT 1: Sexual Abuse by Abusing Position, Authority or Profession. The period of statutory limitation.

17. The Indictment in Count 1 originally charged a violation under Art 200 **(1)** 1) CCK, Sexual Abuse by Abusing Position, Authority or Profession (committing a sexual act). This crime carries a maximum punishment of five (5) years imprisonment. The charge was amended by the Prosecutor on 21 October 2010, shortly after the Main Trial in the First Instance Court began, to a violation under Art 200 **(2)** 1), Sexual Abuse by Abusing Position, Authority or Profession (touching). This crime carries a punishment of imprisonment from six (6) months to three (3) years.

18. Under Art 90 (1) CCK, the criminal prosecution may not be commenced after certain periods of time have elapsed, depending on the punishment of a particular offense. Pursuant to Art 90 (1) 5), a three (3) years period of statutory limitation, counted from the

date of commission of a crime until the commencement of the prosecution, is foreseen when the offense is punishable by imprisonment of more than one (1) but not more than three (3) years. This limitation applies to a violation under Art 200 **(2)** 1), since the maximum punishment is three (3) years.

19. The Judgment of the First Instance Court found the Defendant guilty of Count 1 of the Indictment, as amended, namely committing a violation under Art 200 (2) 1) CCK, Sexual Abuse by Abusing Position, Authority or Profession (touching). The Judgment states that the offense occurred 'in 2006' without greater specificity. The Trial testimony of the complaining witness was to the effect that the offense occurred 'sometime in mid-2006' (*see* minutes of the Main Trial, 18 October 2010, page 15). The Panel has been unable to find any additional evidence which would provide a more definitive date.

20. As noted in the procedural history above, the criminal report was filed with the Prosecutor on 24 August 2009, based on the witness's statements provided earlier in August 2009. The Panel believes that this is the appropriate date for determining when the criminal proceedings were commenced. (The Defendant was arrested on 27 August 2009, and the Summary Indictment was filed on 3 September 2009.) The issue becomes whether the period of statutory limitation applies in this particular scenario.

21. If the phrase 'mid-2006' is interpreted broadly, it could include the month of August 2006. However, a more literal interpretation would suggest otherwise. Thus, it cannot be concluded with certainty whether the three (3) years statutory limitation period elapsed or not.

22. Also, it must be determined whether there were any interruptions in this period. Under Art 91 (4) CCK the period of statutory limitation is interrupted if the perpetrator commits another criminal offense of 'equal or greater gravity' prior to the expiry of the statutory limitation period. Here, the Defendant has been convicted of several other offenses which occurred prior to the expiry of the three (3) years period of statutory limitation applicable

to Count 1, only one of which provides a greater punishment, and that is Accepting Bribes, Count 5, which carries a maximum punishment of five (5) years. However, as discussed below, the Panel has determined that there is insufficient evidence to sustain that conviction, so it cannot be considered for purposes of the period of statutory limitation.

23. The Defendant has also been convicted of Attempted Sexual Abuse by Abusing Official Position, Art 20 and 200 (2) 1) CCK, in Count 3. An Attempt shall be punished no more than three-quarters of the maximum punishment for the criminal offense itself, pursuant to Art 20 (3) and 65 (2) which in the present case is three-quarters of three (3) years. Obviously this crime is not of 'equal or greater gravity' than the completed offense.

24. The remaining offense for which the Defendant was convicted involves violation under Art 164 (1) CCK, Mistreatment in Exercising Duties, Count 10.[3] This crime carries the maximum punishment of three (3) months to three (3) years imprisonment. Thus, the question is, whether the offense under Art 164 (1) is of 'equal or greater gravity' than that under Art 200 (2). The maximum punishment is the same for both criminal offenses - three (3) years imprisonment. But, Art 164 (1) carries a shorter minimum punishment - three (3) months imprisonment - as opposed to the minimum punishment under Art 200 (2) of six (6) months imprisonment.

25. In deciding whether the Defendant gets the benefit of the period of statutory limitation, the Panel is guided by the provisions of Art 3 (2) KCCP, which provides that '[d]oubts regarding the existence of facts relevant to the case or doubts regarding the implementation of a certain criminal law provision shall be interpreted in favor of the defendant and his or her rights under the present Code'. Thus, since there are both factual and legal doubts, the panel is led inexorably to the conclusion that the conviction

[3] The First Instance Court Judgment also found the Defendant guilty of a violation under Art 164 (1) CCK in Count 9, but the present Panel has re-qualified that offense under Art 339 (1) as in the original Indictment, and Art 339 (1) carries a maximum punishment of one (1) year imprisonment.

for Count 1 cannot stand because all such doubts, as discussed above, must be interpreted in favor of the Defendant.

26. The Panel will now address the arguments that Defense Counsel raises as to specific counts.

C. COUNT 3: Attempted Sexual Abuse by Abusing Official Position.

27. Turning first to Count 3, Attempted Sexual Abuse by Abusing Official Position, under Art 20, 200 (2) 1) CCK. Defense Counsel argues that the First Instance Court Judgment found Defendant guilty for committing this offense in May-June 2008 at the Obiliq Police Station, whereas the putative victim VG was not transferred to the Obiliq Police Station until 2 July 2008.

28. With respect to the aforementioned contention of the Defense Counsel, the Panel observes that the minutes of the Main Trial show conclusively that the offense occurred well after 2 July 2008, and that the First Instance Court simply committed an oversight or made a clerical error in its Judgment.

29. In particular, VG was questioned by the Prosecutor during the Main Trial on 21 October 2010. He asked her the date when she returned from maternity leave. VG responded as follows:

'It was about May or June 2008, when I came from maternity leave. Initially I worked short shifts. **After about six months** [*emphasis added*] this should have ended, and I should have gone to my normal work routine. And, a week before this switch should have started, I went to his office. I do not know whether he invited me there or I went, but it had to do with the new line of work and I would have then have made a proposal regarding the shift.'

It was at this meeting that the offense occurred.

30. The portion of the complaining witness's testimony which has been emphasized above - 'after about six months' - clearly shows that it was not May-June 2008 when the offense occurred, but rather about six (6) months thereafter. And there is no other evidence on this point apart from VG's testimony. Thus, the First Instance Court made an erroneous determination of the factual situation under Art 405 (2) KCCP, in that it determined a material fact incorrectly, i.e., the date of the offense. The date is material in this matter because the Defendant has claimed that the victim was not working at the Station during that time frame.

31. Accordingly, the provisions of Art 424 KCCP come into play. Paragraph (1) of Art 424 *inter alia* states that the first instance judgment shall be annulled and the case returned for retrial if there is an erroneous determination of the factual situation. However, this applies only if a new main trial is '**necessary**' to correct the factual situation. Such is not the case here.

32. As noted above, it is obvious that the offense occurred about six (6) months after May or June 2008. The critical testimony in this regard - 'after about six months' - comes in the sentence immediately following the reference to May or June 2008. At worst, the date specified in the First Instance Court Judgment is a mere oversight on the part of the First Instance Court, or perhaps even a clerical mistake. The mistake can be corrected simply by modifying the Judgment of the First Instance Court to substitute the correct date - November or December 2008 - for the incorrect date. Ordering a retrial to correct an obvious mistake would create a legal absurdity which must be avoided.

33. In application of Art 424 (4) and 426 (1) KCCP the Panel also must have regard to one of the fundamental principles of the criminal procedure - a trial within a reasonable time. The reasonable time guarantee is set out in Art 5 (1) and (2) KCCP, and also in Art 31 (2) of

the Kosovo Constitution. Pursuant to Art 22 (2) and 53 of the Kosovo Constitution, this guarantee must be applied consistent with the jurisprudence of the European Court of Human Rights. The reasonable time guarantee 'underlines the importance of rendering justice **without delays** which might jeopardize its **effectiveness** and **credibility'** [*emphasis added*] (ECHR, *H v. France*, 24 October 1989, para 58). The purpose of the reasonable time requirement is therefore to guarantee that within a reasonable time and by means of a judicial decision, an end is put to the insecurity into which a person finds himself or herself on account of a criminal charge against him or her. This is in the interest of the person in question as well as of legal certainty.

34. In light of the foregoing, the Panel finds that ordering a retrial would create an unnecessary and pointless delay in the proceedings. The retrial is not necessary because evidence of VG has already been taken in the First Instance Court. That evidence, as considered above, clearly indicates the time of the crime - November or December 2008. Being mindful of the reasonable time guarantee and, particularly, efficiency of the criminal proceedings, the mistake in the Judgment of the First Instance Court in the date of the crime is modified by the Panel, based on Art 424 (4) and 426 (1) KCCP.

35. Thus, Defense Counsel's argument is rejected.

D. COUNT 5: Accepting Bribes.

36. Defense Counsel challenges the First Instance Court Judgment regarding Count 5, Accepting Bribes, Art 343 (1) CCK, on several grounds: that the written statements of BK and NZ were improperly admitted, contrary to Art 156 (2), 403 (1) 8) KCCP; that BZ's testimony was internally inconsistent; that there was no plausible explanation for the fact that there was no trace of the alleged transfer of the money to the Defendant's wife *via* Western Union; that the Defendant was ill during the testimony of BZ, and was not

allowed to be excused; and that the First Instance Court rejected Defense Counsel's request to recall BZ for cross examination after the Defendant recovered.

37. The Panel is persuaded by Defense Counsel's arguments insofar as they relate to the insufficiency of the evidence.

38. The First Instance Court in its Judgment found the Defendant guilty of accepting a bribe of 500 Euros from BZ in order to perform, within the scope of his authority, an official act which he should not perform, namely, evicting a usurper from BZ's apartment. This finding is based primarily on the Trial testimony of BZ who stated that in May or June 2008 he paid the Defendant a bribe of 500 Euros which he sent *via* Western Union to the bank account of the Defendant's wife.

39. The First Instance Court Judgment is also based in part on the statement given to the Police by NZ who was unavailable to testify at the Trial.[4] The statement was not subject to cross examination, but was admitted under Art 368 (1) 1) KCCP, over Defense Counsel's objection. The First Instance Court explained that it was used only for purposes of corroboration. The statement of NZ claimed that he (NZ) and BZ asked the Defendant for help in evicting a person who was illegally occupying BZ's apartment, and that BZ gave the Defendant 2000 Euros for this purpose.

40. It was revealed through financial disclosure, ordered by the First Instance Court, that there was no record of any such Western Union transaction, and that there was no deposit into the account of the Defendant's wife during the relevant time period. Indeed, the only deposit which remotely matches the witness's testimony is one for 600 Euros two (2) years earlier. This matter could not be clarified because the Defendant's wife chose not to offer evidence as was her right under Art 160 (1) 1) KCCP, which exempts a spouse from the duty to testify.

[4] Defense Counsel also makes reference to a statement of BK, but no such statement was considered by the First Instance Court in its Judgment.

41. The First Instance Court addressed these contradictions in its Judgment, and offered various theories to explain why there was no Western Union record; why there was no record of deposit in the account of the Defendant's wife; and why NZ said 2000 Euros rather than 500 Euros; all of which gave the benefit of the doubt to the Prosecution. The First Instance Court stated: 'In the contradictory context, in the opinion of the panel what counts is the firm and solid testimony of BK as to the fact that the money was given to the police officer to solve the issue of property. This part of the testimony is steadfast and flawless.' (*See* Judgment, page 26.)

42. The Second Instance Panel believes that this assessment represents an erroneous determination of the factual situation under Art 405 (1), (2) KCCP. The Panel is unable to accept the finding of the First Instance Court that the Defendant accepted a bribe when the testimony of the complaining witness proved to be blatantly false in a material respect: as to how the money was transferred, and to whom. BZ's testimony was unequivocal in this regard, yet his testimony proved to be false because there was no Western Union transfer to the account of the Defendant's wife, and there was no deposit into her account by any other means during the period in question. Moreover, there is no evidence whatsoever that any money was ever actually accepted or received by the Defendant himself.

43. Thus, the First Instance Court did not pay proper heed to Art 3 (2) KCCP, which provides that '[d]oubts regarding the existence of facts relevant to the case … shall be interpreted in favor of the defendant…' Here, all doubts were resolved in favor of the Prosecution. Accordingly, the First Instance Court Judgment as to conviction for Count 5 must be modified and the Defendant acquitted for the lack of evidence.

44. In view of the aforementioned finding, the Panel deems it unnecessary to address several other arguments raised by the Defense Counsel in relation to this Count.

E. COUNT 9: Mistreatment in Exercising Duties.

45. Next, the Defense Counsel takes aim at Count 9 under which the Defendant was found guilty of Mistreatment in Exercising Duties, under Art 164 (1) CCK, which carries a punishment of three (3) months to three (3) years imprisonment. This Count was reclassified by the First Instance Court from a violation under Art 339 (1), Abusing Official Position or Authority, which carries a punishment of up to one (1) year. The Defense Counsel argues that the reclassification is a violation of Art 403 (1) 10) KCCP, because it goes to the detriment of the Defendant and therefore exceeds the scope of the original charge.

46. The possibility of reclassifying Count 9 first arose during the Trial when, on 1 April 2011, the Presiding Judge informed the Parties of the 'abstract possibility' that Count 9 should be reclassified to Art 164 (1) CCK. (*See* minutes of the Main Trial, 1 April 2011, page 32). Defense Counsel objected, and requested that in case of reclassification, the Defense would need to receive an amended Indictment and would need additional time to deliver their defense in this regard.

47. During the next Trial session on 5 April 2011, the Prosecutor and Defense Counsel presented their closing statements. The Presiding Judge of the First Instance Court made no further reference to the possibility of reclassification of Count 9. Furthermore, the Prosecutor and Defense Counsel both made closing arguments related only to Art 339 (1) CCK, the original charge, and not the more serious offense of Art 164 (1) under which the Defendant was convicted.

48. With regard to Defense Counsel's reliance on Art 403 (1) 10) KCCP, the Panel notes that Art 403 (1) 10) makes a further reference to Art 386 (1), and, as such, speaks of the **act charged**. One must therefore make a distinction between the **act charged**, and the **legal classification of the act charged**. With regard to the former - the act charged – Art 386 (1)

requires that '[t]he judgment may relate only … to an act which is the subject of a charge contained in the indictment'. Whereas, with regard to the latter - the legal classification of the act charged - Art 386 (2) provides that the court shall not be bound by the prosecutor's legal classification of the act. Although the KCCP does not explicitly limit the court's power to reclassify an offense from one with a lesser punishment to another offense with a greater punishment, a majority of the Second Instance Court's Panel believes that the argument of Defense Counsel is grounded based on local practice, since such a reclassification is to the detriment of the Defendant.

49. In addition, the Panel observes that the elements of an offense under Art 339 (1) CCK, Abusing Official Position or Authority, are different from those under Art 164 (1). The relevant part in Art 339 (1) reads:

> 'An official person who, with the intent … to cause any damage to another person … abuses his … official position, exceeds the limits of his … authorizations or does not execute his … official duties shall be punished...'

Art 339 (1) does not require that actual damage is caused to another person by abuse of official position. The crime is completed once an official person 'with the **intent** … to cause any damage to another person' abuses his official position [*emphasis added*].

50. This is different from Art 164 (1), which reads:

> 'An official person, who, in the exercise of his … duties, **mistreats**, **intimidates** or **insults** another person, shall be punished…' [*emphasis added*]

Therefore, Art 164 (1) requires the prosecution to establish that another person suffered an actual damage, i.e., mistreatment, intimidation or insult. This additional element is not required under Art 339 (1). In view of the fact that the elements of the two offenses are

different, the Panel is of the opinion that the First Instance Court should have afforded the Defendant an opportunity to prepare a defense to the enhanced charge in an effective manner, pursuant to Art 12 (1) KCCP which states that '[t]he defendant shall have the right to have adequate time and facilities for the preparation of his … defense'. However, the material before the Panel indicates that the Defendant was given no opportunity to prepare his defense to the charge under Art 164 (1) CCK, as it was only through the First Instance Court's Judgment that he learned of the conviction under Art 164 (1).

51. This amounted to a substantial violation of the criminal procedure under Art 403 (2) 2) KCCP. However, a retrial is not necessary. The only reason why the First Instance Court convicted the Defendant under Art 164 (1) CCK, and not, as originally charged, under Art 339 (1), is because of its view that Art 339 (1) entails a material benefit or **material** damage. The Panel disagrees with the First Instance Court that the term 'damage' in Art 339 (1) covers only 'material damage'.[5] Art 339 (1) clearly refers to '**any** damage'. The term 'any damage' denotes both material damage and immaterial damage, such as physical pain, different forms of emotional distress, fear, and deterioration of physical appearance.

52. Such reading of Art 339 (1) is underlined by the following paragraph of the same provision, Art 339 (2), which states: 'When the offence provided for in paragraph 1 … results in a damage exceeding 2500 EUR **or a grave violation of the rights of another person**, the perpetrator shall be punished…'

53. It is therefore obvious that the legislator intended that under Art 339 (1) the perpetrator may act with the intent to cause material damage to another person as well as with the intent to cause immaterial damage to another person. If Art 339 (1) was meant to cover

[5] Art 339 (1) CCK reads: 'An official person who, **with the intent** to obtain an unlawful material benefit for himself, herself or another person or a business organization or **to cause <u>any damage</u> to another person** or business organization, abuses his or her official position, exceeds the limits of his or her authorizations or does not execute his or her official duties shall be punished by imprisonment of up to one year.'

only material damage to another person, the legislator would not have used the words '**any** damage' in Art 339 (1). Further, in addition to material damage exceeding 2500 EUR the legislator would not have included an alternative damage of a **'grave violation of the rights of another person'** in Art 339 (2).

54. The Panel further observes that where in the CCK the legislator intended to cover only material damage, it has expressly specified so by including the words 'material damage'. By way of example, the Panel refers to Irresponsible Economic Activity, Art 233 (1) CCK, and Organizing Pyramid Schemes and Unlawful Gambling, Art 243 (3) CCK.

55. With this in mind, the Panel does not find it necessary to return the case for retrial because the evidence was sufficient to support the Defendant's conviction for the original charge of Abusing Official Position or Authority, under Art 339 (1) CCK. The First Instance Court determined that from 2006 until 2009, at the Obiliq Police Station, in his position of commander of the police station and therefore of official person, the Defendant mistreated and insulted KH, police officer at the above station, by saying to her on several occasions 'you are worth nothing, you don't know how to walk, you are a dirty thing'.

56. Through this conduct the Defendant abused his official position with the obvious intent to cause psychological damage to KH. This is corroborated by the evidence which demonstrates that KH's mental health was adversely affected by the Defendant's behavior. KH lapsed into a 'grave health state', and suffered a 'nervous breakdown' which caused her to be taken to the hospital emergency unit, and subsequently required her to undergo psychological counseling. (*See* minutes of the Main Trial, 21 October 2010, pages 21, 25.)

57. The Panel, therefore, concludes that through correct application of the law, Art 12 (1), 403 (2) 2) KCCP, Art 339 (2) CCK, in order to remedy the substantial violation of the criminal procedure in the First Instance Court, the Defendant's conviction under Count 9 is reclassified to the original charge - Abusing Official Position or Authority, Art 339 (1)

CCK, because from 2006 until 2009, at the Obiliq Police Station, the Defendant abused his official position of commander of the Obiliq Police Station, with the intent to cause psychological damage to KH, police officer at the above station, by saying to her on several occasions 'you are worth nothing, you do not know how to walk, you are a dirty thing'.

F. COUNT 10: Mistreatment in Exercising Duties.

58. The Defense Counsel also argues that the words used against the complaining witnesses in Count 9 and also Count 10, even if proven, do not constitute a violation under Art 164 (1) CCK, Mistreatment in Exercising Duties. However, the Panel has now reclassified Count 9 to a violation under Art 339 (2), so for purposes of this argument the Panel will refer only to Count 10.

59. With regard to Count 10, the First Instance Court found that the Defendant mistreated, intimidated and insulted KB, a member of the public, who went directly to the prosecutor with a complaint about Police handling of her case. The Defendant told to KB: 'Do you know that as long as I am here you would not dare to go somewhere else. You are obviously not normal. Do you know I can detain you?' The Defense Counsel argues that these words, even if proven, do not constitute a violation under Art 164 (1) CCK.

60. The Panel rejects that argument of the Defense Counsel and concurs with the finding of the First Instance Court. Art 164 (1) provides that '[a]n official person, who, in the exercise of his … duties, mistreats, intimidates or insults another person, shall be punished…' The words spoken by the Defendant to KB, a member of the public, can only be described as insulting and intimidating. Accordingly, this argument of the Defense Counsel is without merit.

61. Further, the Defense Counsel argues that the First Instance Court should have permitted the Defense to acquire evidence about a purportedly false report filed by KB, which alleged that KB had been the subject of an attempted kidnapping and rape by a group of masked persons in November 2009, supposedly at the behest of the Defendant.

62. The matter was first raised during the cross examination of KB, in which she admitted giving a statement to the Police. KB was then asked if there was a criminal report and investigation against her for making a false report. She stated that she was unaware of such an investigation, and questioning on this topic then ceased. (*See* minutes of the Main Trial, 21 October 2010, pages 35-37.)

63. The issue was addressed again on 21 January 2011 when the Presiding Judge of the First Instance Court denied the request of the Defense Counsel to acquire evidence related to criminal proceedings against KB for making a false report on the ground that the evidence was unrelated to the Trial and was therefore irrelevant.

64. The First Instance Court acted well within its authority to reject the application on the grounds of relevance and probative value since the incident of the purportedly false report occurred long after the specific charge in the Indictment, and had nothing to do with the charge. Art 152 (2) KCCP provides that '[t]he court according to its own assessment may admit and consider any admissible evidence that it deems is relevant and has probative value with regard to the specific criminal proceedings…'

65. In the session before the Second Instance Court, the Defendant submitted a document, dated 2 November 2009, which purports to finalize the investigation by the Obiliq Police Station concerning the false statement by KB. The document concludes that the reported case did not happen, that KB 'theatricalized' the complaint, and that she is aware that she committed a criminal act. However, the document is not signed, nor is the name of the

author of the document noted. Accordingly, the Panel is not able to place any credence in this document or to admit it into evidence.

G. Other arguments in the Appeal.

66. The Second Instance Court will now address the more general arguments of the Defense Counsel.

67. The Defense Counsel points out, that the criminal report in the case was filed without any investigation, and the Indictment was filed within three (3) days without any investigation. He claims that such a procedure violated Art 304 (1) KCCP. The Panel, however, finds that the precise wording of Art 304 (1) states otherwise: 'After the investigation has been completed, **or if the public prosecutor considers that the information that he has in relation to the criminal offense and the offender provide sufficient grounds for filing an indictment**, proceedings before the court may be conducted only on the basis of an indictment filed by the public prosecutor. '

68. Thus, Art 304 (1) contemplates two different ways in which an indictment can be filed: after the investigation, or when the prosecutor believes that he/she has enough information to do so, even without an investigation. In the present case, the Prosecutor chose the latter route, based on the various statements from the complaining witnesses, gathered by the Police. Accordingly, the Panel sees no violation and rejects the argument of the Defense Counsel.

69. Moreover, even if this procedure could somehow be construed to be a violation of criminal procedure, it would not amount to a substantial violation. Under Art 403 (2) KCCP, a violation of procedure is substantial only, if the court applied it incorrectly '**and** this [violation] influenced or might have influenced the rendering of a lawful and proper

judgment'. The Defense Counsel argues that the Prosecutor rushed to judgment without carefully evaluating the case, and that this lack of evaluation had an adverse effect on the entire Trial. However, the First Instance Court conducted a lengthy and thorough Trial, and carefully evaluated all of the evidence, so the Panel is unable to discern any violation, let alone a substantial one.

70. It is also argued by the Defense Counsel that the Presiding Judge of the First Instance Court violated criminal procedure by admitting evidence offered by MP (Count 1) and KB (Count 10) at the beginning of the Trial rather than at the appropriate time during their testimony or during the administration of material evidence. This evidence consisted of numerous documents, mostly medical reports, and was received by the First Instance Court at the very beginning of the Trial, over the Defense Counsel's objection. However, even if this could be construed as a violation of the criminal procedure, it is hard to see how it 'influenced or might have influenced the rendering of a lawful and proper judgment', under Art 403 (2) KCCP. Therefore, it did not constitute a substantial violation of the criminal procedure.

71. A further argument claims that the First Instance Court violated the criminal procedure by allowing the Injured Parties, as witnesses, to remain in the courtroom during the testimony of other Injured Parties, contrary to Art 164 (1) KCCP, according to which 'witness shall be examined separately and without the presence of other witnesses'. The First Instance Court discusses this issue in its Judgment, at page 36. As a factual matter, the First Instance Court points out that the Injured Parties did in fact leave the courtroom on 18 October 2010, the first day of the Trial. (*See* minutes of the Main Trial, page 11. It is recorded: 'The Injured Parties, despite having been allowed to stay, decide to leave the courtroom.') It is not clear from the minutes whether the Injured Parties were in the courtroom on the other days during the testimony, but they must have been present since the First Instance Court discussed the issue in its Judgment.

72. The First Instance Court in its Judgment points out the provision of Art 361 (1) KCCP which states that 'a witness who has not testified shall not, as a rule, attend the presentation of evidence'. The First Instance Court in its Judgment explains that the words 'as a rule' in Art 361 (1) 'makes it clear that this provision is not mandatory and that can be derogated depending on the circumstances'. The First Instance Court further reasons that an Injured Party also has the right to pose questions to witnesses and comment on the evidence under Art 80 (3) KCCP, and therefore has the right to be present in the court, 'otherwise his/her rights foreseen in Art 80 would be illegitimately denied' (*See* Judgment, page 36).

73. However, even if the First Instance Court misinterpreted Art 361 (1), there was no substantial violation of the criminal procedure under the circumstances of this case. This is because each of the Injured Parties testified about a discrete and separate incident which did not involve the other Injured Parties. Thus, the possibility of witness's contamination was minimized. In other words, the testimony of one Injured Party could not influence the testimony of another Injured Party, because the factual situations were completely different. Accordingly, even if a procedural violation existed, it had no ability to adversely affect the rendering of the Judgment.

74. There is also the broad claim that the Presiding Judge of the First Instance Court was biased against the Defendant. This broad claim subsumes more specific claims, such as the Presiding Judge of the First Instance Court took over the job of the Prosecutor in his questioning, steered the witnesses to incriminate the Defendant through leading questions, and mistreated Defense Counsel.

75. It is true that the Presiding Judge of the Second Instance Court did take over the questioning in many instances, and that he was a thorough and vigorous questioner. It is also true that the Presiding Judge and Defense Counsel developed a very poor relationship during the Trial. It is undeniable that from time to time the Presiding Judge of the First Instance Court was harsh and short-tempered with Defense Counsel. The

minutes of the Main Trial record that the Presiding Judge of the First Instance Court regarded some of the Defense Counsel's statements as insulting.

76. The Panel of the Second Instance Court recalls that the personal impartiality of a judge must be presumed until there is proof to the contrary (ECHR, *Lindon, Otchakovsky-Laurens and July v. France*, 22 October 2007, para 76). Turning to the present case, a thorough questioning of the witnesses by the Presiding Judge may not be taken as demonstrating a bias on part of the Presiding Judge. Rather, the questioning indicates that the Presiding Judge sought to clarify in detail the Prosecution allegations against the Defendant.

77. Even though the Presiding Judge of the First Instance Court occasionally chastised the Defense Counsel, he did not place any significant limitations on Defense Counsel's ability to present his defense or challenge the Prosecutor's case. While a detached approach is expected in judicial proceedings (*See* ECHR, *Kyprianou v. Cyprus*, 15 December 2005, paras 130, 131), the judicial pronouncements made in course of the Trial and the reasoning in the Judgment do not demonstrate that the Presiding Judge or the First Instance Court Panel were influenced by any personal prejudice.

78. A careful review of the First Instance Court's Judgment shows that the Presiding Judge and Panel viewed the evidence objectively and thoroughly, and rendered the Judgment accordingly, without bias. Indeed, it must be noted that the Defendant was acquitted of both Count 2 and Count 7, and was found guilty of a lesser offense in Count 3. Therefore, the Defense Counsel's argument is rejected.

79. The remaining arguments can be grouped together, and basically they claim that there were inconsistencies in the witnesses' testimonies, both internal and external; that there were inconsistencies between the witnesses' Trial testimonies and their written statements; that in the First Instance Court's Judgment there was no elaboration of the

witnesses' testimonies who were favorable to the Defendant; and that the First Instance Court Panel gave no credence to the explanations of the Defendant about the possible motives of the complaining witnesses or the Defense Counsel's closing statement. The Defendant's central theme in all these arguments is that the complaining witnesses conspired against him as revenge for certain management decisions he made which were unfavorable to the complaining witnesses, and because he may have been responsible for the arrest of a relative of one of them.

80. These arguments are belied by the exhaustive analysis undertaken by the First Instance Court with regard to each Count in the Indictment as clearly reflected in the First Instance Court's Judgment. The First Instance Court carefully evaluated all the evidence, both in favor of the Prosecution and the Defendant, including the Defendant's own statements, and explained in great detail how it reached its findings.

81. The Panel of the Second Instance Court sees no erroneous or incomplete determination of the factual situation (except as discussed above regarding Count 5). Indeed, the arguments by Defense Counsel are best characterized as his disagreement with the results, rather than as legitimate shortcomings on the part of the First Instance Court in evaluating the evidence and determining the facts.

82. In light of the above, the remainder of the Defense Counsel's Appeal is rejected as unfounded, pursuant to Art 420 2) KCCP.

H. Sentencing.

83. The First Instance Court imposed a total sentence of thirty eight (38) months imprisonment, aggregated to two (2) years and four (4) months imprisonment, with credit for time spent in detention and house arrest from 27 August 2009 until 5 January 2010. The Second Instance Court has now annulled the conviction for Count 1 because of expiry

of the period of statutory limitation, of which crime the Defendant was sentenced by the First Instance Court to six (6) months imprisonment; and also has annulled the conviction for Count 5 because of insufficient evidence, of which crime the Defendant was sentenced by the First Instance Court to one (1) year and six (6) months imprisonment. The sentences for the Count 1 and Count 5, totaling twenty four (24) months, must be subtracted from the original total of thirty eight (38) months, amounting to a new total of fourteen (14) months.

84. While the Panel of the Second Instance Court has reclassified Count 9 to a crime under Art 339 (1) CCK, which carries a lesser maximum punishment than Art 164 (1), under which the Defendant was convicted by the First Instance Court, the Panel does not find it justified to depart from the imprisonment sentence of six (6) months imposed by the First Instance Court. The Panel deems that the sentence is appropriate pursuant to Art 64 (1) CCK, in light of the aggravating circumstances as determined in the First Instance Court's Judgment - that the Defendant committed the crime as a commander of the Obiliq Police Station, by taking advantage of his position of power in the Station, not just on one occasion but showed a tendency of repetition of such action.

85. The Panel agrees with the sentencing decision of the First Instance Court regarding Counts 3 and 10. But in view of the substantial reduction in the overall term of imprisonment - annulment of the conviction for Count 1, acquittal of Count 5, and reclassification of Count 9 to an offence with a lesser punishment - the accessory punishment of prohibition of exercising public administration or public service shall be reduced for the Counts 3, 9 and 10 from three (3) years to two (2) years after the punishment of imprisonment has been served.

86. In modifying the First Instance Court's Judgment with regard to the accessory punishment, the Panel refers to Art 64 (1) CCK. The accessory punishment of two (2) years is considered to be proportionate to the criminal conduct of the Defendant as determined by the Panel in this decision. It sufficiently serves to prevent the Defendant from

committing criminal offences in the future and to rehabilitate the Defendant. Furthermore, the punishment sends a strong message to those holding a position of authority that taking advantage of that authority shall not be tolerated. The position of authority is not a privilege for one's personal benefit, but rather imposes an additional responsibility to ensure functioning of the office in full compliance with the law.

87. Accordingly the Defendant is sentenced as follows:

Count 3, Attempted Sexual Abuse by Abusing Position, Authority or Profession, Art 20, 200 (2) 1) CCK - four (4) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for two (2) years;

Count 9, Abusing Official Position or Authority, Art 339 (1) CCK – six (6) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for two (2) years;

Count 10, Mistreatment in Exercising Duties, Art 164 (1) CCK - four (4) months imprisonment with the accessory punishment of prohibition of exercising public administration or public service for two (2) years.

88. The total sentence of fourteen (14) months imprisonment is aggregated to twelve (12) months imprisonment, with credit for the period of time that Defendant spent in detention and house arrest from 27 August 2009 to 5 January 2010.

Presiding Judge:

_____

EULEX Judge Dean Pineles

Recording Officer:

Panel Members:

_____ _____

_____ Judge Rafet Haxhaj Judge Vehbi Kashtanjeva

EULEX Legal Officer

Zane Ratniece