

**BASIC COURT of Pristina**  
**P 309 / 10**  
**P 340 / 10**  
**29 April 2013**

The judgments published may not be final and may be subject to an appeal according to the applicable law.

**IN THE NAME OF THE PEOPLE**

The panel of the Basic Court of Pristina composed of presiding EULEX Judge Arkadiusz Sedek, along with EULEX Judge Dean B. Pineles and Local Judge Vahid Halili as Panel Members, and with Gemma Eaton as court recorder,

In the criminal case against:

**L.D.**  
**A.D.**  
**D.J.**  
**I.R.**  
**S.H.**

These five defendants were indicted by indictment PPS no. 41/09, which was filed with the court on 15 October 2010;

And

**I.B.**  
**S.D.**

These two defendants were indicted by indictment PPS 107/10, which was filed with the court on 20 October 2010.

The two indictments were joined into a single indictment on 29 November 2010, and confirmed pursuant to article 316 (4), Kosovo Code of Criminal Procedure, by a three judge panel on 27 April 2011.

The single indictment was then amended and expanded on 22 March 2013 and 17 April 2013.

Under the indictment as amended and expanded, the defendants were charged with the following offences, all pursuant to the 2004 version of the Criminal Code of Kosovo (CCK):

**Count 1**

***Trafficking in Persons*** in violation of the Criminal Code of Kosovo, Article 139, punishable by imprisonment of two years to twelve years, committed in Co-perpetration, Article 23 of CCK, against **L.D., S.H. and A.D.**

#### **Count 2**

**Organised Crime**, in violation of the CCK, Article 274, paragraph 3, punishable by a fine of up to 500 000 EUR and by imprisonment of seven years to twenty years, against **L.D.**

#### **Count 3**

**Organised Crime**, in violation of the CCK, Article 274 paragraph 1, punishable by a fine up to 250 000 EUR and imprisonment of at least 7 years against **A.D. and S.H.**

#### **Count 4**

**Unlawful Exercise of Medical Activity**, in violation of the CCK, Article 221, paragraph 1, punishable by a fine or by imprisonment of up to one year, committed in **Co-perpetration**, Article 23 of CCK, against **L.D., D.J., I.B. S.D. and S.H.**

#### **Count 5**

**Abusing Official Position or Authority**, in violation of the CCK, Article 339, paragraph 1, punishable by imprisonment of one year to eight years **against D.J.**

#### **Count 6**

**Abusing Official Position or Authority**, in violation of the CCK, Article 339, paragraph 1, punishable by imprisonment of one year to eight years **against I.R.**

#### **Count 7**

**Grievous Bodily Harm**, in violation of the CCK, Article 154, paragraph 2, subparagraph 4, punishable by imprisonment of 1 year to 10 years; or in the alternative, paragraph 5, punishable by imprisonment of 6 months to 3 years; or in the alternative paragraph 1, subparagraph 4, punishable by imprisonment of 6 months to 5 years, committed in **Co-perpetration**, Article 23 of CCK, against **L.D., S.H., I.B., S.D., and A.D.**

#### **Count 8**

**Fraud**, in violation of the CCK, Article 261, punishable by imprisonment of 6 months to 5 years **against L.D. and A.D.**

#### **Count 9**

**Falsifying Documents**, in violation of the CCK, Article 332, paragraph 1, punishable by a fine or imprisonment of up to one year **against L.D. and A.D.**

#### **Count 10**

**Falsifying Official Documents**, in violation of the CCK, Article 348, punishable by imprisonment of up three months to three years **against I.R.**

After holding a public main trial on:

October 04, 05, 06, 11, 12, 18, 19, 20 and 25, 2011;

November 09, 10, 15, 17, 22, 23, 29 and 30, 2011;

December 19, 20 and 21, 2011;

February 06 and 13, 2012;

March 16, 22 and 23, 2012;

April 04 and 05, 2012;

May 10, 18 and 24, 2012;

June 13, 14, 18, 19, 20 and 21, 2012;

July 24, 2012;  
September 4, 6, 7, 11, 13 and 25, 2012;  
October 9, 2012;  
November 14, 16 and 26, 2012;  
December 5, 2102;  
January 29, 2013;  
February 11, 12 and 26, 2013;  
March 01, 08, 22, 27 and 29, 2013;  
April 02, 03, 05, 10, 12, 16, 17, 19, 23 and 24, 2013.

In the presence of:

The prosecutor:

**Jonathan Ratel**, EULEX Prosecutor

The defendants:

**L.S.** with his attorney L.S.;  
**A.D.** with his attorney P.D.  
**I.R.** with his attorney F.V.;  
**D.J.** with his attorneys I.SH. and A.T.;  
**S.H.** with his attorney F.B.;  
**I.B.** with his attorney A.A.; and  
**S.D.** with his attorney H.ZH.

After deliberation and voting on 24, 25 and 26 April 2013, pursuant to article 383, paragraph 2, Kosovo Code of Criminal Procedure (KCCP),

The court announced in public on 29 April 2013 the following JUDGMENT pursuant to articles 385 and 392, Kosovo Code of Criminal Procedure:

## JUDGMENT

### Count 1, **Trafficking in Persons**

**L.D.** is guilty of committing the criminal offence of *Trafficking in Persons* in violation of Article 139, paragraph 1, of the Criminal Code of Kosovo, committed in **Co-perpetration**, Article 23 of CCK.

**A.D.** is guilty of committing the criminal offence of *Trafficking in Persons* in violation of Article 139 of the Criminal Code of Kosovo, committed in Co-perpetration, Article 23 of CCK.

**Because** the prosecutor has proved beyond a reasonable doubt that:

On or about 1 January 2008 through to 4 November 2008, **L.D.** in his capacity as transplant surgeon and owner of the Medicus clinic **A.D.** in his capacity as director/manager of the

Medicus clinic; **S.H.** in his capacity as chief anaesthesiologist; **Y.S.** (indicted co-conspirator in separate case) in his capacity as transplant surgeon; **M.H.** (indicted co-conspirator in separate case) in his capacity of recruiter and facilitator; together **K.D.** (unindicted co-conspirator) in his capacity as transplant surgeon; and others, recruited, transported, transferred, harboured and received persons from foreign countries into Kosovo for the purpose of the removal of their organs (kidneys) at the Medicus clinic and the transplantation of those organs into waiting recipients.

**L.D.**, as owner of the Medicus Clinic, was responsible for the overall development and functioning of the Clinic with regard to illegal kidney transplants. He was personally involved in many of the illegal kidney transplant operations listed below.

**A.D.**, in his capacity of manager of the Clinic, was responsible for numerous and indispensable activities related to the illegal kidney transplant operations at the Medicus Clinic, including the following: arranging the transfer of donors and recipients from the Pristina Airport to the Medicus Clinic and their return to the Airport, and in certain cases performing the transfer himself; managing all logistical activities for transplantation operations, such as scheduling and insuring the availability of proper medical supplies; signing and providing letters of invitation to donors and recipients to facilitate their entry into Kosovo; assisting with financial arrangements, and providing receipts for payment in certain cases; maintaining close contact with **Y.S.** regarding logistical arrangements; and engaging in other related activities at the Clinic, such as accounting. All of these activities were carried out with the purpose of accomplishing illegal kidney operations at the Medicus Clinic.

Commencing in 2008, numerous persons were recruited in foreign countries, transported to Kosovo, transferred from Pristina airport to the Medicus clinic, received at the Clinic, and then harboured at the Clinic, all for the purpose of exploitation by the removal of their kidneys and the transplantation of their kidneys into waiting recipients. The donors were all victims of abuse of their position of vulnerability because of their extremely dire financial circumstances, and in certain cases also the victims of coercion, fraud and/or deception. Such conduct is contrary to Article 139(1) and (8), subparagraphs 1 and 2, CCK.

Pursuant to Article 139(8), subparagraph 3, CCK, the consent of the victim of trafficking to the intended exploitation is irrelevant for the purpose of Article 139(1) CCK.

Beginning in March 2008 through to November 2008, the removal of organs from donors at the Medicus clinic, and the transplantation of those organs to waiting recipients, involved 24 separate cases, each one of which involved a donor and a recipient, as described below in chronological order. (Note: case 13 involves two cases on the same day.)

Seven of the cases involved donors who testified at the main trial, and were proved to be victims of abuse of their position of vulnerability, and in certain cases victims of coercion, fraud and/or deception, and were exploited by removal of their kidneys within the meaning of article 139. These are cases 3, 7, 13 (one of two cases on that day), 18, 21, 22 and 23, and are italicized below. While the remaining donors were not located and therefore could not testify at trial, it is reasonable to conclude that all of the other donors were similarly exploited, given the similar nature of their foreign identity and the similar circumstances under which their kidneys were removed and transplanted.

(1) On **08 March 2008**, the group of surgeons and anaesthesiologists comprising **Y.S.**,

**K.D., L.D., S.H., S.D. and I.B.** performed a kidney removal operation on the donor victim “**T**”, the organ (kidney) being then transplanted to the recipient **F.B.** The evidence does not establish whether any payment was made to the donor victim or injured party for the organ;

- (2) On **11 May 2008**, the group of surgeons and anaesthesiologists comprising **Y.S., D.J., L.D., S.H., S.D. and I.B.** performed a kidney removal operation on the donor victim “**R**”, the organ (kidney) being then transplanted to the recipient **O.R.** The evidence does not establish whether any payment was made to the donor victim or injured party for the organ;
- (3) *On 15 May 2008 the group of surgeons and anaesthesiologists comprising **Y.S., D.J., L.D., S.H., S.D. and I.B.** performed a kidney removal operation on the donor victim Protected Witness “**W2**”. Protected Witness “**W2**” had been promised 15,000 USD in exchange for her kidney but only received 12,000 USD. Protected Witness “**W2**” was in poor financial condition. She was the victim of the abuse of her position of financial vulnerability, and the victim of fraud. It was not established how much the recipient “**S**” paid for this organ transplant;*
- (4) On **04 June 2008** the group of surgeons and anaesthesiologists comprising **Y.S., D.J., L.D., S.H., S.D. and I.B.** performed a kidney removal operation on the donor victim **M.Y.** The organ (kidney) was transplanted to the recipient Protected Witness “**T3**” paid 100,000 USD for the organ transplant. The money was paid through an intermediary “**A**”. The Protected Witness “**T3**” provided evidence to the Court that he made payment to the Medicus clinic and **A.D.** received this payment directly. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (5) On **05 June 2008**, the group of surgeons and anaesthesiologists comprising **Y.S., L.D., S.H., S.D. and I.B.** performed a kidney removal operation on an unknown injured party, the organ (kidney) being transplanted to the recipient “**S**”. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (6) On **06 June 2008**, the group of surgeons and anaesthesiologists comprising **Y.S., D.J., S.H., S.D. and I.B.** performed a kidney removal operation on an unknown donor victim, the organ (kidney) then being transplanted to the recipient **Y.D.** The evidence does not establish whether any payment was made to the donor victim for the organ;
- (7) *On 19 June 2008, the group surgeons and anaesthesiologists comprising **Y.S., K.D., L.D., S.H. and I.B.** performed a kidney removal operation on the donor victim Protected Witness “**W1**”, the organ (kidney) then being transplanted to the recipient Protected Witness “**T4**”. The donor victim received 12,000 USD and the organ recipient paid 70,000 EUR for the organ (kidney), through a contact in Israel called “**A**”. Protected Witness “**W1**” sold his kidney due to large financial difficulties he found himself in, and was the victim of the abuse of his financial vulnerability. He saw a media advertisement promising 12,000 USD payment for kidney donation. The donor victim suffered considerable physical and psychological trauma and his medical state deteriorated following the operation due to improper functioning of his remaining kidney and post operatory complications;*

- (8) On **20 June 2008**, the group comprising surgeons and anaesthesiologists **Y.S., K.D., D.J., S.H., S.D. and I.B.** performed a kidney removal operation on the donor victim **A.M.**, the organ (kidney) then being transplanted to the recipient **E.K.** The evidence does not establish whether any payment was made to the donor victim for the organ;
- (9) On **02 July 2008**, the group comprising surgeons and anaesthesiologists **Y.S., D.J., R, L.D., S.H. and S.D.** performed a kidney removal operation on the donor victim “**A**” **LNU**, the organ (kidney) being then transplanted to the recipient Protected Witness “**M2**”. Protected Witness “**M2**” stated that he paid a total amount of 108,000 USD for the kidney transplant, through a person called “**A**”. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (10) On **03 July 2008**, the group comprising surgeons and anaesthesiologists **Y.S., R, L.D., S.H., I.B. and S.D.** performed a kidney removal operation on an unknown donor victim, the organ (kidney) then being transplanted to the recipient Protected Witness “**A1**”. The recipient Protected Witness “**A1**” paid 79,000 EUR, of which 10,000 EUR was paid to “**A**”. The remainder payment was made directly to the Medicus clinic in Pristina by Protected Witness “**B1**” to an employee of the clinic as he had been instructed to do by the escort “**Z**” who had accompanied both Protected Witness “**A1**” and Protected Witness “**B1**”. Protected Witness “**B1**” also received a receipt for the money paid from the Medicus clinic. The recipient stated that the unknown donor was a young man speaking Russian. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (11) On **22 July 2008**, the group comprising surgeons and **anaesthesiologists Y.S., R, L.D., S.H. and S.D.** performed a kidney removal operation on the donor victim, **E.M.**, the organ (kidney) being then transplanted to the recipient **S.T. S.T.** stated that he paid a total amount of 25,000 EUR for the kidney transplant to **Y.S.** whom he had found online and who then offered to help him with obtaining a transplant. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (12) On **23 July 2008**, the group comprising surgeons and anaesthesiologists **Y.S., B, L.D., R, S.H. and S.D.** performed a kidney removal operation on the donor victim **A.G.**, the organ (kidney) then being transplanted to the recipient **V.G.**. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (13) *On 24 July 2008, the group comprising surgeons and anaesthesiologists Y.S., L.D., S.H. and I.B. performed two kidney removal operations on the donor victims, A.R. and Protected Witness “W3,” their organs (kidneys) then being transplanted to the recipients R.F. and W.J. The investigation established that the two kidney transplant operations took place on this date; however, the prosecutor could not pair the donor victims with their respective recipients. Protected Witness “W3” had been in financial distress. She was offered 10,000 EUR through a newspaper announcement, to ‘donate’ a kidney, and she was the victim of the abuse of her financial vulnerability. M.H. and Y.S. had made the necessary arrangements for her and 2 other women to travel to Pristina for the kidney removal procedure. She was paid the equivalent of 10,000 USD in EUR (8100 or 8200 EUR). One of the kidney recipients, R.F. admitted that he had paid 80,000 EUR to M.H. for a kidney*

*transplant using a money transfer service to make the payment. The evidence does not establish whether any payment was made to the other donor victim for the organ;*

- (14) On **29 July 2008**, the group comprising surgeons and anaesthesiologists **Y.S., L.D., S.H. and I.B.** performed a kidney removal operation on the donor victim **Y.C.**, the organ (kidney) then being transplanted to the recipient **B.E.** The evidence does not establish whether any payment was made to the donor victim for the organ;
- (15) On **18 August 2008** the group comprising surgeons and anaesthesiologists **Y.S., K.D., L.D., S.H. and S.D.** performed a kidney removal operation on the donor victim **A.A.** her organ (kidney) then being transplanted to the recipient Protected Witness “**M1**”. Protected Witness “**M1**” stated that, for the kidney transplant procedure, he had paid a total 77,000 EUR, of which 17,000 EUR was paid to an intermediary called “**A**” and the remainder of 60,000 EUR was paid to **M.H.** through a bank transfer to the latter’s account. The evidence does not establish whether any payment was made to the donor victim;
- (16) On **19 August 2008** the group comprising surgeons and anaesthesiologists **Y.S., K.D., S.H. and S.D.** performed a kidney removal operation on the donor victim **J.S.**, his organ (kidney) then being transplanted to the recipient Protected Witness “**A2**”. Protected Witness “**A2**” had paid the sum of 80,000 NIS to an intermediary called “**A**” plus 50,000 EUR to **M.H.**, by means of a bank transfer. He was coerced to undergo the transplant operation at the Medicus clinic, by **Y.S.**, in that he was very uncomfortable with the fact that there was no dialysis machine at the clinic and he was told in no uncertain terms that the operation was the only option available to him if he was to live. In such conditions, changing his mind would have represented a grave threat to his life. Also, as **Y.S.** had assured him, a loss of his money he paid also. The evidence does not establish whether any payment was made to the donor victim for the organ;
- (17) Also on **19 August 2008**, the group comprising surgeons and anaesthesiologists **Y.S., K.D., L.D., S.H. and S.D.** performed a kidney removal operation on the donor victim **V.V.** his organ (kidney) then being transplanted to the recipient **K.T.** . The evidence does not establish whether any payment was made to the donor victim for the organ;
- (18) *On **09 September 2009**, the group comprising surgeons and anaesthesiologists **Y.S., K.D., S.H. and I.B.** performed a kidney removal operation on the donor victim **PM**, his organ (kidney) being then transplanted to the recipient **B.H.** The donor victim had been facing serious financial distress in 2008 due to his familial situation, and he was the victim of the abuse of his financial vulnerability. Following an advertisement he had seen on a website, he contacted an unknown person who promised a payment of a 30,000 USD for donating a kidney. He was persuaded to go to Istanbul for further tests, and in Istanbul he met **Y.S.** who managed the preparations for a transplant operation in Kosovo. After the operation he received 1000 USD from the recipient’s brother personally. The Protected Witness “**PM**” suffered significantly after the operation and he regretted he had agreed to give away his kidney. The donor victim was never provided any payment whatsoever for his organ (kidney) removed at the Medicus clinic, and was the victim of fraud.*

- (19) On **27 September 2008**, the group comprising surgeons and anaesthesiologists **Y.S., L.D., K.D., R, D.J., S.H. and S.D.** performed a kidney removal operation on the donor victim **M.G.**, his organ (kidney) then being transplanted to the recipient Protected Witness **“T2”**. The recipient Protected Witness **“T2”** stated that he had undergone a transplant before, in 2003/2004, utilising the services of **M.H.** who he paid 100,000 USD at that time. However, in 2008 he was in need of a second transplant so he again contacted **M.H.** through a person called **“A”**. Protected Witness **“T2”** paid 30,000 NIS to **“A”** and the rest of the money, amounting to a total sum of 90,000 EUR, he transferred via his bank account to **M.H.** The recipient’s wife, Protected Witness **“T1”** has stated that the actual amount paid for the second transplant operation in 2008 was 130,000 EUR, which was transferred to the bank account. The operating doctor was **Y.S.** The evidence does not establish whether any payment was made to the donor victim for the organ;
- (20) On **29 September 2008**, the group comprising surgeons and anaesthesiologists **Y.S., D.J., S.H. and S.D.** performed a kidney removal operation on the donor victim **“R”** LNU, his/her organ (kidney) then being transplanted to the recipient **M.N.** The evidence does not establish whether any payment was made to the donor victim for the organ;
- (21) On **21 October 2008** the group comprising surgeons and anaesthesiologists **Y.S., D.J., S.H. and S.D.** conducted a kidney removal operation on the donor victim **“D.S.”**, his organ (kidney) then being transplanted to the recipient **D.Z**. The donor victim underwent the procedure as he had serious familial and financial problems as a single parent, and he was the victim of the abuse of his position of financial vulnerability. He was persuaded by a person called **Y**, allegedly a kidney transplant donor victim himself, to have his kidney extracted in Kosovo, in exchange for 20,000 USD. After undergoing the kidney removal surgery he only received 6,000 USD and was promised more money only if he recruited other kidney ‘donors’. Thus, he was also the victim of fraud. At the clinic, he was not advised of the consequences of the kidney removal and was coerced by **A.D.** to sign consent papers he did not understand. The inquiry could not establish the amounts paid by the recipient of the transplanted organ (kidney);
- (22) On **26 October 2008** the group comprising surgeons and anaesthesiologists **Y.S., K.D., R, E, S.H., I.B. and S.D.** conducted a kidney removal operation on the donor victim **“AK”**, his organ (kidney) then being transplanted to the recipient **R.K.** The donor victim had undertaken to have his kidney extracted in order to support his studies and help his sick father, and he was the victim of abuse of his position of financial vulnerability. He saw an advertisement on the internet and through two intermediaries, **Y** and **J**, he was offered 10,000 EUR in exchange for his kidney. After the operation, however, he only received 8,000 USD and was promised the rest of the money owed only after he recruited other kidney ‘donors’. Finally, he was paid 500 USD for the outstanding debt and was threatened by the same intermediary **J** to keep silent or suffer dire consequences. Thus, he was also the victim of fraud. The recipient’s son, **Y.K.** testified in court admitting that his father had kidney transplant surgery at the clinic in Pristina, Kosovo; however, he did not indicate the amount of money paid for the operation. He mentioned that his father had in the meantime passed away;

(23) *On 31 October 2008 the group comprising surgeons and anaesthesiologists Y.S., K.D., L.D., D.J. S.H. I.B. and S.D., conducted a kidney removal operation on the donor victim Y.A. his organ (kidney) being then transplanted to the recipient B.S. The recipient's family members, Protected Witness "A3" and Protected Witness "A4" confirmed that B.S. paid 90,000 EUR for the kidney transplant operation. The money was wired to the bank account of M.H. The donor victim Y.A. was recruited in Istanbul by an intermediary called I who had assured him he would receive 20,000 USD for his kidney, and he was the victim of the abuse of his position of financial vulnerability. His travel arrangements to the clinic in Pristina were managed by M.H. After the surgery, and at the time of the special investigative hearing, the donor victim had never received any money in exchange for his kidney, and was therefore the victim of fraud.*

The criminal charge against **S.H.** as described in Count 1 is re-qualified as per Article 139 paragraph 4 of the Criminal Code of Kosovo (CCK) (negligent facilitation of the offense of trafficking), and based on Article 2, paragraph 2, of the Criminal Code of Kosovo (CCK), in conjunction with article 389, paragraph 4, of the Criminal Procedure Code of Kosovo (CPCCK), **the charge is rejected.**

Because **S.H.**, as the lead anaesthesiologist at the Medicus Clinic, personally interacted with most if not all of the donors and recipients involved in the 24 kidney transplant operations in preparation for surgery, and therefore knew that they were all foreign nationals. This striking fact should have aroused his suspicion that the Clinic was engaged in trafficking, and should have required him to seek information from **L.D.** so as to understand the true facts. He also participated in each of the surgeries, and should have known that kidney transplant operations were illegal in Kosovo, and that the Clinic had no license or authorization to conduct these operations. There is no evidence that he actually knew that trafficking was taking place at the Clinic. However, despite his lack of knowledge that the prohibited consequence of trafficking could occur from his actions, he ought to have been aware and could have been aware of such a possibility under the circumstances and according to his personal characteristics. Therefore, he committed the offense of trafficking by negligent facilitation as a result of unconscious negligence under article 16(3), CCK.

Because, however, the 2013 revision of the Criminal Code of Kosovo does not criminalize the negligent facilitation of trafficking, the law more favourable to the perpetrator shall apply, and the charge must be rejected.

Pursuant to Article 6, Article 11, Article 15 (1), Article 23, Article 274, paragraph 3 and Article 39, paragraph 1 and 2 of the CCK, **L.D.** is sentenced to imprisonment of 8 (eight) years and fine of 10,000 (ten thousand) Euros that is to be paid no more than six months after the judgment is final. The sentence of imprisonment is in conjunction with the sentence imposed in count 2.

Pursuant to Article 6, Article 11, Article 15 (1), Article 23, Article 274, paragraph 1, and Article 39, paragraph 1 and 2, of the CCK, **A.D.** is sentenced to imprisonment of 7 (seven) years and 3 (three) months and fine of 2,500 ( two thousand five hundred ) Euro that is to be paid no more than six months after the judgment is final. The sentence of imprisonment is in conjunction with the sentence imposed in count 2.

## **Count 2, Organised Crime**

**L.D.** is guilty of committing the criminal offence of *Organised Crime*, in violation of the CCK, Article 274, paragraph 3.

**Because** the prosecutor has proved beyond a reasonable doubt that:

From on or about January 01 2008 to November 04 2008 at the Medicus clinic, **L.D.**, in his capacity as transplant surgeon and the owner of the Medicus clinic with overall responsibility for the functioning of the Clinic, organised, established, supervised, managed and directed the activities of the organised criminal group which occurred at the Medicus Clinic. The organized criminal group was a structured group consisting of three or more persons, including **L.D.**, **Y.S.**, **M.H.**, **A.D.**, **K.D.** and others. The group existed for at least several months during 2008, and was not randomly formed for the immediate commission of an offense. The group was formed with the aim of committing one or more serious crimes on an ongoing basis, specifically trafficking in persons, contrary to Article 139 CCK, in order to obtain, directly or indirectly, a financial or other material benefit, by means of the removal of organs (kidneys) and transplant to recipients who paid large sums of money for their kidney.

Beginning in March 2008 through to November 2008, the removal of organs at the Medicus clinic and transplantation to recipients involved 24 cases of organ removal and transplantation as specified in the above description of the trafficking charge in Count 1, which description is incorporated herein by reference. This illegal activity took place under the overall organization, establishment, supervision and management of **L.D.**, acting in concert with others named above.

**L.D.** and the organised criminal group obtained financial or other material benefits including cash payments made directly to the Medicus clinic, and/or to **Y.S.** and/or to **M.H.** from the recipients of organs (kidneys) including but not limited to the following cash payments:

- (1) From Protected Witness "T3" in the amount of 100,000 USD
- (2) From Protected Witness "T4" in the amount of 70,000 EUR
- (3) From Protected Witness M2 in the amount of 108,000 USD
- (4) From Protected Witness **A1** in the amount of 79,000 EUR
- (5) From **T.S.** in the amount of 25,000 EUR
- (6) From **R.F.** in the amount of 80,000 EUR
- (7) From Protected Witness "M1" in the amount of 77,000 EUR
- (8) From Protected Witness "T2" in the amount of 130,000 EUR
- (9) From **B.S.** in the amount of 90,000 EUR.

Pursuant to Article 6, Article 11, Article 15 (1), Article 23, Article 274, paragraph 3, and Article 39, paragraph 1 and 2, of the CCK, **L.D.** is sentenced to imprisonment of 8 (eight) years and fine of 10,000 (ten thousand) Euro that is to be paid no more than six months when the judgment is final. The sentence of imprisonment is in conjunction with the sentence for trafficking in count 1.

## **Count 3, Organised Crime**

**A.D.** is guilty of committing the criminal offence of *Organised Crime*, in violation of the

CCK, Article 274, paragraph 1,

**Because**, the prosecutor has proved beyond a reasonable doubt that:

From on or about 1 January 2008 to 4 November 2008 at the Medicus clinic, **A.D.** in his capacity as director/manager of the Medicus clinic, with the aim of committing one or more serious crimes, committed the offence of trafficking in persons, contrary to Article 139 CCK, in order to obtain, directly or indirectly, a financial or other material benefit, by means of the removal of organs (kidneys) and transplant to recipients.

**A.D.** and the organised criminal group obtained financial or other material benefits including the following cash payments made directly to the Medicus clinic, and/or to **Y.S.**, and/or **M.H.** from the recipients of organs (kidneys):

- (1) From Protected Witness "T3" in the amount of 100,000 USD
- (2) From Protected Witness "T4" in the amount of 70,000 EUR
- (3) From Protected Witness M2 in the amount of 108,000 USD
- (4) From Protected Witness **A1** in the amount of 79,000 EUR
- (5) From **T.S.** in the amount of 25,000 EUR
- (6) From **R.F.** in the amount of 80,000 EUR
- (7) From Protected Witness "M1" in the amount of 77,000 EUR
- (8) From Protected Witness "T2" in the amount of 130,000 EUR
- (9) From **B.S.** in the amount of 90,000 EUR

Pursuant to Article 6, Article 11, Article 15 (1), Article 23, Article 274, paragraph 1 and Article 39, paragraph 1 and 2 of the CCK, **A.D.** is sentenced to imprisonment of 7 (seven) years and 3 (three) months and fine of 2,500 (two thousand five hundred) Euro that is to be paid no more than three months when the judgment is final. The sentence of imprisonment is in conjunction with the sentence for trafficking in Count 1.

**S.H.** is acquitted from the criminal charge of *Organised Crime*, in violation of the CCK, Article 274, paragraph 1, committed in *Co-perpetration*, Article 23

Because, pursuant to article 390, paragraph 3, of the Criminal Procedure Code of Kosovo, the prosecutor has not proven that the accused has committed the act with which he has been charged.

#### **Count 4, *Unlawful Exercise of Medical Activity*,**

The charge of *Unlawful Exercise of Medical Activity*, in violation of Article 221, paragraph 1, CCK, committed in *Co-perpetration*, Article 23 of CCK, against **L.D.**, **D.J.**, **I.B.**, **S.D.** and **S.H.** is rejected

Because, pursuant to article 389, paragraph 4, of the Criminal Procedure Code of Kosovo (CPCCK) in conjunction with Article 90, paragraph 1, subparagraph 6, and Article 91, paragraph 6, of the CCK, the period of statutory limitation has expired.

### **Count 5, *Abusing Official Position or Authority***

The charge of *Abusing Official Position or Authority*, in violation of the CCK, Article 339 paragraph 1, against **D.J.** is re-qualified as *Abusing Official Position or Authority*, in violation of Article 339, paragraph 3, and is **rejected**,

**Because**, pursuant to Article 389, paragraph 4, of the Criminal Procedure Code of Kosovo (CPCK), in conjunction with Article 90, paragraph 1, subparagraph 6, and Article 91, paragraph 6, of the CCK, the period of statutory limitation has expired.

### **Count 6, *Abusing Official Position or Authority*,**

**I.R. is acquitted** of the charge of abusing official position or authority in violation of article 339, paragraph 3 CCK,

**Because**, pursuant to article 390, paragraph 1, it has not been proven that the accused committed the offence with which he has been charged:

### **Count 7, *Grievous Bodily Harm*,**

Pursuant to Article 389, paragraph 4, of the Criminal Procedure Code of Kosovo (CPCK), the charge of *Grievous Bodily Harm* of the CCK is **rejected** against **L.D.**,

**Because**, pursuant to article 389, paragraph 4, there are circumstances that preclude criminal liability, namely that this charge constitutes an element of trafficking in persons.

**A.D.** is **acquitted** of the charge of *Grievous Bodily Harm in Co-perpetration*, Article 154, paragraph 1, subparagraph 2, and Article 23, CCK,

**Because**, pursuant to article 390, paragraph 3, of the Criminal Procedure Code of Kosovo, it has not been proven that the accused committed the offence with which he has been charged.

The criminal charge of *Grievous Bodily Harm* against **S.H.**, **I.B.**, **S.D.** is qualified as per Article 154, paragraph 1, subparagraph 2, of the CCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person.

**S.H.**, **I.B.**, **S.D.** are guilty of committing the criminal charge of *Grievous Bodily Harm* in violation of the CCK, Article 154, paragraph 1, subparagraph 2, of CCK.

**Because** the prosecutor has proved beyond a reasonable doubt that,

From 08 March 2008 to 04 November 2008 at the Medicus Clinic, **S.H.** in his capacity as chief anaesthesiologist, **I.B.** in his capacity as anaesthesiologist, and **S.D.** in his capacity as anaesthesiologist, knowingly participated in medical procedures which were unlawful under the laws of Kosovo, namely the removal of organs (kidneys) for transplantation. These illegal kidney removals inflicted grievous bodily harm upon the donor victims, namely permanently and substantially weakening a vital organ.

The following persons suffered grievous bodily harm by the removal of their kidneys for transplantation. Victims 3, 7, 13, 19, 22, 23 and 24 presented evidence at the main trial, and it has been proved that they were the victims of illegal kidney removal. The other persons listed did not testify, but they also were victims of illegal kidney removal for transplantation, and likewise suffered grievous bodily harm. Any consent the victims may have given is legally irrelevant, since a person cannot consent to an illegal medical procedure.

- (1) "T LNU" of unknown nationality;
- (2) "R LNU" of unknown nationality;
- (3) Protected Witness "W2";
- (4) M.Y.
- (5) First Name Unknown (FNU) LNU of unknown nationality;
- (6) FNU LNU of unknown nationality;
- (7) Protected Witness "W1"
- (8) A.M. of unknown nationality;
- (9) "A LNU" of unknown nationality;
- (10) FNU LNU of unknown nationality;
- (11) E.M.
- (12) A.G.
- (13) A.R.
- (14) Protected Witness "W3"
- (15) Y.C.
- (16) A.A.
- (17) J.S.
- (18) V.V.
- (19) Protected Witness "PM"
- (20) G.M.
- (21) "R LNU" of unknown nationality;
- (22) Protected Witness "D.S."
- (23) Protected Witness "AK"; and
- (24) Y.A.

Pursuant to Article 6, Article 11, Article 15(2), Article 154, paragraph 1, subparagraph 2, of the CCK, **S.H.** is sentenced to imprisonment for 3 (three) years; **S.D.** and **I.B.** are sentenced to imprisonment for 1 (one) year.

Pursuant to Article 41, paragraph 1, subparagraph 1, articles 42, 43 and 44 (1), (2) and (3) of the CCK, a suspended sentence is imposed on **S.D.** and **I.B.**; the punishment shall not be executed if the defendants do not commit another criminal offence for the period of 2 (two) year.

### **Count 8, Fraud,**

Pursuant to Article 389, paragraph 4, of the Criminal Procedure Code of Kosovo, the charge of **Fraud** in violation of Article 261, paragraph 2 of the CCK against **L.D.** and **A.D.** is **rejected,**

Because this charge constitutes the element of trafficking in persons under count 1.

### **Count 9, Falsifying Documents,**

The charge of *Falsifying documents*, in violation of the CCK, Article 332, paragraph 1, against **L.D. and A.D.** as a separate charge **is rejected**,

**Because**, pursuant to article 389, paragraph 4, of the Criminal Procedure Code of Kosovo, in conjunction with Article 90, paragraph 1, subparagraph 6, and Article 91, paragraph 6, of the CCK, the period of statutory limitation has expired.

### **Count 10, Falsifying Official Documents,**

The charge of *Falsifying official document*, in violation of the CCK, Article 348, paragraph 1, against **I.R.** **is rejected**,

**Because**, pursuant to article 389, paragraph 4 of the Criminal Procedure Code of Kosovo, in conjunction with Article 90, paragraph 1, subparagraph 5, of the CCK, the period of statutory limitation has expired.

### **Accessory Punishments**

Pursuant to Article 57, paragraph 1 and 2 of the CCK **L.D.** is prohibited from exercising the profession of urologist for the period of 2 (two) years starting from the day the judgment becomes final.

Pursuant to Article 57, paragraph 1 and 2, of the CCK **S.H.** is prohibited from exercising a profession of anaesthesiologist for the period of 1 (one) year starting from the day the judgment becomes final.

### **Partial Compensation**

Pursuant to Article 112 of the Criminal Procedure Code of Kosovo (CPCK) the following injured parties W1, W2, W3, PM, **D.S.**, AK and Y.A. are each awarded partial compensation for the psychological and physical damages sustained during kidney removal in the amount of 15,000 (fifteen thousand) Euro from **L.D. and A.D.** to be paid no more than 6 (six) months starting from the day the judgment becomes final.

### **Costs**

Pursuant to article 100 of the Criminal Procedure Code of Kosovo (CPCK) a separate ruling on the costs of the proceedings will be issued.

## REASONING

### I. Procedural Background

The criminal activities alleged in the indictment took place in 2008. The investigation of these activities commenced on 4 November 2008. A Ruling on Initiation of Investigation was issued on 12 November 2008.

On 15 October 2010 Indictment PPS 41/09 was filed, charging **L.D., A.D., D.J., I.R.** and **S.H.** with certain crimes. On 20 October 2010 Indictment PPS 107/10 was filed, charging I.B. and S.D. with certain related crimes. The Indictments were joined on 29 November 2010.

On the 14 December 2010 and 6 January 2011, EULEX Judge Vitor Pardal held the confirmation hearing. On 31 January 2011, the Confirmation Judge issued a Ruling pursuant to Articles 154 and 316 (5) of the KCCP wherein he ruled certain Prosecution evidence to be inadmissible. On 27 April 2011, a three judge panel ruled on the appeal by both the prosecutor and defence counsel, and confirmed the indictment in its entirety. In so doing, the panel determined that all of the disputed evidence was admissible.

The main trial commenced on 4 October 2011. The main trial panel was composed of Presiding EULEX Judge Arkadiusz Sedek, together with EULEX Judge Dean B. Pineles and Kosovo Judge Hamdi Ibrahim. Judge Hamdi Ibrahim was later replaced on the panel by Judge Vahid Halili on 18 May 2012 when Judge Ibrahim was appointed as President of the Pristina District Court. Judge Halili fully familiarized himself with the case before commencing his duties.

The following witnesses were heard:

1. Witness "AK" 05.10.2011, 06.10.2011, 18.10.2011
2. Witness "D.S.", 11.10.2011, 12.10.2011
3. C.B. 12.10.2011, 13.09.2012, 14.11.2012
4. F.H. 18.10.2011
5. **F.M.** 18.10.2011, 19.10.2011
6. Z.K. 19.10.2011
7. O.K. 19.10.2011
8. S.O. 20.10.2011
9. O.M. 20.10.2011
10. R.A. 20.10.2011
11. B.G. 20.10.2011, 25.10.2011
12. **S.B1** 25.10.2011
13. A.G. 25.10.2011
14. S.H1 25.10.2011
15. A.H. 25.10.2011
16. S.G. 09.11.2011
17. B.S1 09.11.2011
18. F.B. 09.11.2011
19. Y.E. 10.11.2011
20. S.M. 10.11.2011
21. H.K. 10.11.2011
22. A.K. 10.11.2011

23. M.M.	15.11.2011
24. T.P.	15.11.2011
25. D.S1	17.11.2011
26. E.P.	17.11.2011
27. S.H2	17.11.2011
28. N.S.	22.11.2011
29. S.C.	22.11.2011
30. E.S.	22.11.2011
31. A.A1	29.11.2011
32. I.A.	29.11.2011
33. S.X.	29.11.2011
34. R.D.	29.11.2011
35. T.B.	29.11.2011
36. A.G1	30.11.2011,19.12.2011
37. A.K1	19.12.2011
38. N.Q.	20.12.2011
39. E.P.	20.12.2011
40. Y.K.	06.02.2012
41. S.M.	13.02.2012
42. M.G.	16.03.2012
43. T.S1	22.03.2012
44. D.G.	22.03.2012
45. N.H.	23.03.2012
46. R.F	23.03.2012
47. Z.Z.	04.04.2012
48. S.H3	05.04.2012
49. A.R.	24.05.2012
50. K.U.	13.06.2012
51. Witness W1	14.06.2012
52. Witness W2	14.06.2012
53. Witnes W3	14.06.2012
54. Witnes M1	18.06.2012
55. Witnes M2	18.06.2012
56. Witnes M3	18.06.2012
57. Witnes T1	19.06.2012
58. Witnes T2	19.06.2012
59. Witnes T3	19.06.2012
60. Witnes T4	19.06.2012
61. Witnes A1	20.06.2012
62. Witnes A2	20.06.2012
63. Witnes A3	20.06.2012
64. Witnes A4	20.06.2012
65. Witnes B1	21.06.2012
66. E.D.	24.07.2012
67. F.B.	24.07.2012
68. S.S1	24.07.2012
69. M.K.	04.09.2012
70. D.S2	06.09.2012, 07.09.2012, 26.11.2012
71. D.G1	11.09.2012
72. D.I.	11.09.2012

73. O.V.	25.09.2012
74. J.D.	25.09.2012
75. M.B.	09.10.2012
76. N.H.	16.11.2012
77. M.T.	29.01.2013,12.02.2013,26.02.2013
78. K.D.	11.02.2013
79. Witness PM	12.02.2013
80. C.B.	08.03.2013
81. B.G1	08.03.2013

On 3, 5, 10 and 12 April, 2013, the defendants were questioned. Defendants **L.D.** and **A.D.** defended in silence.

On 16, 17, 19, 23 and 24 April, 2013 the Prosecution, defence counsels and defendants presented their closing arguments and rebuttals.

The panel then withdrew to deliberate, and on the 29 April 2013 the judgment was announced in a public session of the court.

## **II. Competence of the Court**

Pursuant to article 23, paragraph 1, of the Kosovo Code of Criminal Procedure, District Courts have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long – term imprisonment. This jurisdictional requirement is met in view of the charges herein. Also according to the indictment, the criminal offences occurred in Fushe Kosove where the Medicus clinic was located and where the kidney transplants took place. Thus, pursuant to article 27, paragraph 1, CCK, the District Court of Pristina (now Basic Court) has the territorial competence to adjudicate this case. Thus, the main trial was conducted in the Pristina District Court. Following enactment of the new Law on Courts (Law No. 03/L-199), the Basic Court of Pristina assumed jurisdiction over the case. Also, in accordance with a decision by Supreme Court which reconciled certain inconsistencies in the transitional provisions of the new Criminal Code and the new Procedure Code, the case continued to be adjudicated under the former Codes.

Pursuant to article 3.1 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (hereinafter LoJ), EULEX Judges assigned to criminal proceedings have jurisdiction and competence over any case investigated or prosecuted by SPRK. The present case was presented by the SPRK Prosecutor; therefore, in accordance with article 4.7 of the LoJ, the trial panel of the District Court (now Basic Court) was composed of a mixed panel of two EULEX Judges and one local Judge.

Early in the main trial, defence counsel objected to the composition of the panel. Lawyers L.S. and A.T. claimed that Presiding Judge Arkadiusz Sedek had participated in the case at the pre-trial stage by extending the ruling on investigation and thus should be disqualified for the trial. The issue was dealt with by the Acting President of EULEX Assembly of Judges, Charles Smith, who determined that there was no reason for disqualification. Thus the motion was rejected.

### III. Material Evidence

Material evidence was administrated during the main trial on the initiative of parties and of the trial panel *ex officio*, and admitted by the court. The evidence proposed by the prosecutor is set out in Annex 1, and by defence counsel in Annex 2. Annex 3 consists of medical charts prepared by forensic doctors **C.B.** and **D.S.**

#### A. Objections to the Administration of Evidence, and the Court's Rulings:

1. **F.V.**, defence counsel for **I.R.**, objected to administration of a duplicate of the letter of 12 May 2008, purportedly written, signed and stamped by his client, on the grounds that the original of the letter has never been located. The court rejected this objection because a reliable duplicate is admissible under the applicable rule of admissibility. Moreover, during his examination, **I.R.** admitted that he wrote the letter, and he confirmed the contents as contained in the duplicate version. Therefore, the objection was rejected.

2. **I.SH.**, defence counsel for **D.J.**, objected to the administration of all evidence concerning his client which was obtained during the investigation, on the grounds that **D.J.** had immunity at the time because of his employment. The court rejected this objection because **D.J.**'s immunity was waived for all purposes in connection with this case, including the investigative stage. The court is of the opinion that the respective waiving authority has exclusive competence in this regard. Therefore, the panel did not have any competence to question the independent and sovereign decision of the waiving institution. Accordingly, the objection was rejected. This argument was also raised as a defence against the charges, and was similarly rejected.

3. **A.O.**, substitute defence counsel for **L.D.**, objected to all the evidence against his client on the grounds that the search of the Medicus Clinic was illegal, and that all evidence obtained in the search was inadmissible. The court issued an oral ruling on 12 December 2011 declaring the search to be legal. However, the court reserved the right to re-visit the issue at the end of the trial, and has done so in a detailed discussion below in which the earlier ruling is affirmed. Therefore, the objection was rejected.

4. **L.S.**, counsel for **L.D.**, also objected to the administration and admissibility of any evidence obtained after the date the investigation was concluded, which he stated as 12 May 2009. However, under article 322, KCCP, the parties may request that new witnesses or expert witness be summoned or that new evidence be collected even after the main trial has been scheduled. The request has to be supported by reasoning. If the request is rejected, it may be renewed during the main trial. Also, under article 360 (4), the parties may move that new facts be looked into and that new evidence be collected until the end of the main trial. Under paragraph (5), the trial panel shall have the authority to collect evidence that it considers necessary for a fair and complete determination of the case.

All requests for additional evidence and witnesses fell into one of these categories. Accordingly, the objection was rejected. It is undisputed that the main trial is not just a simple administration of evidence collected during investigation; the parties are entitled to propose new evidence, and the panel is obliged to establish all factual aspects of the case which can include the collection of evidence *ex officio*.

5. Defence counsels for **L.D.**, **A.D.** and **I.R.** objected to the administration of the **content** of the SMS messages obtained by the prosecutor from the telecommunication company VALA. During the investigation, the then-prosecutor issued an order for the **metering** of telephone calls pursuant to article 258 (1), subparagraph 4, KCCP. The order specifically excluded information regarding the content of the calls or messages.

This order was served on VALA, which responded to the order by providing not only metering information, but also provided content information about dozens of SMS messages. The court granted this objection because content information can only be disclosed upon an order of the pre-trial judge under article 258 (2), subparagraph 4, KCCP, and therefore the evidence is inadmissible under article 264 (1).

After the current lead prosecutor realized that the content of the exchange of telecommunications might be crucial for the outcome of the trial, he submitted a request to acquire the said information. Although the submission was granted by the panel, the telecommunication providers IPKO and VALA responded that the data in question are no longer available due to lapse of time, since according to applicable legal provisions in the telecommunication law the company is obliged to store and administer this sensitive data only for limited period of time that already has passed.

Thus, because the initial disclosure of content information by VALA was not authorized by the pre-trial judge, and because the subsequent order of the trial panel could not be complied with, the panel concluded that the content information was inadmissible, and granted the objection. However, evidence of telephone metering is admissible. The prosecutor had the authority to order metering of phone calls as per article 258 (1), subparagraph 4, KCCP, without prior consent of the pre-trial judge.

#### **IV. General Introduction.**

This case, which is commonly referred to as the “Medicus” case, involves charges of trafficking in persons, organized crime, unlawful exercise of medical activities, abuse of position or authority, grievous bodily harm, and other crimes, all of which relate to illegal kidney transplants occurring at the Medicus Clinic, located in Fushe Kosove, in 2008.

##### **A. The Defendants**

**L.D.**, who is considered the lead defendant, worked at the Medicus Clinic, a private health clinic in Fushë Kosovë, which provided both urology and cardiology services. **S.H.**, **S.D.** and **I.B.** also worked at Medicus in a different capacity.

##### **B. Progress of the Trial**

The main trial commenced on 4 October 2011 and concluded with the announcement of the judgment on 29 April 2013, a period of almost 19 months. During that time, the court held 67 trial sessions, heard the testimony of 78 different witnesses, and reviewed thousands of pages of documents and considered several expert opinions and reports.

### **C. International Scope**

The case is international in scope and notoriety, and involves activities in the following countries: Canada, the United States, Kazakhstan, Belarus, Ukraine, the Russian Federation, Moldova, Poland, Turkey, Israel, Germany, Switzerland and Kosovo. Requests for International Legal Assistance, which were issued by both the prosecutor and the court, and which were processed by the Kosovo Ministry of Justice, were forwarded to these foreign countries through diplomatic channels for the production of material evidence and witnesses, as follows. A request for International Legal Assistance was also issued to the Council of Europe, seeking the testimony of D.M.

1. Switzerland, 26 September 2011
2. Germany, 1 September 2011,
3. Canada, 22 August 2011
4. Ukraine, 11 August 2011
5. Russia, 11 August 2011
6. Moldova, 11 August 2011,
7. Poland, 11 August 2011, 2 February 2012,
8. USA, 17 August 2011
9. Turkey, 16 August 2011
10. Israel, 16 August 2011, 9 February 2012,

Except for Moldova, the Russian Federation, the Council of Europe and Switzerland, all of the requests were complied with, either in whole or in part. In some instances, cooperation came slowly, and required repeated reminders by the court, the prosecutor and officials from the Ministry of Justice. This occasioned numerous delays in the main trial. In other instances, compliance was partial, because of the risk of jeopardizing on-going investigations or trials involving similar criminal activity in the requested country, such as Israel and Turkey, or for other reasons.

Moldova refused to cooperate because it does not recognize Kosovo. For a time it appeared that the Russian Federation would cooperate, and make available the testimony of possible kidney donors who live in the Russia, but despite the helpful efforts of the Office of the War Crimes Prosecutor in Belgrade, Serbia, the Russian Federation did not step forward. Switzerland was requested to produce certain bank records, if they existed, but was unable to do so before the end of the main trial, apparently because of the strict confidentiality laws governing Swiss banks. The Council of Europe and Switzerland also declined to make D.M. available as a witness, as explained in detail below.

### **D. Court's Inability to Take Testimony from Important Witnesses**

#### **1. Y.S.**

The court was unable to take the testimony of **Y.S.**, who was involved in the illegal kidney transplants that took place at the Medicus Clinic, and was a major participant in the trafficking and organized crime aspects of this case. **Y.S.** is considered to be a major player in the international trafficking of human kidneys. He has been indicted in a separate indictment in Kosovo, and is presently under indictment in Turkey for similar illegal activity.

He could not be extradited from Turkey to Kosovo, and presently his whereabouts are uncertain.

## **2. K.D.**

Likewise, the court was unable to take the testimony of **K.D.**, a medical doctor who was born in Kosovo. Evidence shows convincingly that **K.D.** actively participated in many kidney transplant surgeries at the Medicus Clinic with **Y.S.** and others during the period in question. He is also under indictment with **Y.S.** in Turkey. Initially he agreed to give testimony by video link, but refused to do so at the last minute after the video link had been established.

## **3. M.H.**

The court was also unable to take the testimony of **M.H.**, who was actively involved in the trafficking and organized crime aspects of this case. He was one of the primary persons responsible for making the financial and logistical arrangements for both donors and recipients of kidneys, and he played the role of the facilitator or “fixer.” On several occasions he accompanied donors and recipients to Pristina, and was physically present from time to time in the Medicus Clinic. Along with **Y.S.**, he has been separately indicted in Kosovo, and is currently under criminal investigation in Israel. Shortly after the Medicus Clinic was searched in November 2008, **M.H.** gave statements to the police and the pre-trial judge. He was released from custody on the condition that he return to Kosovo if ordered to do so, but then absconded.

## **4. A.S. and M.Z.**

**A.S. and M.Z.** recruited potential kidney recipients, and then handled the financial and logistical arrangements for the recipients’ travel to Kosovo. **M.Z.** also accompanied certain of the recipients to Kosovo, and assisted them while they stayed in Kosovo. Both men are under criminal investigation in Israel.

## **5. Y.K.**

It was confirmed by this panel that **Y.K.** recruited at least donor “**AK**” and made financial and logistical arrangements for his travel to Kosovo. Apparently, **Y.K.** has been tried and convicted in Ukraine for related activities, and is serving a prison sentence. The Office of the Prosecutor in Kiev cooperated with the request for International Legal Assistance, and arranged for **Y.K.’s** testimony by video link, but **Y.K.** refused to provide testimony at that time.

## **6. D.M.**

Also, unfortunately, the court did not receive the cooperation of the Council of Europe and Switzerland with regard to its summons to **D.M.** Because of the international publicity surrounding **D.M.** and his report, the panel will address this matter in greater detail.

On 12 December 2010, **D.M.**, issued a report on organ trafficking. The report made extensive allegations about illegal trafficking in human organs. Several prominent figures were identified as possible perpetrators. Needless to say, the report generated a storm of controversy worldwide.

The report made reference to the Medicus Clinic in Pristina, as follows:

*168. In the course of our inquiry we have uncovered certain items of information that go some way beyond our findings as presently reported. This information appears to depict a broader, more complex organized criminal conspiracy to source human organs for illicit transplant, involving co-conspirators in at least three different foreign countries besides Kosovo, enduring over more than a decade. **In particular, we found a number of credible, convergent indications that the organ-trafficking component of the post-conflict detentions described in our report is closely related to the contemporary case of the Medicus Clinic, not least through prominent Kosovar Albanian and international personalities who feature as co-conspirators in both.** However, out of respect for the ongoing investigations and judicial proceedings being led by EULEX/the Office of the Special Prosecutor of Kosovo, we feel obliged at this moment to refrain from publishing our findings in this regard. Suffice to say, we encourage all the countries whose nationals appear in the indictment regarding Medicus to do their utmost to halt this shameful activity and assist in bringing its orchestrators and co-conspirators to justice.* (emphasis added)

The report concluded with the following:

*Our sole aim today is to serve as spokespersons for those men and women from Kosovo, as well as those from Serbia and Albania, who, regardless of their ethnic or religious backgrounds, simply aspire to the truth and to an end to scandalous impunity, with no greater wish than to be able to live in peace. Truth and accountability are absolute necessities if there is to be genuine reconciliation and lasting stability in the region. In the course of our mission we met with persons of great valor—both local and international actors—who are fighting to overcome indifference and build a fairer society. They deserve not only our expressions of solidarity, **but also our full and active support** (emphasis added).*

Based on the report, the Parliamentary Assembly's Committee on Legal Affairs and Human Rights adopted a resolution on 16 December 2010 in Paris, which was subsequently adopted by the Parliamentary Assembly. The resolution included the following:

*5. The criminal activity, which developed with the benefit of the chaos prevailing in the region, at the initiative of certain KLA militia leaders linked to organized crime, has continued, albeit in other forms, until today, as demonstrated by an investigation being carried out by the European Union Rule of Law Mission in Kosovo (EULEX) relating to the Medicus Clinic in Pristina.*

The resolution made recommendations for concerted action to address the allegations, and implored member states and observer states:

*19.6.1 to respond without delay to the requests for judicial co-operation addressed to them by EULEX and the Serbian authorities in the framework of their current investigations concerning war crimes and organ trafficking; the delayed response to these requests is incomprehensible and intolerable in view of the importance and urgency of international co-operation to deal with such serious and dangerous crime problems.*

With this background in mind, the Presiding Judge of the Medicus trial panel requested, through formal diplomatic channels in early June 2012, that the Council of Europe and Swiss authorities make **D.M.** available to testify by video link in the Medicus trial on 3 September

2012. It was the panel's view that its request would be readily approved in light of **D.M.'s** statements about the importance of truth and accountability as well as the sweeping exhortation contained in paragraph 19.6.1 of the resolution quoted immediately above.

The panels' optimism proved to be misguided, however. By letter to the Presiding Judge from the President of the Council of Europe, dated 10 July 2012, the Presiding Judge was informed that his request had been referred to the Committee on Rules of Procedure, Immunities and Institutional Affairs for its legal opinion. The letter then summarized the opinion of the Committee resulting from its meeting on 27 June 2012. In essence, the Committee concluded that **D.M.** enjoyed immunity under article 14 of the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949, which states:

*Representatives and their substitutes shall be immune from all official interrogation and from all arrest and all legal proceedings in respect of words spoken or votes cast by them in the exercise of their functions.*

As explained in the President's letter, the Committee opined that,

*The immunity guaranteed by article 14 of the General agreement is mandatory before the courts; it is the responsibility of the court with jurisdiction (in this case, the District Court of Pristina) to recognize that D.M. enjoys absolute immunity owing to the direct and obvious link to his parliamentary functions of the opinions or remarks that have been expressed or might in the future be expressed in relation to the ongoing trial.*

The President's response then concluded that,

*In light of the above, the Parliamentary Assembly does not have the authority to waive D.M.'s parliamentary immunity in the context of Article 14 of the General Agreement. It is therefore not in a position to respond favorably to the request made on 24 April 2012 [sic] by the District Court of Pristina.*

The court in Pristina then received a response from the Embassy of Switzerland in Kosovo, dated 27 July 2012, which stated that,

*According to the letter dated 17 July 2012, the Federal Office of Justice is unable to meet the request based on the decision of the Parliamentary Assembly of the Council of Europe that the parliamentary immunity of D.M. cannot be lifted. Thus, D.M. did not accept the invitation to provide testimony on 3 September 2012 (or any time thereafter).*

The trial panel is familiar with the legal concept of immunity and strictly respects it in appropriate cases. However, this does not appear to be such a case. There is an obvious and significant discrepancy between the declaration in **D.M.'s** report and the ensuing resolution by the Parliamentary Assembly, making lofty statements about truth, accountability, cooperation and the shameful nature of illicit organ trafficking, and the formalistic position taken by the Council; when given the opportunity to assist in the truth seeking function in a real life, ongoing trial alleging such trafficking, **D.M.** and the Council of Europe quickly retreated behind the cloak of immunity.

Moreover, the purported claim of absolute immunity rests entirely on article 14 of the General Agreement. While the trial panel does not profess to have special expertise in the

area of privileges and immunities of officials of the Council of Europe and is reluctant to challenge the rulings of the Council Of Europe, it cannot help but notice the provisions of article 19 of the very same General Agreement, which are nowhere referred to in the President's letter, and which state in pertinent part as follows:

*The Secretary General shall have the right and the duty to waive immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Council of Europe.*

It would appear that this waiver provision could have been applied to the request by the Presiding Judge in the Medicus case. If D.M., as he states, knows of "credible, convergent indications that the organ-trafficking component of the post-conflict detentions in our report are closely related to the contemporary case of the Medicus Clinic..." then his testimony could have contributed significantly to establishing the truth, without prejudice to the interests of the CoE.

While the Medicus case has now concluded without the benefit of D.M. evidence, the panel can only hope that the Council will rethink its position if such evidence is sought in any future trials that may occur in relation to the allegations in D.M's report.

## **V. Legality of the Search of the Medicus Clinic**

During the confirmation stage of the indictment, the admissibility of the evidence seized during the search of the Medicus Clinic, which commenced on 4 November 2008 and continued through 11 November, was challenged on the grounds that the search was conducted without a judicial order, neither a verbal order nor one in writing, contrary to relevant provisions of the Kosovo Constitution and the Kosovo Code of Criminal Procedure.

Ultimately, the evidence was determined to be admissible at the confirmation stage, following an appeal to a three judge panel. However, the motion was renewed by L.S., defence counsel for **L.D.**, in a written submission to the court filed on 29 September 2011. Whether the evidence seized at the Clinic was admissible or not was viewed by all parties as significant, because without this evidence the prosecution most likely could not continue with the indictment. Thus, the court and all parties agreed that this matter would be addressed at the outset of the main trial, with a ruling by the court to be issued promptly.

The court then took testimony from numerous witnesses who had knowledge of the circumstances surrounding the search, and reviewed several important reports that were written during the search process or shortly thereafter. Following the testimony, L.S., and defence counsel for **I.R.**, F.V., filed written submissions, arguing that the search was illegal and therefore that the evidence seized during the search is inadmissible.

The trial panel issued an oral ruling on 19 December 2011 declaring the evidence to be admissible,<sup>1</sup> but reserved the right to review the issue at the conclusion of the case. Because of the importance of this issue, this judgment addresses the matter in detail immediately below.

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<sup>1</sup> The ruling herein remains consistent with the oral ruling.

The following witnesses testified regarding the search of the Medicus Clinic:<sup>2</sup>

1. F.H., minutes 18 October 2011, pages 4-13
2. F.M., minutes 18 October, pages 13-35, and 19 October, pages 3-13
3. Z.K., minutes 19 October, pages 14-25
4. O.K., Chief Public Prosecutor, minutes 19 October, pages 26-35
5. S.O., minutes 20 October, pages 2-5
6. O.M., minutes 20 October, pages 5-18
7. R.A., minutes, pages 19-37
8. S.B., minutes 25 October, pages 2-10
9. A.G., minutes 25 October, pages 12-18
10. S.H1, minutes 25 October, pages 25-35
11. S.G. , minutes 9 November 2011, pages 2-6
12. B.S1, minutes 9 November, pages 6-11
13. F.B., minutes 9 November, pages 15-20
14. H.K., minutes 10 November, pages 29-41
15. M.M., minutes 15 November, pages 2-10
16. T.P., minutes 15 November, pages 11-24
17. S.H2, Minutes 17 November 2011, 15-19
18. N.S., minutes 22 November 2011, pages 2-9
19. S.C., minutes 22 November 2011, pages 10-16
20. A.A., minutes 29 November 2011, pages, 17-19, 22-29
21. I.A., minutes 29 November 2011, pages 8-22
22. S.X., minutes 29 November 2011, pages 23-26
23. E.P., minutes 20 December 2011, pages 10-15

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<sup>2</sup> Some of these witnesses also offered testimony on other aspects of the case; their testimony was not necessarily limited to the issue of the search.

24. H.S., minutes 5 April, pages [ ].

The following factual situation emerges from the testimony of these witnesses at the main trial. The court does not believe that it is necessary to summarize the testimony of each of the witnesses. Instead, the court has made reference to important parts of the testimony of the key witnesses regarding this issue. The court is of the opinion that the critical facts are not in dispute; rather, it is the legal conclusion to be drawn from the facts that constitutes the dispute.

### **A. The Initial Police Investigation**

Prior to the search of the Medicus Clinic on 4 November 2008, intelligence information began to develop about suspicious activity occurring at the Pristina Airport with regard to foreign citizens entering the country for medical treatment at the Medicus Clinic. Initially, the information was undefined, and it was merely passed on to the Kosovo Police by the Border Police at the Airport. Eventually, in October 2008, **F.M.**, was assigned as the lead investigator.

First, he paid a visit to the Clinic to see where it was located. During the visit, he met **L.D.** and **T.P.** **F.M.** requested licensing documentation and was informed by **L.D.** that such documentation was not readily available, but would be provided at a later date. This was **F.M.**'s only visit to the Clinic prior to 4 November.

**F.M.** also visited the Airport on several occasions to meet with Border Police, and familiarize himself with the documents regarding the entry of these foreign residents. He was able to review copies of passports, as well as guarantee letters or invitations issued by Medicus that had been provided in advance to the foreign residents who were visiting the Clinic. On 3 November, he noticed that the most recent guarantee letters were issued to two persons who had entered Kosovo during the preceding few days. One was a Turkish man named **Y.A.**; the other was to an Israeli man named **B.S.**

On the morning of 4 November, **F.M.** returned to the Airport for further investigation. He learned that **Y.A.** had an open ticket to return to Turkey on Turkish Airlines. By pure chance, he then noticed a group of 3 or 4 persons in the terminal who did not appear to be Kosovo citizens, and he recognized one of them as **Y.A.** He did not recognize the others, but learned later that one was **M.H.**, another was "**E**" and the third was a relation of **B.S.**

**F.M.** observed **Y.A.** and **M.H.** go to the Turkish Airlines counter and they appeared to be making flight arrangements to leave Kosovo. **M.H.** and the others then went outside the terminal, while **Y.A.** headed to passport control. As **Y.A.** arrived at the passport control counter, **F.M.** was able to compare the copy of the passport he already had in his possession with the passport presented by **Y.A.**, and they matched.

**Y.A.**, who looked worried and pale, was then ushered into an interview room, and questioned by **F.M.**, through an interpreter. **Y.A.** simply said that he wanted to go home. **F.M.** conducted a visual body scan and saw an incision of about 20 centimetres at **Y.A.**'s waist. **F.M.** contacted the Airport's on-call doctor who checked **Y.A.** and determined that the incision was related to kidney surgery, given the location of the incision on **Y.A.**'s body. **F.M.** then suspected that the surgery had taken place at Medicus.

**Y.A.** was transported by **F.M.** to the Police Station, and they arrived about 13:00 hours. **Y.A.** then confirmed that he had had kidney removal surgery at Medicus, and that he had been brought to Kosovo by **M.H.** **Y.A.** also said that the recipient of the kidney was still at the Clinic. **Y.A.** was then left in the care of a special victim's unit from the Ministry of Justice. Because of his precarious medical condition, he was hospitalized at the University Hospital.

**F.M.** notified other police officers to go to the Medicus Clinic and secure the scene, which he now considered to be a crime scene. He then went to Pristina Hospital and arrested **L.D.**, following which he went to the Clinic, arriving around 15:00-15:30 hours. Once at the Clinic, which had been secured as he instructed by about 20-25 officers, he determined that a search would be necessary. Because of the sensitivity of the case he contacted the on-call public prosecutor, and asked him to report to the scene, which he did around 16:00-16:30.

At this point, the testimony of the witnesses diverges, although the inconsistencies are not critical to the issue at hand, namely whether a judicial order was ever issued for the search. **F.M.** claimed that the search did not begin until the prosecutor arrived, and that the prosecutor authorized the search after contacting the Chief Public Prosecutor. The prosecutor claimed that the search was already underway when he arrived, and that he never authorized the search since he had no authority to do so—only a judge could authorize a search.

What is clear from the testimony, however, is that no judicial search order was ever issued, nor was a judge ever contacted by the police or prosecutor to obtain an order, either a verbal order or one in writing, even though there was an on-call system for pre-trial judges, as demonstrated by the excerpts from the minutes of the main trial immediately below.<sup>3</sup> What is also clear is that no person in a position to do so ever granted consent for the search, and that there were no designated witnesses who monitored the search.

## **B. Key Testimony Regarding the Search**

When **F.M.** was questioned by the SPRK prosecutor at the main trial as to whether he requested permission from the pre-trial judge, he responded:

*No, because the Public Prosecutor should take that action. Our contact is with the Public Prosecutor and not the judge. We obey the orders of the Public Prosecutor.*<sup>4</sup>

The Chief Public Prosecutor denied being present at the scene and passed the responsibility for contacting a judge to the Public Prosecutor. When asked by a member of the trial panel at the main trial why the pre-trial judge was not contacted, at least for a verbal order, he replied:

*He [the judge] should have been notified and I have no knowledge in this regard as this fell under the scope of the Public Prosecutor.*<sup>5</sup>

Then when asked at what point the judge should have been contacted, he stated:

*At the moment when there is a request for the search by the police*<sup>6</sup>

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<sup>3</sup> These excerpts from the minutes are intended to be representative only. They do not constitute a complete catalogue of all references to this subject in the minutes. However, the excerpts accurately reflect the totality of the situation.

<sup>4</sup> Minutes, 18 October 2011, page 30.

<sup>5</sup> Minutes, 19 October 2011, page 34.

On the other hand, the Public Prosecutor suggested that the search was justified without an order because the search took place in public premises and because of the urgency of the situation. During his testimony at the main trial, he offered a lengthy exegesis on the law governing searches, including the following:

*I think that the police—and there was a discussion that they entered without the order of the Pre-Trial judge but according to article 242, paragraph 4 of the CPC of Kosovo, the police have the right to search on public premises without the order of the Pre-Trial judge or if the effectiveness of the search is likely to be undermined if it is [not] conducted instantly and without warning. Of course the search should be carried out without a warning when it is to be done on public venues. I consider the police acted correctly in entering the premises and conducting the search. There were questions here about the donor, the recipient and the doctor all of them were foreigners. If the search had been postponed for another day then the effect of the search would have failed in regard to the clinic.<sup>7</sup>*

According to the Public Prosecutor, the responsibility for contacting a judge, assuming such a contact was required, rested with the police. When asked by the Presiding Judge whether the prosecutor or the police had the responsibility to seek verbal permission from the pre-trial judge, he replied:

*I believe it was the responsibility of the police to call when they went to the crime scene. It has always been practiced that when I have gone to a number of crime scenes, I have obtained the telephone number of the pre-trial judge and given it to the police officer in charge, who has then invited the pre-trial judge.<sup>8</sup>*

The on-call pre-trial judge was working that day at the Pristina District Court. During examination at the main trial, he testified that his first knowledge about the search was after he arrived home:

*As far as I remember, I emphasize this once more; I don't know when the search was conducted. When I went home, I heard the news, and the news was that there were a few persons arrested at Medicus. The first information I received was from the TV.<sup>9</sup>*

The pre-trial judge went on to testify that the on-call public prosecutor had an office on the floor above his office at the District Court, and that the prosecutor had the judge's mobile phone number.<sup>10</sup> When the pre-trial judge learned more about the case he realized he had a conflict of interest, and the President of the District Court then assigned another pre-trial judge. This judge subsequently presided at the detention hearing on 7 November. During examination at the main trial he was asked if he ever received a request to authorize a search of the Medicus Clinic. He replied:

*No, because such requests should be filed before the detention hearing.<sup>11</sup>*

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<sup>6</sup> Id.

<sup>7</sup> Minutes, 20 October 2011, page 17

<sup>8</sup> Id.

<sup>9</sup> Minutes, 25 October 2011, page 5

<sup>10</sup> Id., pages 8-9

<sup>11</sup> Id., page 30

In any event, despite the absence of a judicial order, and despite the different opinions about whether it was necessary to contact a judge, and if so by whom, the search began sometime around 16:00-16:30 and lasted for several hours, then continued on the following days.

### **C. Testimony regarding Consent.**

The following excerpts from the minutes of the main trial address the issue of whether an authorized member of the staff of the Medicus Clinic ever consented to the search.<sup>12</sup> Under article 245, paragraph 1, subparagraph 1, consent is one of the exceptions to the requirement for a judicial order prior to a search. It is clear from the excerpts below that no consent was ever given to the police.

During the search, certain staff members of the Medicus Clinic were present in the building, although **L.D.**, who had been arrested earlier, was not at the Clinic. According to **M.M.**, a part time worker at the Clinic, he along with **T.P.**, **N.S.**, **A.A.** and the cleaning lady were there. When asked at the main trial if any of them were allowed to follow the police around, **M.M.** stated:

*No. They ordered us to sit down and not speak. Their behaviour was rude, they entered the rooms as they were, wearing shoes and didn't let us do anything. The worst was we had no idea what was happening. No one explained to us. At 6 o'clock the cameras arrived and the show started. T.P. was taken in a manner I cannot describe, in front of the cameras and the others were placed on the other vehicles and taken to police stations.*<sup>13</sup>

During T.P.'s trial testimony, he was asked if he or the other staff were allowed to accompany the police as they searched the building, and he replied in the negative.<sup>14</sup> When asked if anyone of the staff gave consent for search, he replied:

*They didn't ask us at all.*<sup>15</sup>

He said that eventually, after about three hours, the cameras arrived and he was arrested.<sup>16</sup>

According to N.S., working part time at the Clinic, he arrived at the Clinic to start his shift around 15:00. He and T.P. were allowed to enter after showing IDs. This witness testified:

*I just want to explain. We were asked for IDs and then they allowed us to enter the corridor of the ground floor, me and T. They ordered us to sit down and switch our phones off and not to move our seats. For about half an hour, they did not allow us to go to the toilet and no one told us anything. All we saw were people in uniforms continuously moving up and down. No one questioned us until they took us to the Police Station at about 8 or 9 that evening.*<sup>17</sup>

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<sup>12</sup> These excerpts from the minutes are intended to be representative only. They do not constitute a complete catalogue of all references to this subject in the minutes. However, the excerpts accurately reflect the totality of the situation.

<sup>13</sup> Minutes 15 November 2011, page 7.

<sup>14</sup> Id., page 17

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Minutes 22 November 2011, page 5.

He was then asked who else from the staff besides himself and **T.P.** were in the Clinic, and he identified **S.H.**, **S.C.** and **M.M.** When asked if all of them remained in the same place, he said:

*Yes, we were at the same place and they ordered us not to move from our seats. The Police Officer with a harsh voice told us not to move.*<sup>18</sup>

When asked if anyone granted consent for the search, he replied:

*No one ever asked us. The Police Officer who was standing by us had to ask another Police Officer if we were allowed to go to the toilet which was 2 m away.*<sup>19</sup>

When asked if any of the Police Officers asked any of the staff members to be a witness during the search, he said no.<sup>20</sup>

**S.C.**, confirmed that no one who was present in the Clinic was asked to consent to the search. She also testified that neither **A.D.** nor **L.D.** ever arrived in the Clinic.<sup>21</sup>

At some point during the search, **A.D.** did arrive at the scene by car. He provided certain documents to a forensics officer which had been requested earlier by officer **F.M.** when he first visited the Clinic several days earlier. **A.D.** was subsequently arrested along with **T.P.**<sup>22</sup>

#### **D. Testimony Regarding the Presence of Two Witnesses**

The excerpts from the minutes of the main trial immediately below address the issue of the presence or absence of two witnesses during the search, which is a necessary requirement.<sup>23</sup>

During his testimony at the main trial, the Director of the Organized Crime Unit, and who went to the crime scene, was asked if he observed the presence two adult witnesses during the search. He said that the question would have to be addressed to the investigators directly, but continued:

*I know it is required by the CPOK and I know at the time these were the priorities and I'm sure the investigator took into consideration.*<sup>24</sup>

He added:

*It is routine that the investigator has two witnesses during search present. I did not see the case file. You can see the case file. But I personally did not see.*<sup>25</sup>

When asked whether two witnesses were present during the search, he testified:

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<sup>18</sup> Id., page 7

<sup>19</sup> Id.

<sup>20</sup> Id., page 8

<sup>21</sup> Id., page 15

<sup>22</sup> Minutes 18 October 2011, page 34

<sup>23</sup> These excerpts from the minutes are intended to be representative only. They do not constitute a complete catalogue of all references to this subject in the minutes. However, the excerpts accurately reflect the totality of the situation.

<sup>24</sup> Minutes 18 October 2011, page 10

<sup>25</sup> Id.

*There were witnesses present. The staff that were working there. T.P. himself was present. In L.D.'s clinic there were staffs present that were being observed and followed.*<sup>26</sup>

He continued:

*At some point during the search they were pulled aside in the corridor and then they were asked to go to their assigned work places where they usually performed duties and where their usual obligations laid in. The last persons who left the crime scene were the arrested persons and the witnesses and A.D.[,] no one stayed behind.*<sup>27</sup>

From the testimony of these witnesses it is clear that the requirement for the presence of two adult witnesses, who should be instructed to observe closely how the search was conducted and be informed of their right to make objections to the record, was not safeguarded and in fact was simply ignored. The clinic's personnel was ordered to stay in certain rooms and simply perform their official activities, so there was no possibility for any of them to observe the actions conducted during the search and to pose any objections that might be appropriate.

### **E. The Role of Health Inspectors.**

In deciding the legality of the search it is important to understand not just the role of the police, but also the role of health inspectors from the Ministry of Health who have independent legal authority to enter, inspect and search health facilities, and to seize evidence. The testimony of key witnesses, along with relevant material evidence, make it clear that the health inspectors played an integral role in initial search of the Medicus Clinic on 4 November 2008 and during the following days.

The lead police investigator, during direct examination by the SPRK prosecutor at the main trial, was asked whether he contacted other agencies before beginning the search. He responded:

*I informed all other units which I thought were important. The health unit, as we had a close cooperation with the health inspectors as we had other cases with them before. I informed chief health inspector I called them as this was a kind of procedure as we did so when we had a health issue and they were the people to guide us and I wanted them to come there and tell us what to do.*<sup>28</sup>

The Chief Health Inspector, testified at the main trial that it is not unusual to receive a request from the police for assistance. The SPRK prosecutor then asked, *Is it fair to say that the police refer to the health inspector in relation to a medical or health issue?* To which he responds, *yes.*<sup>29</sup>

When asked what he did after receiving the request from the police, he said:

*I sent two inspectors. A lady and a gentleman, the gentleman was S.O. and I do not remember if the lady was A.M. or D.D.*<sup>30</sup>

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<sup>26</sup> Id., page 34.

<sup>27</sup> Id., pages 34-35.

<sup>28</sup> Minutes, 18 October 2011, page 23.

<sup>29</sup> Minutes, 19 October 2011, page 15.

<sup>30</sup> Id.

When asked to describe the first action taken during the search besides gathering the employees, **F.M.** stated:

*During the ocular search, the doctor A.G. was also present there and the chief health inspector and [a] few other health officials were also present there...<sup>31</sup>.*

*On the third floor, the investigative team observed a male patient lying on a bed. The forensic doctor asked him why he was there, and he replied that he had had an intervention in his kidney. The team then believed that a transplant had taken place.<sup>32</sup>*

The SPRK prosecutor asked the man's name. **F.M.** testified as follows:

*Then we commenced a more detailed search by the forensic unit of the KPS in conjunction with the inspectors of the health section. Photographs were taken and a manual description of the objects found and there [sic] positions. There was no need for the search to continue on that particular evening for any longer because it started to get dark.<sup>33</sup>*

When asked who was actually doing the search, **F.M.** replied:

*The ocular search was carried out by me, my supervisors, the Public Prosecutors, the forensic unit and the health inspectors. The detailed search is performed by the forensic unit as far as the collection of evidence is concerned but they communicated with us at all times to see if items are important to the investigation.<sup>34</sup>*

According to **F.M.** and other trial witnesses, the collaboration between the police and health inspectors continued during the evening of 4 November when there was a meeting at the police station attended by **F.M.**, the Public Prosecutor, the Chief Public Prosecutor, the Chief Health Inspector, the Forensic Doctor and others. The purpose was to discuss the actions that they should undertake as they were treating the victim who had declared that his kidney had been removed. They also had a patient who admitted that a kidney had been transplanted into his body.<sup>35</sup>

This was the first case of its kind they had investigated. When asked what was discussed at the meeting, **F.M.** stated:

*The discussion was about the interpretation of the criminal offence. The health inspector had brought the law on health and would read all the provisions and interpret it thereafter and the descriptions of those law[s] with respect to private clinics and the transplant possibility undertaken. The forensic doctor was obliged to confirm the possibility of such transplant being undertaken under such conditions of the clinic.<sup>36</sup>*

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<sup>31</sup> Minutes, 18 October 2011, page 24.

<sup>32</sup> Id.

<sup>33</sup> Id., page 25.

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id., page 27

Eventually it was decided that there was grounded suspicion under article 139 of the Kosovo Criminal Code, Trafficking, and the Public Prosecutor issued an order for arrest of the persons already detained.<sup>37</sup>

In the meantime, decisions were made about the treatment of **B.S.**, the kidney recipient. He was sent to the University Clinic Centre of Pristina upon a decision of the Chief [Health] Inspector and the Forensic Doctor that his life would otherwise be endangered.<sup>38</sup> As it turned out, the University Hospital could not meet **B.S.'s** treatment needs, and it was decided to return him to the Medicus Clinic, under the care of **L.D.**

Regarding the ongoing nature of the search in the days following 4 November, **F.M.** testified,

*After the 4 November [search] the searches continued until the 11<sup>th</sup>. The forensic police continued the searches together with the expert[s] of health from the Ministry of Health.*<sup>39</sup>

### **F. The Reports Regarding the Search**

The various reports that were prepared during the search confirm that the search was a joint collaboration between the police and health inspectors, and that the health inspectors were acting under the authority of several laws governing health.

In his report to **A.G.**, Minister of Health, dated 6 November 2008, Chief Health Inspector, stated:

*The inspection is based on the Health Law 2004/4, Articles, 101, 102.1, 118.1 [,] Health Inspectorate Law no. 02/L-38 Section 1, 2, 6, and 7 and the law on Private Activity 2004/50, Articles, 25.1, 26.1, 28.1...<sup>40</sup>.*

In his Criminal Report to the District Public Prosecutor, dated 7 November 2008, **F.M.**, the lead police investigator, stated in the section labelled Justification:

*Based on the forensic medicine examinations conducted by the health inspectors of the Ministry of Health, pharmaceutical experts of the Ministry of Health and those from the forensic unit of Kosovo Police, who are still working at the crime scene, it is suspected that kidney transplants were performed illegally and in inadequate professional conditions at the Medicus Clinic, and that this clinic does not possess a license from the Ministry of Health.*<sup>41</sup>

In his Crime Scene Search Report, dated 10 November 2008, the Technician in charge of the Forensics Unit, stated:

*We arrived at the crime scene on [4 November] around 14:35. We met there with DKKO investigators from the Human Trafficking Section, who informed us that the investigator in charge for this case is **F.M.** Present at the crime scene were Pristina District Public Prosecutor, health inspectors **S.O.** and **A.M.** from Ministry of Health and a Forensic Pathologist.*

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<sup>37</sup> Id., page 28

<sup>38</sup> Id.

<sup>39</sup> Minutes 18 October 2011, page 35

<sup>40</sup> Specific Report, from Z.K. to the Minister of Health, dated 6 November 2008, page 1, English version

<sup>41</sup> Criminal Report, **F.M.**, dated 10 November 2008, page 2, English version

In the section of this Report labelled “Activities carried out on 04.11.2008,” the technician wrote:

*As requested by the investigators it was our duty to document all actions taken in this clinic, type of medicines used, work areas, photograph the equipment used and find all other related documents for further investigation of this case.*

*Besides the team from the Crime Scene Section of Department of Forensics, the documentation team included also:*

- 1) A.B. Investigator, DKKO-SHTQNJ*
- 2) B.G. —Chief Inspector, Pharmacy Inspectorate, Ministry of Health*
- 3) R.M. —Inspector, Pharmacy Inspectorate, Ministry of Health*
- 4) S.HI —Inspector, Pharmacy Inspectorate, Ministry of Health*
- 5) L.F. —Inspector, Pharmacy Inspectorate, Ministry of Health*
- 6) D.V. —Inspector, Pharmacy Inspectorate, Ministry of Health*
- 7) A.G. —Forensic Pathologist*
- 8) S.O. —Inspector, Ministry of Health*
- 9) A.M.—Inspector, Ministry of Health*
- 0) A.J. —Forensic IT Expert, DKKO<sup>42</sup>*

Due to large number of medicines the investigators and inspectors came across in the clinic, the pharmacy inspectors provided practical and technical assistance essential to an understanding of the exact nature of the medical activities conducted in the clinic. Both pharmacy inspectors and health inspectors work within the Ministry of Health, and exercise contemporaneous authority. There is no distinction between pharmacy inspectors and health inspectors. See section 6 d of the Law on Health Inspectorate, which lists medications as one of the responsibilities of the health inspectors.

After describing the activities of the team on 4 November, the technician’s Report continues:

*Around 17:45 of this date we suspended our activity in this clinic to resume the next day, on 05/11/2008 at 10:30. At around 10:30 we met with the Chief of Human Trafficking Section, and inspectors from Pharmacy Inspectorate, Ministry of Health. We drew joint documentation plans of our joint actions at this location.<sup>43</sup>*

After listing all the medical documents, patient records , medicines and medical equipment identified during the search of 5 November, the Report states:

*All these have been seized by the Inspectors of the Pharmacy in the Ministry of Health.<sup>44</sup>*

Under “Activities taken place on 06.11.2008,” the Report continues:

*At about 11:05 hrs of this day we have continued with further check of this clinic, continuing with the second floor which we have identified by ”C.” The Laboratory of the clinic was located on this floor. The pharmacy inspector together with the Criminality Specialist/technician went to the first floor identified by “B” to room identified by no 12 as surgery room and have taken expired medications from surgery set which were identified as testimony E# 12.1. These medications have been examined and registered and later on seized*

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<sup>42</sup> Id., page 2

<sup>43</sup> Id., page 4

<sup>44</sup> Id., page 7

by the Pharmacy inspectors. Also the Pharmacy Inspectors have taken all the other medications which according to them have no expiry date or in another way had reasons to be in the clinic.<sup>45</sup>

Under “Activities taken place on 07.11.2008,” the Report states:

*At about 11:00 hrs the Criminology Technician together with the Pharmacy Inspectors and the inspector of health have continued with other activities at this clinic.*<sup>46</sup>

Under “Activities taken place on 10.11.2008,”<sup>47</sup> the Report states:

*On 10.11.2008 at about 13:15 criminality technicians Sergeant S.V. and H.S. were sent to the Clinic Medicus to assist Pharmacy Inspectors and those of health from the Ministry of Health during hand over-take over process of the seized medications...*<sup>48</sup>

### **G. Relevant Provisions of the Kosovo Constitution and the Kosovo Code of Criminal Procedure (KCCP)**

The pertinent provision of the Kosovo Constitution reads as follows:

#### **Article 36, Right to Privacy**

1. [...]
2. *Searches of any private dwelling or establishment that are deemed necessary for the investigation of a crime may be conducted only to the extent necessary and only after approval by a court after a showing of the reasons why such a search is necessary. Derogation from this rule is permitted if it is necessary for a lawful arrest, to collect evidence which might be in danger of loss or to avoid direct and serious risk to humans and property as defined by law. A court must retroactively approve such actions.*

The implementing provisions of the KCCP governing search and seizure are set out in Chapter XXVIII: INVESTIGATION ACTIONS, Section 5. Search and Temporary Confiscation, articles 240-253.

### **H. Analysis**

The prosecutor argues first that the implementing provisions in the KCCP simply do not apply in this case because of the provisions of article 201 (1) and (2) of the Kosovo Code of Criminal Procedure, which state in pertinent part, as follows:

*(1) If there is a reasonable suspicion that a criminal offence prosecuted ex officio has been committed, the police have a duty, either ex officio or on the request of the public prosecutor, to take all steps necessary to locate the perpetrator or his or her accomplice from hiding or fleeing, to detect and preserve traces and other evidence of the criminal offence and objects which might serve as evidence, and to collect all information that may be of use in criminal proceedings.*

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<sup>45</sup> Id.

<sup>46</sup> Id., page 8

<sup>47</sup> There are no entries in the Report for 8 and 9 November 2008 which were weekend days.

<sup>48</sup> Crime Scene Search Report., page 9

(2) *In order to perform the tasks under paragraph 1 of the present article the police shall have the power:*

- ...
- 6) *To search specific buildings and premises of public entities in the presence of a responsible person and to examine specific documents belonging to them;*
  - 7) *To confiscate objects which must be confiscated under the Provisional Criminal Code or which may serve as evidence in criminal proceedings*

First, the prosecutor contends that article 201 is free-standing, and is not modified or restricted by the provision of article 240 and following. In other words, the police have the authority to search premises and seize objects irrespective of the specific provisions governing search and seizure. The court disagrees with this line of reasoning. Initially, it must be noted that paragraph 6 refers to buildings and premises of public entities. The Medicus Clinic was a private health care institution, and not a public entity, so by its very terms paragraph 6 does not apply. The fact that the clinic offered public service to patients, and was obliged to respect the law on health with all with sanctions and restrictions, did not change its legal entity from private to public institution.

Moreover, to accept the prosecutor's expansive interpretation would mean that article 36, paragraph 2, of the Kosovo Constitution, as well as the detailed provisions of chapter XXVIII, section 5, of the KCCP, are superfluous, whereas they are designed to protect the important right of privacy of citizens of Kosovo. The court is unwilling to sweep away these important protections so blithely. Accordingly, this argument must be rejected.

The prosecutor also presents an argument based on article 245, which sets out exceptions to the requirement for a search order:

- (1) Police may, if necessary, and to the extent necessary, enter the house or other premises of a person and conduct a search without an order of the pre-trial judge if:*
- 1) *The person concerned knowingly and voluntarily consents to the search;*
  - 2) *A person is calling for help*
  - 3) *A perpetrator caught in the act of committing a criminal offense is to be arrested after a pursuit;*
  - 4) *Reasons of safety of people or property so require; or*
  - 5) *A person against whom an order for arrest has been issued by the court is to be found in the house or other premises.*

The only provisions of Article 245 (1) which might justify a search without a search order in this case are subparagraphs 1 (consent), 3 (perpetrator caught in the act), and 4 (safety of people).

However, there is no viable claim that this was a consent search as demonstrated from the excerpts of the minutes quoted above. There is evidence that members of the health staff were present in the Clinic, but circumstances negate any claim of consent. Also, the only people who clearly had authority to consent were **L.D.**, **T.P.**, and **A.D.**, **L.D.** were not present, and **T.P.** was uncooperative. **A.D.** showed up at the scene, but the search had already begun.

Nor is there a viable claim that there was a perpetrator caught in the act who was to be arrested after a pursuit. While the police might have suspected or hoped they could catch someone in the act of transplanting a kidney, this was not the case, and in any event there was

no pursuit. There is a claim that **M.H.** and **Y.S.** may have escaped from the clinic at some point, but this is mere speculation.

The most reasonable claim, and the one chiefly relied on by the prosecutor, is that the search was conducted out of concern for the safety of persons. The relevant facts, as described above, show that **Y.A.**, provided important information during the late morning/early afternoon of November 4 to Inspector **F.M.**—specifically that he had a kidney removed at Medicus in the very recent past. This was significant evidence that illegal activity might be occurring at Medicus, and warranted immediate police action. Up to this point, there was no real evidence that transplants or any other illegal activity was taking place there. This new evidence caused police investigator **F.M.** to order that the scene be secured at about 13:00, and to mobilize a search operation which ultimately ensued at around 16:00-16:30, approximately three hours later.

As noted above, article 245, paragraph (1), subparagraph 4, allows the police to enter the premises without a judicial order of any sort “*if necessary and to the extent necessary*” if “*reasons of safety of people...so require.*”

However, paragraph 3 of the same article 245 deals with a similar situation:

*Exceptionally, in exigent circumstances, if a written order for a search cannot be obtained in time and there is a substantial risk of delay which could result in the loss of evidence or of **danger to the lives or health of people**, the judicial police may begin the search pursuant to the **verbal permission** of a pre-trial judge.* (emphasis added).

Both Article 245 (1), paragraph 4, and Article 245 (3) deal with virtually the same concern: safety of people, and danger to the lives or health of people. One allows entry without an order; the other requires a verbal order. It is therefore necessary to try to reconcile these provisions.

Paragraph 1 of article 245 must be interpreted to deal with unique situations that are occurring in the moment--in addition to safety concerns, it also includes calls for help, hot pursuit, and the need to enter to make an arrest. In other words, situations that require instantaneous action. These situations must be contrasted with potential safety situations that do not require instantaneous intervention. In other words, there could be varying degrees of exigency implicating the different provisions of 245. It all depends on the facts of a particular case.

The Medicus situation falls within the second category--Article 245 (3). The police themselves did not see the need to enter the Clinic immediately, and took many steps before the actual intervention. **F.M.** contacted his superior officer and requested a large police presence at the clinic at about 13:00 hours. Several officers mobilized and made their way to the scene. They then took control of the scene and cordoned off the premises. **F.M.** also contacted several agencies, including health inspectors, and they all proceeded to the scene before the search started. **F.M.** himself did not arrive at the scene until about 15:00-15:30, following his arrest of **L.D.**, and the search itself did not commence until about 16:00-16:30, roughly three hours after **F.M.** first contacted his supervisor.

Given this sequence of events, it was obvious that these were not circumstances that would obviate the requirement of obtaining verbal permission from a pre-trial judge. The panel

observes that the situation unfolded over several hours during the business day so there should have been no concern about being able to locate a judge. Indeed, the prosecutors were in the same building, and additionally they were aware of the judges' on-call mobile numbers. Thus, it is the panel's conclusion that there is no legitimate reason for failing to obtain at least a verbal search order from a judge.

The panel is also of the opinion that the situation in the clinic falls directly under the scope of Article 243 (2), which states:

*During the search of a person, a house or other premises, two adult persons shall be required to be present as witnesses. Before the search begins the witnesses shall be warned to observe closely how the search is conducted, and shall be informed of their right to make objections, if any, to the contents of the record of the search before it is signed.*

As noted above, it is clear that no persons were present as witnesses. However, there is an exception to this requirement in article 245 (4), which states:

*Exceptionally, a search may be conducted without witnesses being present if their presence cannot be secured immediately and it would be dangerous to delay the beginning of the search. The reasons for conducting the search without the presence of witness shall be noted in the record.*

Under the circumstances of this case, the exception does not apply. There was ample time to arrange for the presence of two witnesses. Moreover, no reasons for conducting the search without two witnesses were noted in the record. Indeed, there was no reference whatsoever to this requirement in any of the police reports.

Were it not for the direct and substantial involvement of the Health Inspectorate, as discussed immediately below, the evidence seized during the search would be declared inadmissible under article 246, KCCP, which states:

*Evidence obtained by a search shall be inadmissible if:*

...

*1) The search was executed without an order from the pre-trial judge in breach of the provisions of the present Code;*

...

*5) Persons whose presence is obligatory were not present during the search (article 243 paragraphs 1 and 2 of the present Code).*

There is also a requirement under article 245, paragraph 6, for the filing of a search report if the search is conducted without a written order:

*If the police have conducted a search without a written judicial order they shall send a report to that effect to the public prosecutor and the pre-trial judge, if any pre-trial judge is assigned to the case, no later than twelve hours after the search.*

Defence counsel V. argued that this provision was violated, and that this violation constitutes another reason for declaring the evidence inadmissible.

As noted, Officer **F.M.** filed a criminal report on November 7. However, in response to a question from F.V., defence counsel for **I.R.**, said that a criminal report is different from a search report. (Minutes, October 20, page 37). In addition, **M.S.** filed a report on November 10. It appears that neither report meets the requirements of 243 (7). However, the absence of a search report is not a basis for inadmissibility under article 246 of CPCK.

## **H. The Relevant Health Laws**

The applicability of the above-discussed provisions of the KCCP governing searches by law enforcement authorities, however, are not dispositive of the issue, in light of the independent legal authority of health inspectors from the Ministry of Health.

First, as a factual matter, it is clear that health/pharmacy inspectors from the Ministry of Health played a key role, if not a dominant role, during the search. This is reflected in the testimony of witnesses and the various reports, as outlined above. The authority of these inspectors contained in the relevant health laws of Kosovo is extremely broad. There are three laws which are interrelated, and which are summarized here.<sup>49</sup> These are the laws relied on by the Chief Health Inspector.

### **1. Kosovo Health Law 2004/4** equips them with the authority to:

Section 46: prohibit certain private health activities, including the transplantation of human organs.

Section 101.2: all health care institutions shall be subject to internal and external supervision.

Section 102.1: Health Inspectorate shall carry out external professional supervision

Section 110.1: organ transplantation shall be carried out only in an institution authorized by the Ministry of Health.

### **2. Law on Private Practices in Health** addresses the following

Section 26.1: external supervision is carried out by the Health Inspectorate, among others.

Section 27.1: all documents must be made available to the supervision officer.

Section 27.2: during supervision, the officer shall be allowed free access to all spaces.

Section 28.1: disciplinary and penal provisions in the Health law and other relevant laws shall be applied.

Section 28.2: if the supervisor establishes that a penal act (crime) was committed, he/she is obliged to immediately submit a request to initiate procedures to the competent body.

### **3. Law on Health Inspectorate** provides:

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<sup>49</sup> The language has been paraphrased and is not verbatim.

Section 1.1: Health Inspectorate carries out external professional monitoring pursuant to section 102.1 of the Health Law.

Section 1.4: monitoring implies undertaking all inspection measures foreseen by this law.

Section 2.4: the Inspectorate informs the competent authorities regarding illegal work in health care institutions

Section 3.6: the Inspectorate cooperates and coordinates its activities with various other agencies, including the Kosovo Police Service.

Section 6 d and f: Inspectors carry out monitoring of prescriptions and the utilization of drugs and expiration dates, and of the maintenance of medical documents and evidences as well as other reporting forms.

Section 7.1: inspectors have free access.

Section 7.2: inspectors shall enter at any time to all working places within an institution.

Section 7.4: inspectors shall carry out necessary inspection and research to collect evidences that are considered important to insure that legal provisions are being applied.

Section 7.7: inspectors shall carry out control of all books and documents.

Section 7.9: inspectors are authorized to copy documents and to confiscate them in case they need evidence.

Section 7.14: the inspector shall issue denunciation papers regarding severe violations of the law in order to raise penal procedures in the competent court.

These various laws are extensive, and give broad authority to health inspectors in their supervision and monitoring of health care facilities. The inspectors are empowered to enter health facilities at any time, unannounced, and to inspect the facilities thoroughly. They are also empowered to seize documents and other material evidence which may be relevant to their responsibilities. And importantly there is no requirement for health inspectors to obtain a judicial order of any sort before entering and searching a facility, and seizing evidence.

The health laws, of course, have a different purpose from the laws governing police conduct, primarily protecting the health and safety of persons using health care institutions and making sure that institutions are complying with the applicable laws and regulations. While the function of health inspectors is not that of law enforcement, it is important to note that in appropriate cases they are required to cooperate and coordinate with the police, as set out in section 3.6 of the Law on Health Inspectorate, as noted above.

In addition, article 197, CPCK, imposes a similar obligation:

*(1) All public entities have a duty to report criminal offenses prosecuted ex officio of which they have been informed or which they have learned of in some other manner.*

*(2) In submitting a criminal report, the public entities referred to in paragraph 1 of the present article shall present evidence known to them and shall undertake steps to preserve traces of the criminal offense, objects upon which or with which the criminal offence was committed and other evidence.*

Thus, the activities of the health inspectors in conducting the search, in seizing evidence and in cooperating with the police in this case were clearly foreseen within their statutory mandate.

As to the evidence seized, given the information that became available as the situation unfolded, such as the fact **Y.A.** had donated a kidney and that **B.S.** had received a kidney, everything that was seized by the health inspectors and the police had a connection to legitimate health issues. For example, data recovered from the computers and protocol books might reveal other donors and recipients who needed follow-up health care. As another example, the medications seized could demonstrate the types of procedures that were conducted in the Clinic, such as organ transplants.

### **I. Conclusions concerning the search**

Under the specific circumstances of this case, the police had ample time to contact a judge for at least a verbal search order. Their failure to do this finds no justification in the relevant facts. Also, the absence of two adult witnesses is not justifiable, as the police likewise had ample of time to secure their presence. Accordingly, if it were not for the close involvement of the health inspectors, the evidence seized at the Clinic would be inadmissible. However, the activities carried out by the health inspectors under their broad authority were legal, and indeed mandated, and all the evidence obtained by them in cooperation with the police is admissible.

Therefore, the motions of defence counsel to declare as inadmissible the evidence seized in the search of the Medicus Clinic is rejected as ungrounded.

### **VI. The Authorization *vel non* of the Medicus Clinic to perform kidney transplant surgeries.**

Whether the Medicus Clinic was properly licensed or authorized to conduct kidney transplants is a significant issue in the case. Even though some of the related charges have been rejected because of the statute of limitation, it is still necessary to explore this issue in detail because it affects other important aspects of this case. Indeed, it has been claimed by the defence counsel of **L.D.** and **A.D.** that a license or authorization was issued by the Ministry of Health, or at least that they had a reasonable belief that a license or authorization had been issued.

The following witnesses provided relevant testimony:

1. A.G., minutes 30 November 2011, pages 4-26, and 19 December 2011, pages 2-15
2. A.K., minutes 19 December 2011, pages 16-33
3. A.M., minutes 13 February 2012, pages 2-23

4. N.H., minutes 23 March 2012, pages 2-16

5. M.B., minutes 9 October 2012, pages 2-25.

#### **A. Relevant Health Laws**

On 19 February 2004, the Kosovo Assembly enacted the Kosovo Health Law, No. 2004/4. This law has been referred to above in the discussion of the legality of the search of the Medicus Clinic. It is helpful to recall that Section 46 states that,

*Private health activities are not allowed in the following field. :*

*d) Collection, preservation [,] transport and transplantation of tissues and human organs except in cases of auto-transplantation*

Section 110 provides that,

*110.1 Organ and tissue transplantation shall be carried out only in a Health Care Institution authorized for this purpose by the Ministry of Health.*

*100.3. Provisions regarding organ and/or tissue removal shall be defined in the special law.*

On 27 September 2004, the Assembly enacted Law No. 2004/50, the **Law on Private Practices in Health**, which has also been referenced above. After the war, health care facilities operated without any licenses, and this law, for the first time, provided for the licensing of health care professionals in the private sector in article 2, and for the licensing of private health care institutions in article 4.

Article 2.1 states that,

*Health care professional can practice health activity in the Kosovo private sector if:*

*a). He/she is a licensed health professional.*

Article 4.3 provides that,

*Private health care institution shall not practice health activity if it does not possess the License issued by the Board [of Licensing].*

Article 5 establishes Obligations of the Institution. In particular, article 5.2 provides that,

*Private health activity is not allowed in the fields that are stipulated in Article 45 [sic; should be article 46] of the Kosovo Health law.*

The law also established the Licensing Board of Private Health Care Institutions (article 9), and outlined the composition, management and mandate of the Board in the following articles. Moreover, the law established procedures for applying for, and granting or denying a license (article 20, et seq.).

Article 29.2 provided that,

*In order to enforce this Law, the Ministry [of Health] shall issue relevant sub-legal acts.*

In exercising its authority under article 29.2 (among other authority), the Ministry of Health issued “Administrative Instruction 08/2007 For Hospital Service in Kosovo,” effective in 2007. This instruction established, for the first time, all the requirements for establishing different types of hospital services (e.g., cardiology, urology). Up until this time, no licenses to private health care facilities had been issued by the Ministry of Health.

### **B. Development and Evolution of the Medicus Clinic: Chronology of Events**

The testimony of the above-listed witnesses and the material evidence reveals the following factual situation.

**M.B.** first met **L.D.** when the latter was doing post-graduate medical studies as an exchange student. **M.B.** found **L.D.** to be a skilled person and loyal colleague. After **L.D.** returned to Pristina, the two stayed in contact from time to time. When the war broke out in Kosovo, **M.B.** invited **L.D.** and his family to come to Berlin which they did, staying for six months. When **L.D.** returned to Pristina, **M.B.** bought him a used car, and provided him with medical equipment to start his own practice, which he did.

An application for business registration was submitted by **L.D.** to the Provisional Business Registration office of UNMIK on 09.06.2000 for “Ordinanca Urologjike ‘Medicus’” (application number 1902560). According to the Kosovo Registry of Business Organisations and Trade Names “Ordinanca Urologjike ‘Medicus’” with registration number 80126301 was registered as a business on 18 August 2000. Its main activity was listed as Medical Practice Activities (8512). Other activities listed were Other Human Health Activities (8514) and Retail Sale of Medical and Orthopaedic Goods (5232).

**M.B.** and **L.D.** stayed in contact, and **M.B.** agreed to invest in a new clinic that **L.D.** wanted to develop, which was then in the construction stage and which would become the physical facility of the Medicus Clinic in Fushe Kosove.

On the ground floor of the Clinic was the urology unit. **L.D.** and **M.B.** discussed creating a complimentary service on the first floor, involving dialysis and kidney transplants, but **M.B.**, during several discussions on the subject, objected strongly to kidney transplants because of poor post-surgery care in Kosovo. The two then agreed to establish a cardiology unit on the first floor.

In 2004, they formed a company, the purpose of which was to operate the cardiology clinic, and they were the two shareholders. The plan was that German doctors would work at the clinic, along with local doctors.

On 22 October 2004, the Medicus Clinic was registered with the official name - N.P.M. Klinika Kardiokirurgjike “Medikus” under the Business Registration Number: 70199987. The associates listed on the registration were **L.D.** and **M.B.** The official activities of the clinic were set out as; Medical practice activities (8512) and Other Human Health Activities (8514).

In February 2005 **M.B.** authorized Lawyer **F.B.** to sign and certify on his behalf and in his absence the sale/purchase of the first floor of the Medicus Clinic in Fushe Kosovë. The seller

was **L.D.** and the buyer was **M.B.** The purchasing price was 110.000,00 €. The transaction was finalized by contract on 14 March 2005.

**M.B.**'s commitment was exclusively to the cardiology clinic on the first floor, and he had no connection with the urology unit on the ground floor. In total, **M.B.** invested 450,000 to 500,000 euros in the cardiology clinic and surrounding property. As time passed, **M.B.** continued to be the owner of the Cardiology Clinic on the first floor, whereas ownership of the urology clinic remained with **L.D.**

On 20 June 2005, **L.D.** requested from the Licensing Board at the Ministry of Health a license for Cardio Surgeon **V.K.** to work at the "German Cardiac Surgery Clinic 'Medicus'" in case of need.

On 19 August 2005, business registration number 70293202 was registered to "N.P.M Klinika Kardiokirurgjike 'Medikus'". The owner was listed as **M.B.** The primary activities were listed as Medical Practice Activities (8512). Other Human Health Activities (8514) and Wholesale of Pharmaceutical Goods (5146). **L.D.** was registered as authorized participant.

On the 10 December 2007, "Medicus Clinic of Urology" submitted a request for a license in the field of urology, which was denied due to "major lackings" including the failure to specify the activities of this Private Health Institution.

On 13 December 2007, the Ministry of Health issued Decision 10/630/77. Based on the inspection report regarding the Medicus Clinic, **U.H.** was fined 500 Euro for breach of an Administrative Directive regarding temporary Licensing of Non-Kosovo Health Professionals, which prohibits the latter from carrying out health activities until obtaining a license according to the legislation in force.

On the same date, the Ministry of Health also issued another Decision, 10/62877, in which the Medicus Clinic was fined 3000 EUR for a breach of the applicable health laws and administrative directives which prohibited the performance of cardio surgery at the premises until the clinic received a license in this field of medicine.

On 21 December 2007, an application was made for **Y.S.** to be licensed as a Non-Kosovar Health Professional. **L.D.** had been interested in performing kidney transplants going back to the days of his early discussions with **M.B.** about the appropriate configuration of the Medicus Clinic. In 2005 or 2006, **L.D.** inquired about making a connection with a transplant surgeon at a conference in Istanbul. **Y.S.** eventually contacted **L.D.**, and they agreed to collaborate at the Medicus Clinic.

On 9 January 2008, the Sub-commission for the Central Board for Licensing of Doctors at the Ministry of Health held a meeting at which it was ascertained that **Y.S.**, Specialist of General Surgery, and **U.H.** Specialist of Cardiovascular and Thoratic surgery, fulfilled the conditions for licensing. The Sub-commission recommended the granting of license-certificates for the two doctors. In a decision dated the same day, the Central Board allowed for temporary engagement of the two doctors. In the decision it is mentioned that all conditions had been met except the one for licensing of the health institution itself.

On 10 January 2008, a formal application on behalf of the Medicus Clinic for a urology license was filed with the Ministry of Health. This license was requested for the ground floor

of the Medicus Clinic. The payment for the license application of €3,000 was made by the clinic and all necessary documents were submitted. However, there is no evidence that the license was ever issued.

On 17 January 2008, a contract of Employment was signed between **Y.S.** and Medicus (**L.D.**). The terms of employment stated that **Y.S.** will be in the position of General Surgeon – Operations related to transplantation of kidneys and other organs. The place of work was designated as the Urology Clinic at Medicus, and the starting date was 17 January 2008.

In March 2008, **I.R.**, one of the defendants, was appointed by Minister of Health as acting Permanent Secretary of the Ministry of Health. The Permanent Secretary is the chief civil servant within the Ministry. **I.R.** was also Chairman of the Licensing Board of Private Health Care Institutions.

In March 2008, **L.D.** made inquiries about the possibility of conducting kidney transplants at the Medicus Clinic with **S.M.**, a Health Adviser, who in turn made inquiries to **A.G.** **A.G.** and **S.M.** discussed the matter over lunch at a Restaurant in Pristina sometime in March 2008, although the Medicus situation was just one of many they discussed.

On 8 March 2008, a kidney transplant took place at Medicus. A person called “**T**” donated a kidney to **F.B.**”.

Because the initial licenses for **Y.S.** and **U.H.** were only temporary, **L.D.** submitted a written request to the Ministry of Health dated 20 March 2008, requesting an extension of the licenses. The extension was granted by decision of the Central Board.

On 2 May 2008, **A.D.** wrote to **I.R.** and **A.G.** at the Ministry of Health requesting approval for kidney transplants at the Medicus Clinic, claiming that the Specialized Hospital “Medicus” fulfilled all necessary conditions regarding this surgical activity, including specialized staff for this purpose. He included a “development project” outlining the capacity of the clinic in this regard. The letter is dated 2 June 2008, but the correct date is 2 May 2008 based on the protocol number and stamp.

On 7 May 2008 the Board for Licensing of Private Health Care Institutions in Ministry of Health issued a License for the private health care institution “Special Hospital for Cardio Surgery “MEDICUS” ” no. 05/01 which was valid for 5 years until 6 May 2013, subject to annual confirmation. The decision and the license were provided to **M.B.** and the Medicus Clinic. This was the first such license to be issued by the Board.

The license was a distinctive document on A4 sized paper and read as follows:

*Republic of Kosovo*  
*Government*  
*Ministry of Health*  
*LICENSE*  
*Private Health Institution*  
*Special Hospital for Cardio surgery “Medicus”*  
*M.B., Founder*  
*05/01, No of License*  
*07/05/2008, issuing date*

*Fushe Kosova, place*  
*Industrial Zone nn., Address of Institution*

<i>Head of Board</i> <b>I.R.</b>	<i>Minister of Health</i> <b>A.G.</b>
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On 12 May 2008, **I.R.**, as the Head of Board for Licensing of Private Health Care Institutions and Acting Permanent Secretary at the Ministry of Health, issued a letter to **A.D.** entitled “Confirmation of approval of license for urological services”. The letter was a reply to the request submitted by **A.D.** on 2 May 2008. The reply of 12 May 2008 states:

*Honorable L.D.,*

*We inform you that based on your request dated 02/06/2008 [sic; should be 02/05/2008] with protocol number 05/2432, after the review by the Ministry of Health’s Board of Licensing of Private Health Institutions, in principle the possibility was approved of a special licensed hospital Medicus, to also offer urology services within the services in accordance to applicable legislation and based on the annex of AD 8/2007 which regulates the transplantation of organs from live donors.*

By request dated 24 July 2008, the Medicus Hospital was asked to send a report to the Ministry of Health related to the activities in the area of invasive cardio surgery and cardiac services.

On the 31 July 2008, **L.D.** reported to the Ministry of Health about the work of the Cardio Surgery clinic. In his report, he again referred to the earlier written request that was submitted to the Ministry requesting kidney transplants at the Medicus Clinic. He emphasized that they had “invested a lot in the necessary equipment to conduct kidney transplantations” and that he hoped that “our patients will be treated in our country by the local professionals; this will save a lot of means to them as well as our state budget”.

On 21 August 2008 **I.R.** replied to the letter/report. He attached draft legislation dealing with organ transplants and solicited comments on the draft. The Ministry had been researching possible legislation to regulate transplants based on European best practices, and to address the huge impact on the state budget created by dialysis. However, he did not authorize any transplant activity.

### **C. Significance of the Letter of 12 May 2008**

The letter of 12 May 2008 took on great significance during the trial. It is significant with regard to certain of the charges against **I.R.**, and it is significant with regard to the defence posed by **L.D.** and **A.D.** that Medicus did in fact receive a license or authorization for organ transplants, or at least that they had a reasonable belief that a license or authorization had been issued. (However, even if a license or authorization had been issued, this fact would not affect the charges of trafficking or organized crime.)

The letter is written on letterhead of the Ministry of Health, it is signed by **I.R.** and it bears a stamp, but the letter was not protocolled in the Ministry’s archives and there is no official record of the letter. Also, there is no record of any Board activity concerning an application for a urology license, and no urology license was ever issued.

**I.R.** explained in his statement to the prosecutor and during his examination at trial that the letter was simply routine correspondence-- an interim response to **L.D.** informing him that the Clinic was approved in principle for kidney transplants in the event that, sometime in the future, kidney transplants were authorized in Kosovo through special legislation, which at the time was being explored by the Ministry.

This letter forms the basis for the two counts against **I.R.**: count 6, abusing official position or authority; and count 9, falsifying official documents. The prosecutor has constructed a conspiracy theory under which **I.R.**, at the behest of, or under pressure from, **S.M.** and **A.G.**, issued this document to their friend **L.D.** at Medicus in order to provide “cover” for conducting illegal kidney transplants. In addition to the wording of the document, the prosecutor points to the fact that the document was not protocolled at the Ministry, as it should have been, and therefore it must have been issued with an illicit purpose in mind.

The theory of the prosecutor does not withstand scrutiny based on the evidence presented in this trial.

First, it is clear from the form of the document that it did not constitute a license. The actual form of a license is illustrated above, and it is patently obvious that this document was not a license, and could not reasonably be construed as a license. This is especially true in view of the fact that an actual license in proper form had been issued for the Cardiology Clinic at Medicus just days before.

It is also clear from the text of the document that it was neither a license nor an authorization to conduct kidney transplants. The text, while perhaps in artfully worded, speaks of the possibility in principle, and refers specifically to applicable legislation regulating the transplantation of organs. This can only mean article 46 of the Health Law which prohibits kidney transplants in private clinics.

Indeed, **L.D.** and **A.D.** never understood the document to be a license, authorization or “cover” for their activities. While they may claim otherwise, the document, in fact, was never used as such. Not one kidney donor or recipient ever testified to seeing this document. The one or two recipients who referred to a document purporting to be an authorization are referring to the license issued to **Y.S.** in January 2008 to conduct surgery, and not to the document of 12 May 2008.

Also, in later correspondence with the Ministry, **L.D.** complains about the Ministry’s lack of response to his requests for authorization. In his report to the Ministry about the Cardio Clinic dated 4 August 2008, he turns his attention to the earlier request from Medicus for approval to conduct kidney transplants, and he implores the Minister and Permanent Secretary to act favourably on this request in the interest of the clinic, given the financial investment that had been made, and in the interest of the citizens of Kosovo and the state budget. If Medicus already had “cover” from the Ministry, this passionate entreaty would have been entirely superfluous.

**I.R.** responded on 21 August 2008, and referred to draft legislation that was under consideration, and requested comments. It was clear, as it was in the document of 12 May 2008, that kidney transplants were not authorized, although the matter was being addressed by the Ministry of Health.

Therefore, the court accepts **I.R.**'s explanation that the document of 12 May 2008 was merely an advisory notice to the effect that if special authorizing legislation was enacted at some time in the future, the Clinic "in principle" would be permitted to conduct kidney transplants. The document, by its very terms, was not a license or authorization; it was not intended to be a license or authorization; it was not understood by Medicus to be a license or authorization; and it was not used as a license or authorization. This document does not provide any authorization and was of informative nature only.

Also, while the document should have been assigned a protocol number and registered in the archives, this was a purely administrative task, and not the responsibility of the Permanent Secretary. At a time when the Ministry was dealing with 200 or more applications for licenses, it is hardly inconceivable that this administrative step was overlooked. The court accepts **I.R.**'s explanation that he did not intentionally bypass the protocol procedure to conceal the document.

It is also the court's view that the document of 12 May 2008 was not a falsified official document. The prosecutor places emphasis on the subject line which refers to the confirmation of a urology license, but the body of the document leaves no doubt that no license or authorization is intended. The document could have been worded more clearly, but it does not contain false information, nor does it lack essential information.

It was merely a courteous response to the inquiry from **A.D.**, and had no legal consequence. Even if it could be argued that the document should have contained a definite statement that transplants were illegal under article 46 of the Health Law, the prosecutor has failed to prove any illegal intent on the part of **I.R.** The prosecution tends to read this correspondence in conjunction with email addressed by **L.D.** to **M.B.**, but omits that the email exchange is dated March 2008 so at that time **L.D.** was not in possession of any document/authorisation allowing his clinic to provide kidney transplantation services at all.

It has to be stated very clearly that the prosecution did not submit sufficient evidence of a conspiracy for the benefit of **L.D.** involving **I.R.**, **S.M.** and **A.G.** The mere fact that **S.M.** and **A.G.** discussed the possibility of transplants at Medicus as requested by **L.D.**, and that **I.R.** subsequently issued the letter of 12 May, is not enough to show any illegal activity. Thus, the claim of a conspiracy is just speculation.

Accordingly, the court concludes that the letter did not provide a license or authorization to conduct organ transplants, and could not be reasonably construed to do so. Thus, all kidney transplants conducted at the Medicus Clinic were done in contravention of article 46 of the Kosovo Health Law, and were illegal. Also, it is clear that **L.D.** and **A.D.** knew that the transplants were illegal. In addition, irrespective of the statute of limitation, there is no criminal liability on the part of **I.R.**

## **VII. Kidney Transplants at the Medicus Clinic in 2008**

The essential issue in this case concerns whether kidney transplants took place at the Medicus Clinic, and if so by whom, and whether such transplants constituted human trafficking and organized crime. In order to prove trafficking, the prosecution had to prove that the kidney donors were exploited, and in order to prove organized crime the prosecution had to prove that the trafficking occurred through the activities of a structured criminal group. The court

also had to determine whether the kidney removals constituted grievous bodily harm. In determining these issues, the court evaluated a large volume of evidence, including, but not limited to, live witness testimony of donors, recipients and others; documentary evidence; email correspondence; telephone metering; financial records ; medical records and expertise; and extensive forensic analysis.

Among the witnesses were six persons who testified as kidney donors at the main trial. The donors included two women and four men. The court also considered the testimony of a seventh donor, **Y.A.**, which was taken at a Special Investigative Hearing on 17 November 2008 before the pre-trial judge. Despite diligent efforts by Turkish authorities, **Y.A.** could not be located for the main trial.

The witnesses also included nine persons who testified as kidney recipients at the main trial, all of whom were males and all of whom were from Israel, except for three who were from Poland, Germany and Canada, respectively. The court also heard the testimony of several relatives of two now-deceased kidney recipients who had first-hand knowledge of kidney transplants at the Medicus Clinic. Thus, the number of recipients under consideration is eleven; the number of witnesses is 13.

Because of the importance of the testimony of kidney donors and recipients in relation to the central issues in this case, the testimony of each witness has been summarized immediately below. The court found the testimony of donors and recipients to be highly consistent, credible and compelling. Their stories were remarkably similar with regard to recruitment, financial arrangements, travel, surgery and other important details, which show the reliability of the testimony.

#### **A. Summary of the Testimony of Kidney Donors, in chronological order by date of surgery from earliest to latest**

##### 1. “**W2**” testified by video link from Israel on 14 June 2012.

Witness **W2**, was born in one of the former Soviet Republics. She immigrated to Israel in 2007 where she was a laundry worker. She responded to an advertisement in a Russian language newspaper soliciting a kidney donor. She was escorted to the testing facility to undergo some blood tests by a person named ‘**D**’. He explained that she would receive \$15,000. Later he told her that there was a potential recipient with the same blood type.

She and ‘**D**’ then flew to Istanbul on or about 14 May 2008 on the first leg of the trip to Pristina. At the airport they were met by a man of apparently Turkish nationality who spoke Hebrew. The following day she flew by herself to Pristina. At the airport she was met by two young men holding signs. She was then driven to a clinic about 15-20 minutes away.

Once at the clinic, she had more medical tests, and met the doctor who would perform the surgery. She also met the recipient whom she described as a young Turkish man. Prior to surgery, she signed a document in the Russian language saying that she did not have any objections or complaints. She remained in the hospital for five days and was separated from the recipient by just a curtain.

After five days, both of them flew back to Istanbul, along with his relatives and the surgeon. She did not sign any papers before leaving the clinic, and she did not receive any documents.

Once back in Tel Aviv, she met ‘D’ who paid her the equivalent of only \$12,000 in euros. The payment was in cash, and took place in his vehicle. She did not feel well, and did not argue about the short payment. She spent the night in a hotel and had to change the bandage frequently as the incision was not in good condition.

During her testimony, she recognized a photograph of the clinic building, but was unable to identify any of the eight individuals depicted in the photo arrays.

Presently, she is experiencing urinary problems, and about a month before testifying, she saw a doctor who prescribed antibiotics. The witness responded to the advertisement because of a difficult financial situation. She does not speak Hebrew well and had difficulties finding work in Israel, but needed extra money because of her daughter’s psychological problems. She also had debts of about 4,000 euros. She learned from the internet that persons are paid much more than she received for a kidney—no less than 150,000 euros. She is seeking compensation from the court.

2. “W1” testified by video link from Israel on 14 June 2012.

**W1** wishes to file a compensation claim in the amount of 100,000 euros. He presently lives in Israel. He responded to an advertisement in a Russian language newspaper in Israel in 2008 about 3-4 months before his operation, which solicited a kidney donor for \$12,000. At first he hesitated to call the number, but eventually did so because of his financial problems. He owed money to a number of banks, and had debts of approximately 6,240 euros. His mother is dependent on him, and has no one else. There is a warrant for his arrest in civil court because of his debts.

He called an Israeli number, and the person whom he conversed with spoke Russian. This person took him for blood tests in Israel. They spoke 6-7 times all together. After the blood tests, he did not see him again. He met another person who spoke fluent Russian. He was concerned about the operation, and this person explained that the operation would leave only a small scar, and that he would be able to do everything as usual, including physical labour. They also spoke about the money.

He then waited 1-2 months before receiving a phone call informing him that a match had been found. **W1** was worried about the operation and whether he was doing the right thing, but he decided to go through with it, even though he was told he could back out if he wanted. He was also concerned about the legality of the situation, and was told that it was legal, and that there was no reason to be concerned.

He spent the night in a hotel in Tel Aviv, and then flew the next morning to Istanbul with the other person. It was June 2008, around the 18- 21. All the arrangements were made by someone else, at no cost to him. Once in Istanbul, they were met by two people in a car. They drove to a hotel where A.O. and his traveling companion stayed the night. Early next morning, **W1** provided another blood sample, and was told he was going to Pristina. At the airport he saw the man with sunglasses again, who told him the surgery would not be a problem because he was a healthy guy.

He was told to tell passport control that he was just visiting relatives, but was never asked. He was not given any papers before entering Kosovo. He was then driven to the hospital, along with the recipient and his wife who he learned had been on the same flight. Once there,

he was very nervous, and his whole body was shaking and he was sweating. He was told to sign a document, which was in English. The verbal explanation was also in English, but his English is not good. Nevertheless, it was clear to him that the document concerned the operation, and that he was giving his consent. He believes that the person giving the explanation was the doctor who performed the operation. He was not given a copy of the document he signed. He told the doctor that he had eaten something on the plane, and was told that that was not good. Nevertheless, he was prepared for surgery. He was lying next to the recipient who was 55-60 years old.

After the surgery he experienced intense pain where the surgery was performed. He displayed a scar to the court on his left side. The doctor who spoke Hebrew came every day to visit the recipient. He was in the hospital for five days and saw the surgeon regularly while he was in recovery and before he was discharged. He kept asking if everything was all right and was told that it was, but he had a feeling that everything was not all right. He was driven to the airport by two persons who spoke English, but he does not know their nationality. Upon arriving back in Israel, he met a person who verified that the operation had taken place by looking at the incision. They then went into a bathroom where the other person counted out 7,800 euros which was the equivalent of the agreed upon price of \$12,000.

After being back in Israel for several weeks, blood began to seep from the incision. He went to a clinic where he displayed the scar and said that he donated a kidney to a relative, which was not true. He was sent to the emergency room for tests, and was told he had a hematoma. The blood continued to seep from the wound after he was discharged. He returned to the hospital and was told by the doctor that there could have been a complication during surgery, that it was not supposed to be like that, and that he could have lost a litre of blood that week. He was under medical observation, and had to go for tests every three months, including tests on his remaining kidney. He was told that he will not be able to engage in physical labor in the future, contrary to what he was told by his recruiters. He experiences limitations when he moves to his left, and according to the doctor it could take years to heal and requires constant surveillance.

At the end of his direct examination, the prosecutor showed him some photographs of the Medicus clinic, and the building and some of the rooms looked familiar. He saw a picture which looked like the doctor who had performed the surgery, but was unable to identify anyone else in the remaining photos apart from a photo of a person who looked like the person in the Armani sunglasses.

Upon leaving Medicus, he received a discharge document that has the name Medicus on it, as well as a phone number, his name and a stamp. He has not made any claim for insurance in Israel. In elaborating on the document he signed at the clinic, he said that no one explained the consequences of the operation. They talked to him, but did not explain anything. From what he understood, the document said that he was having an operation with his consent, and that no one was forcing him to have the operation. They saw, however, that he was extremely anxious, and did not stop.

In further elaboration, he said that they should have explained the consequences. They said everything would be fine, but he was hospitalized for a week, and will have to be under medical supervision for the rest of his life. They also saw that his other kidney was not functioning as well as it should. He considers himself a victim as he was merely a child, only

20 years, and did not really know what he was doing. No amount of money is worth what he went through, with the complications and uncertainty about the future.

When asked if he could identify **L.D.**, who stood up and approached the camera, the witness said that he did not recognize him.

33. “**W3**” testified by video link from Israel on 14 June 2012.

W3 at the time of her testimony lived in Israel where she had lived for six years. She came to Israel to earn money to support her 10 year old daughter whom she left in Russia with her daughter’s father. She married within a half year of coming to Israel, earned some money and returned to Russia. In Israel she had an apartment which she needed to retain, and she had to support her daughter. She had debts because of the need to maintain the apartment.

One day in Israel she noticed an advertisement in a Russian language magazine for a kidney donor, with a high payment. She did not call immediately, but then her daughter called, asking if she could come to Israel. **W3** then called, and met a young, handsome man whom she later recognized in a photo line-up, named ‘**S**’ or ‘**D2**’, but she cannot recall. He asked if she was healthy, then mentioned 10,000 [currency not stated], but told her not to talk to anyone, although he did not say why. He told her to think about the situation and let him know.

He called back later and asked if she had made a decision. He introduced her to someone who had the same operation and who said that his condition was fine. After the meeting, the young man called her again and said he would order the tickets, and she decided to go. She was informed that the surgery would be performed in Kosovo at a very good place by an Israeli doctor or professor. On 21 July 2008, she flew to Istanbul with two other women. The young man did not accompany them. In Istanbul, they were met by a bald man who introduced himself as ‘**M**’, and who drove them to a hotel. At the hotel she gave a blood test, as did the other two women. The next day they flew to Kosovo. ‘**M**’ accompanied them on the flight. She learned later that the recipient and his wife—a couple from the U.S.--were also on the flight.

They were delayed at customs while the officers made some calls. They presented letters of invitation that had been given to them by ‘**M**’ in Istanbul. The letter was in a simple envelope on white paper. The text was in Russian, and also apparently in English. It said they were flying for medical check-ups at a certain clinic. She does not recall the letterhead, but there was a phone number and address. Customs returned their documents and released them.

They were then met by a driver who took them to the clinic which was at least an hour away. ‘**M**’ must have been in another vehicle. They arrived at a two- or three-story building. Inside they were given an ultrasound by the doctor who later performed the surgery the next day. They were also asked to sign a document. She read the document which was in Russian. It said that this was a voluntary process, and that she agreed with it. No one really explained what was happening, the consequences of surgery and how long it would be. They just gave them the pen and paper to sign. She recalls that it was ‘**M**’ who gave her the paper.

Following the surgery she met the recipient, a man in his late 60s. She believes he was an American citizen but he may have had a red passport like hers. They could not communicate because they did not share a common language. After three days, the three women flew to

Istanbul. At the airport, ‘M’ gave them 8100 or 8200 euros, the equivalent of \$10,000. ‘M’ took their passports, which caused her some fear. She had also been very fearful in Pristina, and had to be given an injection of a tranquilizer to calm her down before surgery, which was prescribed by the doctor.

The witness was asked to view some photographs. She did not have her glasses with her, but believed that two photos depicted the clinic in Pristina. She recognized the surgery room in the photos. She was also able to identify photos of the doctor at the clinic (**Y.S.**) and ‘M’, respectively. She was also able to recognize a photo of a man in a black t-shirt as **M.H.** He was the man who took their passports, escorted them to Pristina and gave them the money.

Talking about her present health condition, the witnesses explained that she lives in permanent fear regarding her health. She experiences pain on her side and expects to have to have full check-ups. After the surgery she had pain for three or four months. The scar is about 12 cm.

This witness restated during the trial that the doctors in Pristina did not explain the risks of kidney removal; she coped with incredible stress at the time in the clinic. She was afraid that even if she said “no” to surgery, the operation would take place even against her will as the only aim was to make money. Additionally she said that she had realized she was involved with the mafia. When asked why she did not back out when she was in Israel if she believed she was dealing with the mafia, she said, “Please understand there are different difficulty [sic] situations[,]financials and difficulties related to transfer of my daughter to take her with me. Not everything is simple and clear.”

When asked by the trial panel whether the police asked why she was coming to Kosovo, she said that ‘M’ had instructed them to say that they were coming to the clinic for medical check-ups, which was also stated in the paper she had. The police did not ask any questions, and they just said in general terms that they were coming for check-ups.

#### 4. “**P.M.**” testified by video link from Ukraine on 12 February 2013.

‘**P.M.**’ at the time of his testimony still resided in that country. In 2008 he was in acute financial distress because of his family situation. He had a very serious problem with the place of residence for his family, and was unable to pay the rent. His two children lived with his father, and he lived with his mother. He had to vacate his apartment in favour of his two cousins.

He discovered a notice on the internet about a kidney. He forwarded his number and received a phone call from a man who said he could help. He could not tell where the number was from or where the man was from. The man introduced himself but he is not sure whether the name was ‘**J**’ or ‘**Y**’. The person said if he was interested they could talk again. The man called back sometime later, then sent **P.M.** an electronic ticket and said he would be met in Istanbul. He never met the man in person. He was told that after the surgery he would receive \$30,000.

He flew to Istanbul a few days before September 2008. A few days before flying he had a blood test and took the results with him. In Istanbul he was met by a Turkish person who accompanied him to a hotel where he was met by two young people who spoke Russian. They explained what was going to happen and when he would fly to Kosovo. They said that

after the surgery everything would be ok and he would receive his compensation. He was also given a piece of paper which he thinks was an invitation to go to the clinic for a check of his physical condition. One of the people took blood and said they needed their own expertise. He never saw the men again after leaving the hotel for the airport.

Upon arrival in Pristina he showed the letter at border control. He was asked the purpose of his trip, and he explained he was there for his health. He was then met by an ordinary looking man holding a piece of paper with his name on it, who said he was a taxi driver and would drive him to the clinic which took about 20 minutes. It was a two- or three-story building with construction taking place around it. **P.M.** was shown a photograph which looked like the same place.

At the clinic he was met by people in doctor's clothes. After returning in the evening, he was put in a different section of the clinic until he meet the person who performed the surgery. The doctor was about 50 years old. About a half a year later he saw this person's picture on the internet and learned he was from Turkey, and he remembered his beard and short hair. At the clinic the person spoke English. They met in an office on the first floor. The Professor doctor then took him to meet the recipient of his kidney. She was in the section next to his, and her brother was there as well. They were told that surgery would begin in a few hours. He thinks she was from Israel. He spoke with her and her brother before and after surgery, and they spoke a little Russian. She needed a kidney urgently. After the surgery, they thanked him all the time. Her brother gave him \$1,000 in cash, but told him not to tell anyone. He does not remember the brother's name, and he can't recall her name either. He was unable to confirm one hundred percent that the name was '**B.H.**' when that name was mentioned.

The preparation for surgery lasted an hour, and then he was put straight into anaesthesia. He remembers the professor doctor being present and another doctor or male nurse. He remained at the clinic for three days and was cared for by a female nurse. The female recipient was also in the room, but they were separated. He remembers a document that said that he and the woman were cousins, and that based on his own free will he wished to donate a kidney.

**P.M.** was never compensated for his kidney. He was told by the professor doctor that he would be met when he returned to Istanbul, but no one was there to pay him. He spent the night in a hotel that had been booked for him, then flew home the next day. He felt weak, but otherwise normal. However, he has some health problems. He cannot eat certain products because they cause his body to work harder, and if he does so his blood pressure goes down.

After returning home, he tried to locate the person who first contacted him in order to get his money. All his efforts were unsuccessful. During this time he saw a wanted notice for the doctor, who was a well-known Turkish professor. He does not remember if his name was '**Y.S.**'. He was unable to identify a picture of **Y.S.** when asked to identify person on the photo line-up.

He wishes to make a claim for compensation in the amount of 50,000 Euros. He does not have any medical documentation because he has not visited a doctor in many years. It was the left kidney, and he displayed the scar from the incision. After returning to Ukraine, he had a phone conversation with the recipient. She did not have the doctor's number. A month later he talked to her brother who said his sister's condition had deteriorated. They did not have any further communication, and there was no reference to the fact that he was not paid.

No one forced him to do anything against his will. He did so because of his personal circumstances, namely financial collapse, which he now deeply regrets. At that moment in 2008, it was necessary for him to do so in order to improve the situation of his family.

He never appeared before an ethical committee at the clinic in Pristina. It was just the professor doctor who asked him to sign a piece of paper. The woman's brother said that they had spent a lot of money for the surgery, but did not say how much.

5. "**D.S.**" testified personally in front of the panel on 11 and 12 October 2011.

**D.S.** went to high school for construction. During three years from 2005 to 2008 he worked, but the money was only enough to feed himself and his daughter. He built up quite significant debts, for example for the apartment, and in 2008 he lost his work due to the bankruptcy of the company. He was paid a small amount of compensation which was not enough to live on for a long time. Considering the overall economic crisis in 2008 he had very serious financial problems, so serious that he did not have money even for bread and milk. It was also impossible to find a job. At that time according to a court decision his debt was 2,500 dollars. It was very difficult to feed himself and the child. She started to attend school, first grade, and therefore, in addition to his debts, he had further expenses for her clothes and school.

While searching the internet trying to find jobs he came across a website that discussed donating kidneys. **D.S.** left his telephone number. There was no mentioning about price, but there were a lot of notifications and advertisements, and amounts of 80,000 to 150,000 dollars were mentioned. A few days after posting his phone number he received a call from a person who called himself '**Y**'. He spoke very good Russian and told **D.S.** that he was himself a donor and had received 20,000 dollars. **D.S.** was interested, and four or five days later he received a call from a person who introduced himself as '**E**'. '**E**' explained that he could help him for travelling, flights and the financial arrangements. **D.S.** needed some time to think about it, and '**E**' said he would call back in a few days. Even though it was a difficult decision, **D.S.** decided to accept.

**D.S.** was very concerned that this would be very bad for him, but a few days later when '**E**' called he gave his agreement. '**E**' assured him that he would be paid all the money promised: 20,000 American dollars. When he discussed the issue of kidney donation with '**Y**' and '**E**' he did not tell them he was in a poor financial situation. In Istanbul, he had a discussion with '**E**' and told him he lived with his daughter and he needed to raise his child, but they did not discuss the fact that he lost his job. '**E**' gave him a telephone number and asked him to send an SMS with his passport details. The number from which '**E**' was calling was invisible. '**E**' also told **D.S.** to bring medical documents to Istanbul to prove that he did not have diseases such as Hepatitis or HIV.

On 18<sup>th</sup> October 2008, '**E**' called him and told him to go to the airport and approach Turkish airlines where he would be issued an electronic ticket. In Istanbul someone would be waiting for him with his name on a card. '**E**' would arrive later. In Istanbul someone was waiting for him as mentioned. The person was either Turkish or Arabic nationality. They went to the coffee shop and had breakfast. Approximately an hour or so later two young men approached and one of them called himself '**E**'. He introduced the second person as his youngest brother.

After the surgery when 'E' met D.S. in Istanbul, D.S. asked 'E' who the guy was whom he met at the airport 'E' laughed a bit, and called him a nickname: "Y.A.". Soon a man of Turkish or Arabic origin came to the room and D.S. provided a blood sample. Later that evening, 'E' explained to D.S. that the following day he would take a flight to Pristina, and would be accompanied by a female.

The next morning at hotel reception there was the younger brother of 'E', two women and one elderly man of Arabic nationality. No one introduced them by name, but 'E' pointed at one of the women and mentioned that she will accompany him to Pristina. 'E' said that after the surgery was over she will pay him. 'E' gave him a sealed envelope and told him that if he was asked why he was coming to Pristina, he should give this envelope to the police officers.

When they arrived at Pristina, both women and the man of Arabic nationality were the first ones to pass passport control. When D.S. presented his passport the police officers started to ask him something, but he did not understand what they were talking about. He was asked to step aside and a few minutes later a female approached them who was Russian speaking.

The lady told him that the police wanted to know the purpose of his visit. He showed the police officers the envelope from 'E'. After reading the document the police officers started a very emotional conversation between themselves. The woman barely understood the discussion but she advised him that he should not go to that hospital because it had a very bad reputation. She then translated for him that he would not be allowed to cross the border and that he would be deported back to Istanbul. She left and he never saw her again. No one explained anything or gave any reason to him. The police put his documents in an envelope and escorted him to the airplane. The documents were given to the air hostess. He departed back to Istanbul on the same plane he had arrived on. Upon arrival in Istanbul he was met by the airport staff. They took his documents and escorted him through the passport control where they stamped his passport and released him.

'E' then gave him a call and told him that soon "Y.A." would meet him. "Y.A." came and together they went to the ticket counter. He bought D.S. a new ticket to Pristina and also a new return ticket to Istanbul. He told D.S. that the next day early in the morning another man would escort him to the airport. After that 'E' called him and said that he should not talk to anybody, that he should not leave the hotel room and that he would not have any problems. The next morning the other man picked him up and escorted him to passport control. In Pristina when he showed his passport they allowed him to pass without any question or problems.

When exiting the airport building he was met by the female who was with him in the plane during the first flight. Two young men accompanied her of Albanian or Serbian nationality. They drove for 10-15 minutes. When they arrived at the clinic there was a sign that said Medicus Clinic. They entered the second floor where he was met by a male nurse. After he changed clothes the nurse took him to another room where he saw the same people with whom he had flown to Pristina the first time - the two ladies and the elderly man who was lying on the bed. D.S. understood that he would be the recipient of his kidney. Later D.S. heard that this man was called "D". The nurse sent him to a nearby bed and they took blood from him.

After some tests **D.S.** was escorted to the surgical room where he lost consciousness from an injection. When he woke up he had a very strong pain in his left side. Next to him, “**D**” was lying.

Several times during conversations with ‘**E**’, he told **D.S.** that this surgical intervention was entirely legal. This was an important consideration to **D.S.** A day before his flight back, the same woman who had accompanied him on the flight came and said she was going to fly back the following day and she gave him a sealed envelope. **D.S.** saw that there was money inside- 6,000 USD in 100 dollar bills both new and old. **D.S.** started to get worried. He spent altogether four days in the Clinic and left on the fifth day. One of the persons who had picked **D.S.** up at the airport gave him again a ride to the airport and stayed with him until he had to go to the passport control. Then **D.S.** took a flight to Istanbul. After his arrival in Istanbul, he received a phone call from ‘**E**’ who said he would meet him.

When asked whether at any time on his second travel to Prishtina, the passport control asked about the deportation stamp in his passport he answered that no one asked anything. Everything was done very quickly and without asking any question. He did not tell anyone at the border the reason for his visit, and did not show them any other papers during the second visit.

He departed Istanbul on the 25<sup>th</sup>. The last thing ‘**E**’ said to him was that the remaining part of the money will be paid to him later. He suggested to **D.S.** that he could earn money if he could find other donors. He said that per person they would pay him 500 dollars. He did not say precisely who “they” are, but he put it in plural. ‘**E**’ told **D.S.** that they would wire electronically the money to him very soon. He was trying to calm him down saying ‘don’t worry about this’. He would say it would not be bad at all if he could find some other people. **D.S.** never received the remaining money from ‘**E**’ or anyone else. After the arrival home of **D.S.**, he received a phone call from ‘**E**’ who asked him how he was feeling and how the flight back home was. It was on the day after his arrival. **D.S.** said that everything was fine, but he had a pain in the area on the side.

**D.S.** received a phone call from the local police approximately 2 to 3 months after his return. They wanted to know about the purpose of his visit to Kosovo. ‘**E**’ had actually warned him and told him that he had to keep silent, not to say anything to anyone about the whole story. He told him not to mention his name in any way and to delete his telephone number from his phone. **D.S.** did not do that.

He explained to them that the purpose of the visit to Kosovo was to check his heart condition which is not true but he got scared because of what ‘**E**’ had said. He took what ‘**E**’ told as a warning and as a threat. ‘**E**’ asked him to tell a lie and told him that he should never tell this story to anyone, where he had been, whom he had talked to and whom he met, and he would always warn him by saying ‘so that you don’t have any problems’. This was a complete change of attitude on ‘**E**’s part from before the surgery when he was quite friendly and supportive.

At the local police he told a lie and after giving his testimony, they let him go. He signed an explanation note stating that the purpose of his visit to Kosovo was to check his heart although it was not true. Its content was in handwriting. One or two days after this, he received another call from ‘**E**’. He told him to continue to stick to the same things he had declared in case he was summoned again to the police. He also warned him that in the

unfortunate case he said something he was not supposed to, he would be in big trouble and not just him. **D.S.** understood this to mean his family as well. **D.S.** does not know how ‘**E**’ was aware he had been to the police. After this telephone conversation with ‘**E**’, **D.S.** tried to analyse everything that had happened and he came to the conclusion that ‘**E**’s threats and warnings were very serious.

**D.S.** came to understand that his life and life of his daughter could be in danger so he decided to change his place of residence, in May 2009, he moved to another country with the money he had received in Prishtina. After this he had no contacts with this particular person or with any other person connected to this matter.

**D.S.** during the interrogation was confronted with photographs. He was able to identify several photos of the Medicus Clinic, both outside and inside, as well as photos of medical charts and packages that were placed into the refrigerator. The first doctor he saw after his arrival at the Medicus Clinic was approximately 40-50 years of age but **D.S.** could not determine which language the doctor spoke. **D.S.** could recognize him but noted that he was not present in the courtroom. He always entered the room wearing his medical suit. He knew his way around there. He knew where the medicines were, and would give instructions to the male nurses about what to do and they would follow his instructions. It was obvious that it was not his first time there. This doctor conducted an ultrasound on **D.S.** who believed there was also another doctor there but since he was sitting with his back towards **D.S.**, he could not see that. The doctor also checked the results of his analyses that they did before. This doctor was involved in his surgery. **D.S.** noticed that he was taken to the surgery room, that this doctor was there already but his face was covered with this mask. **D.S.** recognised him, because it was the doctor he saw most of the time, compared to the others. Considering the fact that the doctor came to the Clinic several times after **D.S.** surgery, his understanding was that this doctor was playing an important role. He also thought he was checking the condition of ‘**D**’.

As for ‘**D**’, **D.S.** did not talk to him. He looked very sick. At the time he did not know the name of this doctor but now he knows his name and it is ‘**Y**’. He also saw other doctors and medical staff in the Clinic. When the two women talked to each other he understood in their conversation that they were mentioning something like Dr. ‘**S**’ or ‘**C**’. He did not understand much and he could not tell what the content of their conversation was. The doctor no. 2 was 40-50 years of age and of European nationality. Doctor 2 was wearing the same medical scrubs. **D.S.** could see that he was not at the clinic for the first time. He talked to the male nurses and he conducted himself freely. Doctor no. 3 was also wearing the same medical scrubs. She would stay silent but she was present on the day of his surgery inside the surgery room wearing a mask. She was between 28-35 years of age.

Witness **D.S.** was asked to look around the courtroom to see if there was anyone he could recognise. He recognised the person wearing a black and white shirt whom he had seen at the Clinic. He gave him some papers to sign before his surgery. **D.S.** also recognized the person wearing dark brown jacket and thinks he saw him in the clinic. The court identified the man wearing black and white shirt as **A.D.** and the second person as **L.D.** The remaining persons **D.S.** did not recognize.

**D.S.** saw **A.D.** on the day of his surgery, on 21<sup>st</sup> October. He gave him several sheets of paper and he asked him to sign them. **A.D.** tried to explain that all this was entirely legal and that there was no problem. **A.D.** explained that the documents said that ‘**D**’ was allegedly his

relative and that **D.S.** was donating to him his kidney. But **'D'** was never his relative and **D.S.** saw him there for the first time. **D.S.** understood perfectly what was explained to him regarding those documents. They only wanted to make it look as if **D.S.** was donating his kidney to his relative.

**A.D.** came holding those sheets of paper and then left with them. **D.S.** did not have a chance to read the documents, because **A.D.** just flipped from one page to another in front of him and asked **D.S.** to sign them which he did. After that, **D.S.** was taken to the surgery room. The documents were in English and then there was a very bad translation into Russian. He could not read or understand the content of what was written. He signed it knowing it was not true as **'D'** was not his relative. But the essence of what was happening from the legal point of view he could not understand in its entirety, but initially both **'E'** and the woman who met him first, before the surgery, said that it was legal. This was the only contact **D.S.** had with **'A.D'**. It took place around 10-15 minutes before his surgery.

**D.S.** saw **L.D.** in the clinic on the day of his surgery wearing medical scrubs. He was shown photographs by the Public Prosecutor, but recognised only **Y.S.**

**D.S.** displayed to the court a scar on his left side approximately at the height of his elbow going slightly upward as it progresses on his back. The scar is approximately 20 cm long. His health at the time of the testimony is not the same as it used to be. Because of this surgery his current state of health puts many limitations on the way he wants to live his life and he is, for example, limited in the use of certain food products and has certain physical limits.

Considering the whole situation and the fact he has had many problems as a consequence of this, and the fact that he was lied to, he wants to ask for compensation for moral and physical damage caused to him. He is currently going through a lot of tension in his life and he is scared of what the future will bring. Therefore, he is asking for compensation especially considering that these people profited a lot from the health of other people. This was done through lies and unlawful actions. He would like that justice be done: 100,000 dollars compensation.

6. **"A.K."** testified personally before the panel on 5, 6 and 18 October 2011.

**AK** explained that he his problems started in 2008. He had problems with his studies as he did not have enough money and could not pay for the university studies. Each semester he had to pay 600€. Additionally he had living expenses as he lived apart from his family in an apartment. He was together with a girlfriend but they broke up that year. He had a job at the time, but he quit because the company was bankrupt. After he quit the job he received some support from his father, but then his father had a heart attack and could not support him anymore. **AK** tried not to create debt because he would not know how to repay it. After the father was sick he could no longer help **AK**, rather **AK** had to help him as the father was in need of special medical treatment and he could not work. The father was very ill and would die without medical treatment.

**AK** was in a relationship but they broke up – she left him. He felt quite depressed, alone and without any help or support. He felt it was the worst period of his life. He searched the internet where he found a Russian medical board with a message about becoming a kidney donor in exchange for money. He does not remember the internet address, but it was like a medical blog in Russian and on a Russian domain (.ru). He saw about three or four of such

sites. Some were in English. The internet website as he remembered it mentioned that someone can help financially for the donation of a kidney.

He sent an email to the person who posted the information and asked about details regarding how the person can help. The next day the person sent an email asking whether **AK** was interested in making a kidney donation and made a proposition that he would be paid 10.000€. The person identified himself as 'Y'. **AK** exchanged three additional emails with. He had several reasons for donating – but the main motivation was to help others and to help his father. He did not explain all his financial circumstances, but he mentioned his father and his medical treatment.

One day **AK** was contacted via phone from an unidentified number by a person who introduced himself as 'J' who said that **AK** had to be prepared to do some analysis which included blood group analysis, Hepatitis B, HIV and ultra sound. These tests were done at the local government clinic where it was free of charge. Asked about the time frame, **AK** explained that he saw the notice around the 10<sup>th</sup> September and received the results of the analysis towards the end of September 2008.

Approximately two weeks later **AK** sent the analysis and 'J' called on the phone and said that he would send tickets and that the surgery had been organised. It was the first time **AK** learned he would be flying from Minsk via Istanbul to Pristina. He would be flying with Turkish Airlines. He did not receive any money. **AK** asked Y whether it was legal and later he asked J about it. J said that it was legal in Kosovo. Earlier when he looked on the internet he realised that kidney transplantation was not legal in many countries. On 25<sup>th</sup> October **AK** flew to Istanbul. At the airport he met a man who introduced himself as J. J was with a person he introduced as his brother. **AK** gave a physical description of the two men and said he would be able to identify them.

During the car ride to the hotel J spoke to his brother in a different language. **AK** thought it was Jewish. At the hotel J went to the receptionist. **AK** saw his passport which said "State of Israel". At the hotel a man arrived who looked like a doctor in a white suit. He had medical instruments and took a blood analysis. In the morning they went by ordinary taxi from the hotel to the airport. At the airport J said that **AK** would be travelling alone to Pristina and gave him a business card 'Medicus clinic'. Someone would meet him at the airport and if customs in Pristina asked him he should say that he was having medical screening for urinary problems at Medicus clinic. **AK** asked J whether what they were doing was legal and J said that it was legal in Kosovo but that they did not need to draw attention.

He thought the flight was the 26<sup>th</sup> October with Turkish Airlines to Pristina. During the flight he did not recognise anyone, but later he met people who had been on the same flight. When **AK** arrived in the airport, a customs officer looked at his passport and then took him to a nearby office. He was asked about the purpose of his visit and he explained that he was going to Medicus clinic for urinary problems. They took the passport and business card and asked **AK** to sit outside the office and then closed the door. **AK** saw that the officer made a phone call which took about 2-3 minutes but he did not hear what was said or whom he called. Then the officer made a copy of the passport and told him to pass. He was also given the Medicus card.

As he exited the airport there was a person who approached him and asked whether he was there for Medicus clinic. They drove for about 30-40 minutes and then arrived at the clinic.

They went to the second floor and the doctor asked whether this was **AK** and then said that they needed to make an ultrasound. This was done on the second floor in the cabinet. The doctor made an ultrasound and then asked **AK** to sign some papers. The doctor said that he had to sign them, that the surgery would be legal and he had to agree to it. **AK** did not read the papers before signing. There were two copies that should be signed. One was in English and one was in another language. He just glanced at the papers but did not read them. He remembers something was mentioned about UN regulation. He can read English so he could have read the copy, but there was no time as the doctor said: "sign". He had been at the clinic for about 10 minutes at the time. **AK** communicated with the doctor in English; he did not know whether the doctor was aware that he could read in English. The doctor did not ask, but merely pointed to the paper where **AK** should sign. He does not know whether the documents were similar in both languages. **AK** is now aware of the name of the first doctor, which is **-Y.S.**

After approximately 20-30 minutes, some medical staff told him to take off all clothes and placed himself on a moving table. He was then given an injection by a male nurse. About 10 minutes later he was taken on the table through a corridor to a big room which he thought was the operating room. He was given another injection in the room by a doctor and after about 5-7 minutes fell asleep. There were about four persons in the room. One of the persons was **Y.S.** He remembers two doctors and two medical staff.

He next remembers waking up during the night, having pain in the surgery area and asking for water which a medical staff gave him after which he fell asleep again. He then woke up in the morning around maybe 09.00-10.00. He again asked for water which the medical staff provided him with. The medical staff said that everything was good and that he should stay in the bed. **Y.S.** came to inspect him every morning to check if he was ok. The doctor checked his temperature and talked with some medical staff. **AK** was given pills maybe 3-4 times a day.

The first morning when he woke after the operation there was an old man in the bed near his. On the third day the old man who did not talk much said that he was grateful that **AK** was his donor. They spoke in English together. The man was maybe 60-70 years old. Later the man had some visitors – a man and a woman. The man was about 40-45 years old and the woman was about 38-40 years old. They were relatives of the old man.

Normally there were two medical staff near the room and he saw three or four times the other doctor who was in the operation room. **AK** thought that he saw a total of three doctors at the clinic. Two days after the operation he met **J** again. In the morning when he woke up **J** was standing near his bed. **J** asked about his condition and said that he left money in **AK**'s bag. **J** left but said that they would meet when **AK** went to Istanbul again. After he left **AK** checked the bag and found an envelope with money in. There was 8.000 \$ in it, all in mostly new 100\$ bills. **AK** took the envelope and hid it in his shoe. When asked whether he discussed the issue of payment with others than **J**, **AK** said that he talked about it with his recipient. The recipient asked **AK** if he received money or not. **AK** did not know whether any of the medical staff or the doctor saw that the money was put in the bag. He only spoke with them about his medical condition.

When he arrived at the clinic there were four people sitting outside the cabinet. **AK** realised when he saw all these persons in the room that they had been on the same flight. They were the old man, his two relatives and another person whom he saw twice during his stay at the

clinic. He met the man once when he arrived and another time when he left. He does not know what the man was doing at the clinic. He was approximately 50-55 years old. He seemed very confident and was well dressed. As **AK** was preparing to go to the airport he had a five-minute conversation with the person. **AK** is now aware of the name of the person. He saw him in the media and in news articles from different websites on the internet approximately 8-10 months after he had the conversation with him. **AK** thinks that the person was connected to his surgery and transportation. The person's name is **M.H.** **AK** remembers that **M.H.** was on the same flight from Istanbul to Pristina.

On 31<sup>st</sup> October in the morning the doctor told **AK** to prepare his things. The doctor gave **AK** a paper which looked like a letter with the Medicus clinic's stamp on it, but it was in a language that **AK** did not understand. He was told that if he had problems with customs to show this letter. When the car arrived he went to the airport, passed the customs with no problems, got on the flight and left for Istanbul. The next day he left for Minsk. **J** had said that he would meet **AK** in Istanbul, but they did not meet. The purpose was to meet so he could give **AK** an additional 2000\$.

He did not require additional medical care. He passed the test and analysis in his local clinic twice from the time of surgery and the opinion of the doctors in his local clinic was quite good. They still warned him about the fact that he had only one kidney so he could not drink too much liquid or exercise too much but he did not need special treatment.

Approximately one week after his arrival back home **J** called him. **J** said he was busy and could not meet him in Istanbul and he would send the money in a few weeks. In the next week they spoke again and he stated that he would give the additional money, but that **AK** should find other people who wanted to donate. **J** said to **AK** that he would pay 2000 US\$ that he owed and 1000 US\$ for every person that was recruited by **AK**. He did not want problems with the law and refused. They had additional conversations but all the time the position of **AK** remained the same. He did not want to be given money to recruit people. **J** contacted **AK** about five-six times after the surgery. **AK** never made any positive efforts to recruit other people.

After the third conversation **J** said he would send some money. The money was sent via Western Union and he sent name, surname and identity code. This is how **AK** knows **J**'s last name. He sent 500\$ from the nearby Western Union office. Three days after the payment **J** called and said he sent the money for the expenses and he still waited for other people to be recruited. **AK** refused again and in the next conversation he said that **AK** should not go to the police and if he was contacted by anyone not to tell anything. He also said that he has "long arms" and can reach **AK** anywhere. This was perceived by **AK** as a threat to his life and health. In the last conversation **J** said to **AK** that "if you go to the police you can disappear". The last conversation took place approximately 5-6 months after the surgery.

A year after the surgery in autumn 2009, **AK** was contacted by Belarusian local police officer. They asked **AK** to their office where they asked questions about where he had been in 2008 from 25th October to 1st November. They said that they had papers from Medicus Clinic and knew what he was doing at the clinic. They questioned him for about 12 hours. He did not tell them the entire truth, and they tried to push him by saying that he was recruiting people. Then there was a second meeting with the Belarus police. They asked him the same questions and showed some pictures. They asked him to contact **J**, which he did but **J** did not respond. He recognised **J** and his brother in a photo line-up. The police said that these are the

two persons they were trying to find and they had contacted Interpol. There was a third conversation with the police in January-February 2011. During the conversation they showed photographs again – different photographs but same persons – **J** and his brother again. At the end, the police said **J** and his brother and other persons were arrested in Ukraine. **AK** has not been contacted by Ukrainian police, Belarus or Interpol since then.

During his testimony in front of the panel, he was shown some photos taken during the search of the Medicus clinic. He described the building as being two floors and a triangle roof. On the outside there was a sign saying “Medicus Clinic.” **AK** recognised the Medicus clinic where he had the surgery from several pictures

**AK** was then asked whether he recognised any persons in the court room. He looked at all defendants. The first person he recognised was **L.D.** This was the second doctor he saw at the clinic. He was then wearing a white shirt and green trousers. After the surgery **AK** saw him three or four times. He also saw him talk to the medical staff. He saw him one time before the surgery in the operation room where he was in a doctor’s suit and after some time he put a mask on. He was having a conversation with **Y.S.** The conversation was in English but he only heard a few words because he was under anaesthetics. The doctors were preparing for the operation. They both wore gloves and masks.

On the second day **AK** saw the doctor- **L.D.** when he came to the room from the back door. He was talking to the medical staff who were in the room. **AK** is not aware what the conversation was about as he did not understand the language. He then saw doctor **L.D.** a few days after – on the third or fourth day after the operation. At that time **L.D.** was with **Y.S.** They were conversing in English. **L.D.** asked **Y.S.** about **AK**’s situation and how he was treated. **Y.S.** said that **AK** had the proper temperature and the medical staff gave him some pills. **AK** explained that **Y.S.** inspected him every morning and sometimes in the evening. He saw **L.D.** again the day before he left the clinic. He saw him twice on that day, in the morning and the afternoon. He also saw him on the news when the Medicus clinic was closed. He recognised **L.D.** in the court room.

**AK** then identified **A.D.** who was the driver who drove him from Pristina airport to the Medicus Clinic. When they arrived in the clinic the doctor invited **AK** to his cabinet on the second floor, and **A.D.** went to **M.H.** and they started a conversation on the second floor of the clinic. **AK** saw **A.D.** on the last day when he drove him to the airport. **AK** could not identify other persons in the court room.

He recognised **Y.S.** in photos shown as well as one of the medical staff. **AK** identified a photo of **L.D.** Another photo was also of one of the medical staff. The court noted that the person is called **B.S.**

He described his health now as generally OK but maybe once or twice per month he has pain in the surgery area when he drinks too much liquid. He is more tired than before the operation and he has the occasional pain.

He is seeking compensation of 60,000 Euros for pain and moral and physical damage as he had to move from his current residence. He lost contact with his family and had to quit his job and stop his studies. Witness **AK** showed his scar and the judge noted “there is an obvious scar on the left side of the witness’ abdomen. It appears to be about 8 inches long, which is between 15 and 20 centimetres”.

## 7. Y.A.

**Y.A.** testified in an Extraordinary Investigative Hearing under article 238, KCCP, on 17 November 2008. Present at the hearing were **E.S.**, **B.S.**, **M.S.**, **M.H.**, **L.D.**, **T.P.** and **I.R.**, all of whom were defendants, and their defence counsel. The public prosecutor was present, and the hearing took place in front of an international pre-trial judge. The present whereabouts of **Y.A.** are unknown according to Turkish authorities who were contacted through a request for International Legal Assistance during the main trial and by the prosecution office during the investigation. Thus, the statement of **Y.A.** is admissible into evidence, based on Article 368 (1) paragraph 1 of code of criminal procedure.

**Y.A.** came to Kosovo to give his kidney in return for \$20,000 which he was supposed to receive when he arrived at the airport in Istanbul, which he did not. He was initially approached by a person named '**I**' who said he could give his kidney in Kosovo because it was not legal in Turkey, and he would receive \$20,000. '**I**' helped him to obtain a passport and took blood samples to compare with the proposed recipient's blood which matched. **Y.A.** does not know the surname, address or phone number of '**I**'. They met in a park outside of Istanbul. **Y.A.** flew from Istanbul to Pristina on 30 October 2008 according to his boarding pass. '**I**' purchased the ticket. **Y.A.** was accompanied by a person he identified at the hearing—**M.H.**—whom he met at the airport in Istanbul. They did not sit together. In Pristina, **Y.A.** told immigration officials that he had come for treatment.

From the airport he went to the Medicus Clinic with another person whom he did not see in court during the hearing. He was introduced to this other person by **M.H.** At the Clinic, he was placed in a room. The recipient was placed in the same room. **Y.A.** identified the recipient as a person named **B.S.** who was present at the hearing as a putative defendant. The surgery took place the following day. At the hearing **Y.A.** was unable to recognize any of the doctors or other persons who were involved in the operation because he was not paying attention and then lost consciousness. He believed the operation was legal, so he did not care. However, he was able to identify relatives of the recipient at the hearing—**M.S.** and **E.S.**

At the hearing, **Y.A.** was shown photographs of persons, and he identified **Y.S.** whom he had seen at the Clinic, **M.H.** whom he had already identified at the hearing, and **I.R.** and **T.P.**, but he couldn't recall when or where he saw them. As to **Y.S.** could not remember if he was one of the doctors who operated, but he did come to his room after the operation to see how he was doing. It was his left kidney that was removed, and he was not experiencing any problems.

The same person drove him back to the airport. He was with **M.S.** and **M.H.** **M.H.** handed him the return ticket. At the first checkpoint at the airport, there was a problem with his ticket, and he and **M.H.** went to Turkish Airlines to resolve the problem. He was then able to pass the first checkpoint, but was stopped by police officers at the second checkpoint who asked why he had come to Kosovo. **Y.A.** showed them an invitation regarding surgery, and said he had been at the hospital and had had his kidney removed.

**Y.A.** did not know if he would ever receive his money when he returned to Istanbul. He did not know who the owner or the manager of the Clinic was. He was not threatened by '**I**' to relinquish his kidney, and he gave his kidney voluntarily. However, he does consider himself to be a victim because he did not receive the money he was promised. **M.H.** never spoke with him about the financial arrangements regarding his kidney.

Prior to surgery, and while still conscious, Y.A. signed a statement in Turkish, which he understood, saying he was willing to give his kidney to another person. He was given a document after the surgery with the name Medicus on it, which was not in Turkish and which he did not understand, that he presented to the police at the airport.

**B. Summary of the Testimony of Kidney Recipients and Relatives in chronological order by date of surgery from the earliest to the latest.**

**1. “T3” testified by video link from Israel on 19 June 2012.**

**T3** suffered from diabetes, and in 2007 he began to experience deteriorating kidney function. His doctor said he would have to undergo dialysis, which he refused to do, having witnessed his father’s similar experience. He began to inquire about a kidney transplant, and talked to friends and relatives. Then he met a woman in Turkey who had a successful transplant, and she recommended **Y.S.**

He was then contacted by “**A**” who said he could contact **Y.S.** ‘**A**’ explained that he would make arrangements for **T3** to go to Europe for the transplant with **Y.S.** ‘**A**’ also explained the price. **T3** was willing to do anything to receive a transplant. It would cost \$100,000, and he was to pay some money right away, which he did in cash, and the rest later. ‘**A**’ called a short time later and informed **T3** that he would be flying to Turkey on a certain date. At the time he was in a bad condition concerning his health. **T3** had no contact with **Y.S.** before flying to Istanbul, although he later told police that he did have direct contact with the doctor. He lied to the police and did not tell them about ‘**A**’ because he wanted to protect the people that had given him his life back. **T3** flew from Tel Aviv to Istanbul, and had the rest of the \$100,000 on his person, minus the money he had paid in Israel. He carried the money in a money belt on his waist. He was able to pass security in Tel Aviv without a problem, and to enter Turkey without a problem. He was escorted on the flight by “**Z**” who was in contact with people in Istanbul.

At the hotel, he had more blood tests by someone who came on behalf of **Y.S.**, and was told the tests were for cross matching. Also at the hotel was a person named “**Y**” but he did not ask any questions about her. The next day he flew to Pristina. He went to get a bottle of water, and when he returned he was told that he could not drink because he was going to have his operation that evening. He learned later that this person was **Y.S.**, who may have been on the same flight but he did not know.

Soon two jeeps arrived, and **T3**, was taken to the clinic. The driver was a young man, who he learned later was the son of the owner or manager of the clinic. The ride took 15-20 minutes. At the clinic, he changed into hospital garb. When asked by the prosecutor where the money was, he said he had given it to “**Z**” at the hotel in Turkey. This was different from his statement to the police when he said he gave the money to **Y.S.** He lied to the police to protect ‘**A**’ and ‘**Z**’, and his statement to the police is false.

**T3** interacted with the nurses at the clinic who explained that the procedure would be that night. He doesn’t recall if he saw **Y.S.** before the surgery. He had more tests, including an EKG he thinks. He saw two persons who might have been possible donors, but he didn’t pursue the matter. Around 10:00 pm he was given a shot and taken into the operating room.

He saw **Y.S.** and other doctors and nurses, as well as another person on another operating table. He could not tell if the person was male or female. He believes they spoke English.

After the surgery, the person named '**Y**' came into the same room a day or two later, and they were separated by a big screen. She was also a recipient. He also learned that there was a third recipient at the clinic—an old person from Turkey. He did not see any of the organ donors. Upon leaving the clinic after five or six days, he received some documents from **Y.S.** which included a list of tests to be performed by his doctor in Israel. He returned to the Pristina airport in a jeep with the same driver and then returned to Istanbul

At the main trial, the prosecutor confronted **T3** with certain photographs. He identified **Y.S.** in one photo. He does not recall if he signed any documents at the clinic. **T3** was unable to identify **A.D.** in front of the video camera as the driver to and from the airport.

**T3** started having kidney problems at 45. He is in the import business, and now works full time without any problem. He would be dead if he had not had a transplant. He does not consider himself an injured party. He would not prosecute the defendants; he would give them a medal. His wife and son visited him every day, but did not contact the donor.

2. "**T4**" testified by video link in the Hebrew language from Israel on 19 June 2012.

**T4** was born in Iraq in 1940, and lives in Israel. In 2007, **T4** began to have problems with both kidneys. He was told by his doctor that he would have to have dialysis, which he did for about five months at a hospital in Israel. He was also told that he would need a kidney transplant, and that the waiting time was 2-3 years. In 2008, he was put in contact with '**A**', and they met at a café where they discussed the possibility of a transplant in Kosovo. The price would be 70,000 Euro in cash which he paid in two instalments, one in shekels and the other in Euro. He received a receipt for the first payment but not the second.

He then travelled from Tel Aviv to Istanbul with his wife and '**Z**'. In Istanbul he went to **Y.S.**'s clinic and had blood tests. The next day he flew to Pristina with his wife. He was not asked anything at passport control. He doesn't remember meeting a donor at the airport. The ride to the clinic took 10-15 minutes.

Upon arrival at the clinic, he changed clothes and was taken into the operating room after having more blood tests. He recognized **Y.S.** in the operating room, and there were 4-5 other medical staff he did not recognize. After surgery he felt all right, and remained there for 5-6 days during which time he was visited by **Y.S.**. There was also an elderly Turkish woman at the clinic, who was a recipient. At the airport in Tel Aviv he received some documents from '**Z**' who said they were provided in Kosovo. **T4** had the documents in front of him while testifying. One was entitled Medical Report. The Report was read to the witness in Hebrew. There is a reference to an Ethical Committee and consent. **T3** never appeared before an Ethical Committee before having the kidney transplant conducted.

On one of the documents, there is a logo of the Medicus Clinic which he recognized. On the second page there is a signature of **L.D.** One of the documents was a Kidney Transplant Clearance Form dated 19 June 2008 which was read to the witness in Hebrew. It included a statement that the donor has passed the interview and agrees to the transplant. The witness again denied that he had appeared before so-called Ethical Committee, or that anyone had discussed with him the nature of the transplantation. **T3** also had in front of him a document

called “Deed of Donation” dated 19 June 2008 which was read to him in Hebrew. His signature was not on the document, nor was any of his handwriting. However, there is a seal of a notary. He gave the documents to the Israel police when he was interviewed. These are the documents he received from ‘Z’ at the Ben Gurion Airport in Tel Aviv.

T4 was shown some photographs. He recognized the clinic where he had the transplant. However, he was unable to recognize anyone depicted in the photo line-up. T4 was asked if he knew the name of the person who donated his kidney, and he did not. He did not recognize the name of A.O. and did not meet him at the Pristina Airport. His wife visited him every day, but she did not have any contact with the donor either.

3. “M2” testified by video link from Israel on 18 June 2012.

M2 started having kidney problems in 1998 which got worse over time. In 2007, the situation became critical, and he started dialysis—3 times a week for 5-6 hours at a time. It was horrible. He then began researching the options for a transplant. He registered for a transplant in Israel, but there is a waiting list and he was never contacted. Relatives in Ukraine offered to donate, but they were rejected in Israel.

He then went to Etgar Company in Tel Aviv, which arranged transplants abroad. ‘A’ was the contact person. His number was commonly known by patients at the dialysis clinic. He called ‘A’ who told him that a transplant could be arranged. He then met ‘A’ who explained all the tests that would have to be taken, as well as the payment- USD 100,000. Actually, the payment turned out to be more, namely USD 108,000, because the initial amount was for a transplant in the Philippines, but that was no longer possible. M2 made 5-6 payments, some in shekels, some in US dollars. He received receipts. He trusted the company and ‘A’, and really wanted to have the transplant, so he signed a contract for payment.

This process started in mid-2007 and into 2008. He stayed in touch with ‘A’ and waited for a travel date. He also met ‘Z’ who accompanied him to Kosovo. ‘Z’ was also a representative of the Etgar Company. In late June or early July 2008, he flew on Turkish Airlines to Istanbul with his wife and ‘Z’.

In Istanbul they stayed overnight at a hotel. The following morning they crossed the Bosphorus and went to a clinic for tests. There he met Y.S. for the first time. He was told he had good odds for a transplant and was wished the best. They did not discuss any of the details of the surgery, or anything about the donor. The next day they flew to Pristina.

In Israel, before leaving for Istanbul, ‘A’ gave M2 some documents, including an invitation letter to have some medical tests at the Medicus Clinic. However, that was not the purpose of his trip; he was going for a kidney transplant. ‘A’ said he might have to present the letter at the border. The letter was written on Medicus letterhead. At the airport in Pristina, he told border control that he was there as a tourist, and didn’t mention an organ transplant. He was not concerned about the legality of a transplant and didn’t think about it.

They were met by two vehicles and were driven to the clinic, which took about a half hour. Once there, he had to sign some documents, which he just signed without reading. He was told he was agreeing to the transplant. He saw various medical staff, male and female nurses, and he had a good impression of the clinic. He saw Y.S. before the surgery, but did not speak to him. ‘Z’ translated for him how to get ready for surgery. Before surgery he was given an

injection, and there were at least three other medical staff beside **Y.S.** There were 2-3 other people in the operating theatre.

After the surgery, nurses were taking care of him all the time. Later he saw **Y.S.** and they spoke a few words in English. Russian is **M2**'s native language, but no one at the clinic spoke Russian. A few words were exchanged with staff in Serbian. He also saw two other Russian speaking persons who must have been the donor one man and one woman, approximately 50 and 25, respectively. He doesn't know which one was his donor. They were not his relatives, he didn't learn their names, and he doesn't know if they were paid.

He was in the hospital for 4-5 days and left on 15 July. He saw **Y.S.** at least three times, who would examine him and ask questions. He received some documents when leaving, which he gave to the hospital in Israel. Also, **Y.S.** gave him some medications and instructions. There were no complications once back in Israel, except for an adjustment of one of the medications. **M2** had no questions concerning the legality of the transplant. He received documents saying it was legal and the hospital was authorized. He had the documents with him while testifying. One document is dated 9 January 2008—a decision by the Ministry of Health to provisionally appoint **Y.S.** as a general surgeon (along with another doctor). **M2** was shown some photographs. He recognized the Medicus Clinic and **Y.S.**, but not the others. **M2** has medical insurance and is in a legal process with the insurance company. He has received partial reimbursement.

4. "**M3**" Wife of "**M2**." She testified by video link from Israel on 16 June 2012.)

In 2007-08, prior to her husband's surgery, he had to undergo dialysis three times a week, for six hours at a time which was very difficult for him. A kidney transplant was not available for him in Israel. She travelled with him from Tel Aviv to Istanbul, then on to Kosovo for the purpose of a kidney transplant. She stayed at the Victory Hotel in Pristina on 2 July, returning to Istanbul on 8 July.

She was shown a photograph that looks like the clinic her husband was in. She was introduced to **Y.S.** at the clinic by the person from the company who accompanied them, '**Z**', and she saw **Y.S.** once or twice but did not speak to him. She was shown photographs, one of which looks like the doctor but she did not recognize anyone else.

She travelled to Pristina with her husband, '**Z**'. She was not present when her husband gave him money, and does not know whether this was before or after the surgery

5. "**A1**" testified by video link from Israel on 20 June 2012).

**A1** had some difficulties with his health in 2007-08. The doctors told him that his kidneys were running out. They did some tests and they determined that he needed dialysis and transplant. He was trying to get transplant in any possible way. After a period of time he had contact '**A**' in June 2008. They discussed the transplant. **A1** told '**A**' that he wanted this transplant and that he was willing to pay money. '**A**' told **A1** the sum of money, which was 79,000 Euro. They did not bargain about the money. **A1** paid 10,000 euros to '**A**' or to his company Etgar. He received a receipt dated July 23. **A1** paid 69,000 in Euros in the Hospital before the operation.

At the end of June before the operation ‘A’ came to the house of A1 and he signed an agreement for the entire process. ‘A’ also said that the operation would be towards the end of July and Y.S. would conduct the operation. The payment included one person to accompany him. A1 left Ben Gurion Airport on July 1 and flew to Istanbul. On that flight was another person who went to have transplant. He travelled with his wife, and A1 was with his son. There was a person from Etgar Company, ‘Z’. The other person that was having a transplant was called L.S.

No one explained anything about the risks of getting a transplant outside of Israel. It does not matter at all, if it was not for the transplant A1 would be dead now. In Israel at the age of 72 years old, he would never get a kidney transplant.

In Istanbul, ‘Z’ he took them to the hotel and to take a blood test. The next morning they went to Istanbul airport and then flew to Prishtina. No one gave them any documents. At passport control no-one asked them anything. They were told if asked they should tell them that the hospital was the destination. They were not instructed to say kidney transplant or anything but just medical treatment.

After arriving at the airport, a car arrived, they got in the car and went to the hospital. L.S. would have the operation first and he was told to fast. A1 went for surgery the day after he arrived in Prishtina.

A1 met Y.S. at the clinic before the operation. When asked whether A1 made payment directly to Y.S. at the clinic he replied that he paid the hospital. It was actually not him but his son who gave the money. His son was carrying the money in cash- 69,000 Euros. A1 was not involved in the payment but his son was. The receipt for the payment of 69,000 was handed to him by ‘A’ or ‘Z’

During the operation, A1 saw many people, doctors and nurses. He was in the clinic for 7 days after the surgery. His son was there with him all day long and left at night to go and sleep at the hotel. During that time he saw Y.S. every day, twice daily, he checked the data and gave him instructions every day. A1 does not remember if he saw other Doctors during this time, but he does not think so. The treatment at the Medicus Clinic was excellent. A1 never met the person or persons who donated their organs. He did not ask Y.S. or anyone else who the donor was. He was not interested. His son did not have any contact with the person who gave the kidney during the time he was in the clinic. He was not aware that the person who gave the kidney is called M.N.

A1 was shown some photos and asked if he recognised any of them. A1 pointed at the clinic where they were. He was shown some pictures of persons, and thought he recognised Y.S. . He did not recognise anyone else. The Public Prosecutor referred to some documents and asked A1 about “Kidney Transplant Clearance Form”, dated 02/07/08. He did not remember, but thinks that it is his handwriting but he was not sure. He does not know English. On the Deed of Donation- form A1 then confirmed that it is his handwriting. There are two signatures, one of the donor and one of the recipient. A1 confirmed that he knows this document. His signature is on the right. He signed this document in Prishtina on 2 July 2008. He remembers doing that and he sees his signature. When he signed the document his son was with him and he reads English and explained the content to him.

He had five documents which he turned over to the police. One was the Deed of Donation which he signed while in Kosovo. 'Z' was present along with the son of A1. Probably the donor was present but A1 is not sure. He did not see when the other party signed. The original Deed of Donation he received in Kosovo at the clinic. He got it at the reception from staff. He did not get it when he was discharged from the clinic but when he was admitted.

A1 does not see himself as an injured party; on the contrary he gained life.

6. "B1" The son of A1. He testified by video link from Israel on 21 June 2012.

B1 accompanied his father on a trip to Kosovo. His father had kidney failure and very low kidney function before the trip. His father explored the possibility of a kidney transplant in Israel while B1 was at work abroad. They tried to find a solution to this problem but as there was no real possibility for an organ transplant in Israel, they began to look abroad at other countries for the possibility of a transplant.

B1 and his father met 'A' and 'Z' in a shopping mall a couple of days before going to Kosovo where they gave them the details about the trip to Kosovo. Also present was one couple with the name L.S. They flew sometime in June or July 2008. He flew with his father from Ben-Gurion airport and directly to Istanbul. On the flight was his father, 'Z', L.S. and his wife. 'Z' was responsible for all the technicalities, such as hotels flights, transportations, etc.

Payment was done by his father. His father paid something around 75,000-80,000 Euros; part was paid in Israel to 'A' and part was paid in the hospital in Kosovo. In Istanbul, 'Z' took them to a hotel near the airport and then took B1's father and L.S. for some medical tests.

The next morning they went to the airport and left for Kosovo. No one gave him any documents. He did not say anything to the officers at passport control about the purpose of their visit or show them any documents. They just wanted to look at his passport.

When exiting the airport someone picked them up by car and took them to the hospital immediately. From the airport to the hospital it took about 20-30 minutes. They arrived at the hospital which was a two or three story building and they went up to the second floor, where some medical people met them. On the second floor his father was taken to one room for patients and 'Z' and B1 went to give the money to the hospital. It was cash, between 50,000-60,000 Euros. He does not remember the person he gave it to in the hospital. He got a receipt for the money, but does not know if he received it immediately or when they left the hospital.

B1 was shown a document marked "811". He confirmed it is written "F., Y." and he can see the amount was 69,000 Euros. Asked whether it is possible he actually handed the envelope of money to 'Z' he clarified he was together with 'Z', but as he remembers he himself gave it to someone in the hospital.

The surgery was on the day after they arrived. B1 stayed the night in the hotel and his father had the surgery the following day. B1 met the doctor who was to perform the surgery on his father in the hospital. He came a couple of times to see B1's father before the surgery. He saw that doctor on a couple of occasions, especially after the surgery as he was treating his father, checking him. He talked to the doctor maybe once, he asked him how the surgery was

but he was very, very distant. 'If you want to ask questions, you have the medical staff, you have 'Z', you can ask them'.

After the surgery, his father stayed at the hospital for approximately 5-6 days. **B1**'s father was treated by medical staff, and every day he felt a little better. After two days he started to walk a little bit; and a lot of medicine, a lot of pills. **B1** had a chance to view **L.S.** after the surgery. He was also okay.

**B1** saw a person or persons that he believed were the donors. He saw them two days after the surgery. They also received treatment. One was a man, maybe 30-40 years old. **B1** did not talk to him. He does not know which country he came from but he thinks he spoke some Russian, some English. **B1** would guess he was from somewhere in Eastern Europe. He saw also another organ donor, a woman. She was between 25-30 years old. He did not have a chance to hear her speak, but in his opinion she was also from somewhere in that area. **B1** understood that it was the man who gave the kidney to his father. His father and **L.S.** were at the hospital for the same period and left together. They left the hospital by car. 'Z' travelled back with them all the way to Tel Aviv.

Public Prosecutor showed **B1** some photographs, and he recognised the hospital. He was shown some photos of people but he did not recognise anyone.

He did not at any time appear before an ethical committee. As far as he knows neither did his father.

Public Prosecutor showed **B1** document, entitled 'Kidney Transplant Clearance Form'. On the document **B1** saw his father's name, but it was not his father's handwriting nor his father's signature. Public Prosecutor showed another document: "Deed of Donation". **B1** saw his father's name, but not his handwriting. There was a mistake in the name as an "e" was missing. However, at the bottom of the document he recognised the signature on the right-hand side under the words 'signature of recipient' which looked like his father's signature. The signature on the left-hand side he did not recognise. He never saw the document Deed of Donation before. Public Prosecutor showed him "invoice 097, Etgar". **B1** had not seen this document before.

**B1** said that anyone with kidney problems knows the name of **Z.S.** When asked whether he has heard other names, either in Tel Aviv or in the press and otherwise, like **Y.S.**, he explained that **Y.S.** was the doctor that performed the operation on his father. 'Z' introduced him in Kosovo and said this is **Y.S.**

Confronted with the fact that his father said he received several documents including the receipt from either 'Z' or 'A' in Israel after returning, **B1** said his father probably did receive something. However, as **B1** remembers he received the receipt for the money in the hospital. Perhaps his father got a receipt for what he paid to 'A' in Israel.

#### 7. **T.S.** testified by video link from Poland on 22 March 2012.

**T.S.** is 56 years old. He travelled to Kosovo for transplantation in 2008. Prior to coming to Kosovo he experienced four years of hospitalisation and serious treatment for his health. 99% of his two kidneys were not working and he needed a kidney transplant. He was in dialyses for three years every second day for five hours. His need for a kidney transplant became

urgent and he began to research the possibility of receiving a transplant outside Poland through internet. He found that there are many possibilities. Everybody who will search the internet will find many countries like Malaysia and other Asian countries and countries outside Europe.

He found on the internet a hospital in Berlin, Germany, and was told that there is possibility of treatment. He then received an invitation from a doctor in Turkey, **Y.S.** In April or May 2008, he travelled directly from Warsaw to Istanbul, and went to the office of **Y.S.** where he had medical tests. He was instructed by **Y.S.** to wait for the results, and he returned to Warsaw where he waited two or three months.

He travelled again to Istanbul in July 2008. He was placed in a hotel and he was in contact with **Y.S.** . In the meantime he had dialyses. He received a plane ticket and the driver took him to the airport. His health condition was deteriorating, so he cannot remember the date. He is not sure which airline he travelled to Kosovo with. He was in an ambulance at that time for the dialysis. **Y.S.** travelled with him to Kosovo. He flew directly from Istanbul to Kosovo. At the airport a car was waiting and took them to the clinic. There was no name on the building. There was just a building and inside there was a clinic. He does not remember how far it was from the airport. He travelled to Kosovo with his son.

At the clinic, he was in a bad condition but he remembers that he was required to sign documents in two or three languages. He speaks English, Polish and German. The documents were in English. He read the documents before signing them. He does not remember really what was inside the papers. There was one person who said that everything was according to the rules, but he cannot describe that person in detail as it was four years ago. However, the person was short with dark hair and between 40 to 50 years old. He was European; the colour of the skin was rather dark but he was white Caucasian. There were a lot of papers which he signed. As he remembers, one said that the transplantation is for altruistic reasons. There was a clause saying that this transplantation was legal and according to legal system of Kosovo. He just signed these documents and gave them back.

He is not sure if he can identify the person who told him to sign the documents. Asked to identify any persons present in the court room as the staff of Medicus clinic, this witness failed to recognise anyone. He does not know if the persons who handed over the document for him to sign at the clinic were the managers. That person said: "I am the representative and to do everything according to the law you have to sign these documents".

**T.S.** was in the clinic one to two hours before the kidney transplant operation began. The operating surgeon was **Y.S.** . **Y.S.** was present after the operation, and said that the operation went well. **T.S.** was in Kosovo for about 10 days, and then flew to Istanbul with his son. He does not know who the donor of the kidney was.

The cost of his operation in Kosovo was paid in two instalments. Before he went it was €10,000 paid to **Y.S.**, and the second instalment was €15,000 paid in Kosovo at the clinic before the operation. He handed over this amount to **Y.S.** The total amount of money he gave to **Y.S.** for all services was €25,000. **T.S.** was shown some photos, and he thought that one showed **Y.S.** or someone assisting him. He did not recognise anyone else in the picture. He was also shown photos of the clinic, but he did not recognise it.

While he was in the Clinic his treatment was good. The doctors and nurses were professional in the way they treated him.

8. **R.F.** testified by video link from Canada on 23 March 2012.

**R.F.** explained that in 2008 his health was poor, and he had severe kidney damage. He had severe kidney damage. Prior to 2008 he had approximately 10% kidney function. It was getting worse. Prior to 2008, he had problems with his kidneys for 8 years. He explained that he was looking for sources outside Canada since the waiting list is 10-12 years. The doctor in Canada discouraged him to go abroad as they could not be sure of the quality of the treatment overseas and instead encouraged him to go to dialysis.

Regardless, he started exploring having a transplant outside of the country. He contacted all acquaintances that he had abroad. He heard from relatives in Israel, and was put in contact with a person who told him that there was a chance for a transplant and that he was able to secure a donor. They communicated both via phone and internet. He cannot remember the email address, but the name was **M.H.** **M.H.** explained how to have this procedure done. **R.F.** had already had the tests requested by **M.H.** which he sent by e-mail to **M.H.** for review. **M.H.** advised him that the cost of the surgery was 80.000€.

After two weeks, he heard back from **M.H.** who said that he found a match for the transplant. He did not say who or where this person was. He told **R.F.** that in a few days he could travel and have surgery. The plans were to travel to Turkey and have final blood tests, and then proceed to Kosovo. **R.F.** paid to travel to Turkey and then **M.H.** paid from Turkey to Kosovo.

Prior to going to Turkey **R.F.** made a telephone money transfer for **M.H.** using the banking system called Bendix. He did not make any other payment to **M.H.** or to any other persons. He did not receive a receipt from anyone for the 80,000 Euros paid.

He travelled from Toronto to Istanbul on 22-23<sup>rd</sup> July 2008. His spouse travelled with him. Arriving at Istanbul airport, he was met by **M.H.** They went to a hotel that **R.F.** had previously booked in close proximity of the airport where they stayed overnight. **M.H.** provided a person that took some blood for a final blood test on the same date of the arrival.

Next morning, they boarded the flight from Istanbul to Kosovo. He flew Turkish Airlines with his wife, **M.H.** and his wife, and two Russian- speaking women, and a couple that were going to have a transplant. In total, they were 8 persons. In Pristina Airport he passed through customs without any incidents with his Canadian passport. He was not given any travel documents or letters. At the airport they were picked up in two private vehicles and taken to the clinic. At the clinic, **R.F.** was asked to complete certain forms by the surgeon who introduced himself as **Y.S.** He signed the forms which were in English and a local language. He read the forms prior to signing them. The forms said basically that he understands the responsibilities of the surgery. After 4-5 hours **R.F.** was wheeled into the operating room. His next memory is when he woke up.

He did not have direct contact with two Russian women, but they were at the clinic to donate organs. **R.F.** believes that he received one of those organs. The Russian women were approximately mid 30-40 years of age. After the surgery he saw the two Russian women again. They were walking in a corridor. It was on the third day after the surgery. They

appeared to be well. During his recovery, he saw **Y.S.** was very encouraging and said that the signs of the transplant were positive. He shared the room with the German gentleman, **W.J.** Communication was non-existent because **R.F.** did not speak German and the German did not speak English. He left the hospital on the fifth day and returned to Canada.

The Public Prosecutor confronted **R.F.** with some photos. The first photo was the clinic where he underwent surgery in Kosovo in 2008. As to the pictures presenting certain individuals, the witness noted that picture number one could be **Y.S.** but he did not recognise others.

A document entitled “Medicus Kosovo Report” was recognised by the witness. The document starts “**R.F.** together with his donor applied to the clinic to get operated”. He got that document handed to him by **Y.S.** **Y.S.** when he left the clinic. **R.F.** had asked Doctor **Y.S.** if he was going to take a document from the clinic so his doctor in Canada could see it, and **Y.S.** said “yes you can take it and show it to your doctor in your country”. The document was signed by **L.D.** **R.F.** was familiar with the name. Prior to travelling to Kosovo he received information from the Ministry of Health in Kosovo that the clinic was licensed to perform transplants, and **Y.S.** was chosen as the surgeon in this field. At the top it has the emblem of UNMIK, and there is the government of Kosovo’s Ministry of Health emblem on the right hand side. He received the document from **M.H.** upon his questioning in regards to the quality of the clinic and if the clinic was authorised to do the surgery. The document gave the name of the manager or director of the clinic, **L.D.** and gave the name of **Y.S.** who was hired by the clinic to perform the surgery. He did not have any dealings with a person named **L.D.** during his stay at the Medicus Clinic.

He believes the transplant was for altruistic reasons. He does not know if the donor received any payment whatsoever for the donation of the kidney. He did not give anyone any money at all for the donation of the kidney and he did not give any money whatsoever to either of the Russian women. He does not know if they were paid. They were not friends, acquaintances or family members. He never had contact with the ethical committee at Medicus. He only signed a form.

9. “**M1**” testified by video link from Israel on 18 June 2012.

He explained that in 2008 he had kidney failure. The doctors told him that his kidneys had stopped functioning and that he had to undergo a kidney transplant or dialysis. There was no transplant available in Israel as there were no family members to donate a kidney. His options at the time were to have dialysis five times a week for five hours a day or to die. He did not search widely as ‘**A**’ who represented the company Etgar was his first contact. It was a consultancy firm. ‘**A**’ came to his house and explained to him that a transplant could be arranged in Kosovo for 77.000€. He said that **Y.S.** would do the transplant. At the time **M1** did not know the doctor. The payment was divided. The first part of €17,000 was paid in cash to ‘**A**’.

Later when ‘**A**’ called, he told **M1** to pay the remaining 50.000€ into a bank account in Istanbul. **M1** does not know who owned the account as he did not receive a name only an account number. In fact the account belonged to **M.H.** . The money was transferred from the bank account of **M1**.

'A' also gave **M1** a phone number for **M.H.** (**M1** believed the name was a phonetic spelling of **M.H.**) They were in contact over the telephone, and It was the only time he had any contact with **M.H.** **M1** learned the exact bank account in Istanbul over the phone when the person said "*my name is M.H. , this is my account where to transfer this money*".

From Tel Aviv they travelled to Istanbul. In Istanbul '**Z**' took him to have a blood test at a small clinic. There was a nurse and **Y.S.** was there. It was the first time he saw **Y.S.** and he told him that he was the surgeon. He did not explain much about the surgical procedure.

The next day they flew to Pristina. On the flight were his wife and another couple who also went for a transplant. It was **A2.** **M1** had his son and wife with him. When they landed in Pristina they went immediately to the Medicus Clinic. After preparation of 15 – 30 minutes, **M1** went directly into the operation. At the clinic he saw '**Z**' there but did not remember seeing any doctors there. He cannot remember signing any documents before going into surgery. **M1** presumes that **Y.S.** did the surgery, but he only saw him at the clinic after the operation.

**M1** woke up in recovery room. '**Z**' was by his side. It was 04:00am. He felt some pain. When he woke up again **Y.S.** was there and there were also other doctors, maybe Urologists. He had checks by them two or three times. They spoke in English. **M1** was focused on **Y.S.** as he was the surgeon.

Before going into the operation he was told that the donor was a woman. He saw her after the operation. He did not talk to her because she was not in the same room but she was walking around. From the letter he received after being released he knows that she is about 29-30 years old. He got the letter from '**Z**'. It was a printed letter with the letterhead bearing the name of the hospital Medicus. The girl did not speak English and **M1** does not know where she was from but he thinks she was from Eastern Europe. Because she was the only woman around, he understood that she was the donor. The young woman left the hospital 3-4 days before they left. According to the form he received, her name was A. **M1** did not know if A was paid anything or what their deal was. He received excellent treatment. He stayed nine days.

During his stay at Medicus Clinic in Kosovo, he never appeared in front of an ethics committee before or after his surgery. When he was discharged from Medicus, he received a letter of release describing the process, including who the donor and recipient of the transplant were. He received another two forms but he does not know what was written in them.

There was a third recipient who arrived directly at Medicus Clinic. He arrived on the same night as they arrived, maybe later than them. He arrived with his wife. They live in Israel. **M1** does not know who the donors were for **A2** and the third man from Israel. The three operations were all performed on the same night.

They all left together. They took taxi or van to get from Medicus Clinic to Prishtina airport. **Y.S.** was not with them. They flew back to Istanbul and the next day the others flew to Israel.

When asked whether he signed any forms at all at the Medicus Clinic, **M1** said that he saw his signature on a form but he cannot tell for sure if it is his. He cannot recall exactly which

document this was. It was a form where the name **D.I.** appeared. He gave the documents to the police.

The Public Prosecutor showed the witness some photographs. The witness identified two photographs as the hospital Medicus from different angles. He was also shown photographs of persons and recognised **Y.S.** **Y.S.** but he did not recognise other persons. The Public Prosecutor also showed **M1** a document which he recognised as a receipt. He received it in Israel from **'A'** seven days after he returned from the hospital. **M1** had told **'A'** that he needed the receipt to sue the insurance company. On the receipt it shows the amount of 65.000€. **M1** gave **'A'** 17,000 in cash, so all together is 77,000. On the document below the amount it says "kidney transplant".

The Public Prosecutor showed the witness the document entitled "Ethics Committee". The witness confirmed that he saw the document, but did not read it. He got the document when he was released from Hospital from **'Z'** in Kosovo before they flew back. The document, the "Deed of Donation" was shown to **M1**. The signature is similar to his. He was barely alive at the time. He signed everything at the clinic just to have the surgery. He does not know for sure if that is his signature. He did not read the documents before signing them and he did not know what he was signing.

#### 10. "**A2**" testified by video link from Israel on 20 June 2012.

In 2007-2008, **A2** had serious problems with his health. He suffered from genetic kidney failure. He started dialysis on July 10<sup>th</sup> 2008 at Belason Hospital, Tel Aviv. It was awful, and lasted for a bit more than one month. Almost his entire family suffers from the condition and there was no possibility of a familial organ transplant. His father was under dialysis. His mother died of kidney disease when she was 45.

There was the possibility of a transplant in Latvia. He was supposed to go in August 2008. The option to go to Latvia was a good option. He checked everything about it, but he would have to wait in Latvia about 4 months to get a kidney donor.

Around that time he received a telephone call from **'A'**. **A2** did not know him or how he contacted him. **A2** spoke to **'A'** and later **'Z'** and heard he could get a kidney and finish with the operation in one week, which was very important as his father did not know that he was sick and his brother and sister had the same disease. The father was staying with **A2**. He was very sick and old and **A2** took care of him so it was important that he finished quickly. He did not want to upset or disturb his father at this time.

**'A'** and **'Z'** came to his house and spoke to him. It was the first time **A2** saw **'Z'**.

**A2** heard from them that they were connected with the professors from Belason, including **L.S.** , and **A2** insisted to meet him to see that everything was ok with the donors and Hospital. He met **L.S.** at least two hours. **A2** asked about the Hospital and donor and **L.S.** said he had seen the medical tests of the donor. **L.S.** said he worked with **Y.S.** for 10-20 years in Belason, in Israel. **A2** collected the information from **L.S.** **'A'** and **'Z'**, and was satisfied otherwise he would not go through with the operation.

He paid all the money in Tel Aviv by giving **'A'** a cheque, and got a receipt for about 80,000 Shekels. **'A'** gave him the details of the bank number which he transferred the rest of the

money to. Later on he realised it was **M.H.**'s bank account, but when he paid he didn't know this. He just got the paper, faxed it to the bank to transfer the money to the details written on the paper. He did not care where the money was going and did not notice the IBAN number or the prefix. He does not know the name of the receiving bank. **A2** has a problem with his memory, but he remembers the transfer was 50,000€ and he paid in Israel 80,000 Shekels. He has a receipt from Kosovo for 70,000€. He made the 80,000 Shekel payment and the 50,000€ transfer before he left Tel Aviv.

About one –two weeks after he saw **L.S.** he boarded a flight at Ben Gurion airport and flew directly to Istanbul. He went with his wife. Everything was arranged by '**Z**' and '**A**'. As he was walking to the flight, he heard **Y.D.** saying he was having the same operation in Kosovo. They spoke. **Y.D.** was with his son Asaf and his wife also.

When they arrived at Istanbul airport **A2** saw '**Z**'. At the hotel in Istanbul he only saw **D.Y.** , his family and the people at the hotel. He was given a lot of paper to sign in the hotel. He signed everything '**Z**' told him. He is not sure which documents they were. He had some tests done in the clinic of **Y.S.** in Istanbul. '**Z**' took them in the taxi and the Doctor made the blood tests.

The next morning they flew from Istanbul to Prishtina. At passport and customs control at Prishtina airport nothing special happened. He does not remember if anybody asked, but he was supposed to answer that they had come to visit Kosovo if asked.

He did not discuss with '**Z**' about a dialysis machine at the clinic in Kosovo because it was too late to discuss this in Kosovo. He discussed with **L.S.** before in Israel. It was an issue because it was one of his conditions for the operation. He wanted to make one dialysis before the operation to come to the operation in good shape and in case something went wrong and he had to stay for longer than 2-3 days. When **A2** arrived at the clinic **Y.S.** made one more blood test and when **A2** insisted he found there was no such machine.

**A2** became apprehensive because there was no dialysis machine, and sometimes after the operation people need dialysis. He complained to **Y.S.** about the lack of dialysis instrument at the clinic before the operation and **Y.S.** said, "I don't like you. You can go home". He asked **Y.S.** if they had done the urine test of the donor to see if there was blood in the urine. **Y.S.** said: "Are you are Doctor? Who said you need a urine test there is no need".

The Doctor did not like **A2**, and thought he was troublemaker. His relationship with **Y.S.** deteriorated to the point where **Y.S.** said "I will not operate and you won't get your money back". He was very confused which decision to take - to stay for the operation or go back to Israel. He decided to have the operation. Only **Y.S.** and he were present for the conversation. There were problems during the operation, and **Y.S.** said "You see, I should not have operated on you".

**A2** insisted to '**Z**' to know the donor and see him. **A2** met the donor, and he was about 40-41 years old, looked healthy and happy, a normal man which was important to **A2**. They spoke with the eyes only and did not really have a conversation. He was appear to be from Russia but **A2** am not sure exactly.

After the surgery, **A2** saw a total of three donors. One was female and he thinks two were males from Russia but he is not sure exactly. In discussion with the donors no one spoke

about money. **A2** thought it is difficult to believe that they did not get money, although he was told by '**Z**' and '**A**' they were not getting money. **A2** asked if there was a law in Kosovo that he had to be aware of and they told him no. Before he decided to make the operation he asked '**A**' if there was a problem with the law in Kosovo and if there was a chance he would be arrested. They led him understand it is ok; it was a young country and no one should know because of the European and American presence here in Kosovo. '**A**' and '**Z**' told him that they are connected with the right people and Doctors in Kosovo and that is legal and that he will get all the papers of the Ethical Committee. In his situation it was easy and convenient to believe what he wanted to believe.

The whole trip was 7-8 days, about 4-5 days were after the operation. When he left Medicus Clinic he left by walking and he was okay. When he got back to Tel Aviv he got some documents. He is not sure whether it was from '**Z**' or '**A**', but the documents included the medical report of **Y.S.**

The Public Prosecutor showed the witness some photos. First picture is Medicus Clinic which **A2** recognised. In the following two photos he recognised **Y.S.** . In other photos he thinks he recognises '**A**'. The one he can remember is '**Z**'. He does not recognise others. He is shown a picture of a person who he thinks might be one of the Doctors but he is not sure. **A2** explains that except for **Y.S.** he only saw the others for a short time and he was under a lot of medication.

The transplant was performed on 19 August 2008. He did not at any time appear before an Ethical Committee at the hospital. '**A**' and '**Z**' told him that he was not supposed to appear in front of the Ethical Committee

**A2** brought two official documents with him. One is from Medicus Clinic and the total amount is 70,000 Euros. The date is 21 Aug 2008. The reference number is "Kidney transplant". **A2** got the official receipt from '**A**'. He thinks it was by mail and after he came back from operation. He thinks he got the medical reports at the same time when he got the receipt. He did not get any other documents.

He had medical complication after the surgery. **Y.S.** told him that he had a rejection of the new kidney and that his life is in danger because of this. During the night he had to operate once more and the operation was for about 3 hours. As he wrote in his report he said that **A2** had a strong rejection of the kidney and they had to operate him once again. When **A2** returned to Israel he sought medical advice from the Doctor there. **A2** did not believe **Y.S.** when he said that there was a kidney rejection. **A2** thought that there was something wrong with the blood group of the donor. When **A2** arrived in Israel he called '**A**' and insisted to see the blood type of the donor. '**A**' sent **A2** the blood type of the donor and he told him that the truth is that **Y.S.** during the operation hurt the new kidney, and that was the reason of the rejection. It was not a real rejection but **A2** was bleeding inside. Even now the kidney is damaged, but he is ok now. '**A**' told him Professor **Z.S.** said that he was lucky that **Y.S.** operated on him because if it was someone else they would not have been able to manage the damage done to his kidney.

11. "**T2**" testified by video link from Israel on 19 June 2012.

**T2** had some health problems earlier and had a transplant in 2003-2004. It was done outside Israel in Istanbul by **Y.S.** The surgery then went well. The cost of the surgery was 100.000

USD. He paid the money to Moshe in cash. He probably got a receipt but does not remember. After the surgery, he began to have problems again in 2007-08 The doctor told him he needed another transplant. He suffers from a disease that runs in his family. He did not check whether a transplant was possible in Israel as he was told he had to wait for a long time. So far he has never had to go on dialysis.

For the second surgery, he got in touch with 'A'. During their first meeting they spoke about the procedure to decide if he was capable of taking part in the transplantation. He had a number of tests including blood test, cardiac measurement and a set of lung and cardiac test and blood test. L.S. was advisor. Eventually he was cleared and ready for surgery. In the first transplant L.S. was advisor of T2. L.S. was involved in the surgery with Y.S. in Istanbul. In the second transplant, L.S. was the advisor in Israel.

The payment to 'A' was made after the decision that he was able to have the operation. He paid part via cheque and the rest was sent to M. He paid to 'A' 30,000 Shekel. It was about 56,000 Euro to M via money-order to a bank in Turkey. The total cost of the surgery was 90.000 Euros. After the payment of money, 'A' arranged the flight.

On the flight was the wife of T2, T2, there was another couple from Israel. The flight was 2 days before the surgery, 25 or 26 of September 2008. They arrived in Istanbul and met M. M organised everything for them including Kosher food as it was Friday evening. The next day they flew in the afternoon. At Pristina airport they passed through as regular tourist. They were not given anything to present to customs in Pristina. He told customs that he was there for touristic purposes. He did not tell anyone that he was there for a transplant. At the airport a driver waited for them and drove them to the clinic. It took about 10 minutes.

At the clinic T2 was told to wait as he was the second to undergo surgery. He met a group of Doctors and they told him everything that was going to happen and he was given some documents to sign. One of the doctors spoke in English. He does not remember in detail what they said about the documents and he did not care. He wanted to have the surgery. He read the documents generally and not in detail. There were a lot of documents and the surgery was scheduled within an hour or two and this was in the evening. He met the person who donated the organ as they both went to the same office and were asked to sign the same documents by the Doctors. The person was a male aged around 30 plus from Ukraine. They did not speak.

Y.S. and his son prepared him for surgery. And there were 4-5 people involved. He stayed at the clinic for six days. During the recovery, he had 24-hour a day nursing care, and a doctor visiting at least twice a day. Y.S. Y.S. only came twice. He was not alone in the room. The donor was on the other side of the room. T2 thinks that the donor probably received money for giving his kidney, but he does not know He was not a relative of T2.

T2 received a document with the instructions for the Doctors in Israel from Y.S. and details of his surgery and his current situation and the treatment that he received. He got a receipt from someone at the Clinic. It was in an envelope, and was together with Y.S. 's letter. He received the documents as he was being discharged, leaving the clinic.

T2 was shown some photographs by the public prosecutor. He recognised Y.S. , but did not recognise other persons apart from a photo of M.

Following the 2008 surgery, he had some problems with urethra, and it was blocked and he had to undergo another surgery to unblock it. Besides that everything is ok. He started working after 2 months of the surgery. If he had not had the surgery he would have been dead.

12 “**T1**” is the wife of the witness T2. She testified by video link from Israel on 19 June 2012.

Her husband had a transplant in Istanbul in 2003-2004. The Doctor involved in the first transplant was **Y.S.** whom they found through **L.S.** The first transplant cost 80,000 USD. They got the money back through the insurance company.

Her husband was in good health until about 2007/2008 He sought the advice from **L.S.** who told him that he needed another transplant. He was then connected by ‘**A**’ from Etgar Company who helped with the situation. The second transplant was not available in. She does not remember if she or her husband made the payments but the payments were made. It was €130,000. The payment was made to Etgar through the bank. It was a wire transfer in Israel.

The flight was arranged from Tel Aviv to Istanbul. On the flight were her husband and her, and another couple. In Istanbul they went to a hotel. The next day they flew to Pristina. They were not given any documents. At customs nothing happened. She was travelling on her Israeli passport. A van took them from the airport to the clinic. They all got in the van and after 10-20 minutes arrived at the clinic.

When arriving at the clinic **T1** immediately went to the hotel. Her husband went to the clinic. The operation was on the same day as they arrived. She went to the clinic the next day. Her husband was Ok. She met **Y.S.** who that the transplant was OK. Her husband was at the clinic for five days.

The man who gave the organ to her husband was in the same room. He was young around 30 years old. She did not talk to him but they said he was from Ukraine. She did not see the organ donor but she knew that the donor was from Israel. It was a female. After five days they flew back to Israel.

The Public Prosecutor showed **T1** some photographs. **T1** thinks, these were the pictures of the clinic . Additionally, the witness recognized two persons in photo line-up: **Y.S.** and **M.H.** She knew Mr. **M.H.** from the first operation. In 2003, M was the organizer. They gave M the 80,000 dollars

After the second operation the condition of her husband was very good; the operation was successful.

13. **Y.K.**, the son of recipient R.K., now deceased. He testified by video link from the United States on 6 February 2012.

R.K., the father of the witness who lived in Israel, had numerous health problems. He started to have kidney problems sometime in 2007, early 2008. His condition deteriorated progressively and rapidly. From the time of the problem until the transplant it took about a year.

Y.K. travelled to Israel sometime in October 2008. His father was very weak. He was staying at home and not in a hospital. Y.K. spent a couple of days in Israel before they travelled to Istanbul. The flight arrangements were made by his father who also paid for the tickets. His mom also travelled with them. At the time his father was 56 years old, and was very sick at the time. They arrived in Istanbul and spend one night at the hotel, waiting for the connecting flight.

The next day they flew with Turkish Airlines to Kosovo on a morning flight. When they arrived in Pristina a private taxi waited for them at the airport and took them to a hotel. The driver was male, about 30 years old. He spoke very broken English. He did not introduce himself by name. In the afternoon a taxi came to take them to the medical centre. When they arrived they met a nurse in her 30s or late 20s in a nurse uniform. It was a two-story building. She took his father upstairs to the second floor. They saw his father the following day around 9-9.30. His understanding was that his father had received a kidney transplant.

The witness was presented with some pictures by the public prosecutor which he identified as the clinic.

He visited the Medicus Clinic every day for 6-7 days for a few minutes. The medical condition of his father after receiving the kidney got better, it took a little time but he was getting better. The quality of the medical care he assessed as good. After the discharge they went directly to the airport. They took Turkish airlines to Istanbul and waited for a few hours for the flight to Israel.

He does not know where that kidney came from. He does not know the cost of the medical treatment. He does not know whether his family made any claims for insurance regarding the medical treatment his father received either through an insurance company in USA or Israel. He does not know how his family came to know about the medical treatment in Kosovo. He does not know anyone by the name of **M.H.** or **Y.S.**

As far as **Y.K.** is aware his father did not have problems with his kidney following the transplant and after the surgery his father definitely had a better quality of life.

From the trip to Kosovo until his father passed away it was a bit over 3 years. The cause of death was leukaemia.

### **C. Significance of the Testimony of Donors and Recipients**

The testimonies of these many witnesses, standing alone, are fully sufficient for the court to conclude that the crimes of trafficking in persons, organized crime and grievous bodily harm were committed. However, there is a great deal of corroborating evidence that strengthens these conclusions as set out immediately below.

First of all, the eyewitness testimony of the donors proved that the element of trafficking in persons and exploitation as described in Article 139 of the CCK existed. The comprehensive accounts of the victims allowed the panel to reach the conclusion as to their desperate personal situations that lead them to make this life changing and irreversible decisions. After questioning these witnesses the panel was able to establish beyond a reasonable doubt that

each of them was in a position of vulnerability because of extreme financial difficulties. The fact they searched the Internet looking for income exemplifies how desperate they were merely to survive. All of them came across recruiters who offered them the possibility to donate their kidney in exchange for a considerable amount of money that could overcome the financial difficulties.

It is important to underline that this complex surgical intervention-kidney removal- was presented to them as a routine medical procedure, without risk, after which they could resume a healthy life without any restrictions. There was no one who properly informed them about possible risks, which could be serious, either in Istanbul where they were simply tested or at the Medicus Clinic. Also, prior to the surgery they were given virtually no time to make a final conscious and voluntary decision to donate the kidney. Almost immediately after they reached the clinic they were required to sign documents which they hardly understood, including the so-called “Deed of Donation” stating they were donating their kidney for altruistic reasons or to a relative, which in all cases was patently false.

The documents were often written in languages they did not properly understand and were badly drafted. The documents incorporated a very important legal statement, claiming that transplants were conducted either between family members or for altruistic reasons. The “consent” of the donors was collected after they allegedly appeared in front of a bogus, non-existent “ethical committee” that had nothing to do with ethics besides its name. These phony procedures were clearly designed in an attempt to shield the perpetrators from criminal liability. After these documents were signed, the victims were wheeled into the operating theatre, sedated and operated upon, even though some of them had serious second thoughts. This scenario demonstrates another way in which the perpetrators abused the victims’ position of vulnerability.

Additionally, the donors were promised to get financial compensation for their “altruistic” deeds. However, some of them were only partially compensated. And it did not escape the attention of the panel that one of the donors (“PM”) did not get any money whatsoever being left in complete financial despair. Only due to the courtesy of the family of the recipients being grateful for saving her life he got a tip in amount of 1000 USD. It also appears that **Y.A.**, the young Turkish man, did not receive any remuneration either. Such behaviour smacks clearly of fraud.

On top of that, the donors were deceived into thinking that kidney transplantation was legal in Kosovo. This was an important concern to several of them as they did not want to commit any criminal offence. Several of the donors and recipients testified that on a number of occasions they asked the “fixers” about the legality of the operations. They were all told that it was perfectly legal.

Moreover, the statements of both donors and recipients depict the international scale of this criminal ring, starting with “fixers” who recruited vulnerable victims in poor, mostly Eastern European countries, then continuing with intermediaries in Istanbul who facilitated the logistical arrangements and finishing with wealthy recipients who were willing to pay thousands of Euros/dollars for a kidney transplant in far away Kosovo. The system proved to work surprisingly well and all donors and rich recipients ended up on the surgical tables in the operational theatre in the Medicus Clinic located on the edge of Europe. With the testimony it was proven that this system was propelled by flows of considerable amounts of

money that was paid either in cash directly to the clinic, or to the organisers, or by bank wires by desperate clients who frantically searched for a ray of hope for healthy life.

In addition, these invaluable testimonies showed that the most important figures in this criminal scheme were **Y.S.** as the leading, skilful surgeon; **M.H.** talented recruiter and organizer who developed the network of fixers searching for potential donors; a team of Israeli citizens, currently facing criminal prosecution, who directed potential recipients to **M.H.** ; and the local team in Pristina that finally made this system operational. It is more than obvious that without these medical personnel and its managers in Kosovo this endeavour would not work succeeded.

As mentioned before, the panel considered all statements of donors, recipients and their family members as fully credible and convincing, since the statements are consistent, detailed and without significant discrepancies. In this regard, it is important to note that the witnesses were virtually all strangers to each other, so there can be no claim that they collectively concocted false testimony. This fact lends even more credence to their testimony. Moreover, these accounts are in fact fully corroborated by other unambiguous evidence.

#### **D. Corroborating Evidence**

##### **1. Forensic Medical Expertise Prepared by Dr. C.B. regarding Donors D.S. and A. K.**

First on list of evidence that corroborates the eyewitness testimony of the donors and recipients is the Forensic Medical Report prepared by **C.B.** regarding kidney donors **D.S.** and **A. K.** Expert witness **C.B.** is employed by the EULEX Department of Forensic Medicine and is an expert in Forensic Medicine. **C.B.** handed over her CV to the panel and explained that she graduated in medicine in 1995, after which she had 4 years specialisation in forensic medicine. After an additional 5 years of experience, she passed an examination to become a senior forensic expert. She has worked in the forensic field for 15 years, and has numerous other credentials. She is a member of International Academy of Forensic Science and there are references contained within the CV. She is an international expert of EULEX.

She authored two reports. The first is the report of **AK.** The expert examined this witness on 15<sup>th</sup> April 2011 with the purpose of conducting a medical assessment including physical examination, ultra sound and CT to determine if the patient has both kidneys or a single one. The CT scan of the patient shows the image of the right kidney, but on the left side there is no kidney. **C.B.** also made a scan of the abdomen and pelvis, and again no left kidney was observed. The CT scan also revealed some metal clips, one of them situated next to the left artery leading to the kidney. This means that the artery was cut and a clip was attached for purposes of closure. It can also be seen in the lower part of the pelvis that a second metallic clip was applied, meaning that the urethra was also cut and surgically removed. Thus, the left kidney is missing and there are two metallic clips inside of the body of the patient which means the kidney was surgically removed.

Asked whether she discovered any evidence of disease or pathology which might explain the missing left kidney, **C.B.** said that she found no sign of trauma or diseases. From all the examinations, she did not find any medical condition that could justify the removal of the kidney as treatment. The forensic opinion of **C.B.** was that the surgery was performed in order to collect a healthy kidney.

As far as **D.S.** is concerned, the expert witness tested him on 25<sup>th</sup> July. The blood analyses showed that the creatinine was in the upper level. This indicates that the filtration of toxins is not exactly right. C.B. also performed a CT scan of the abdomen and pelvis to cover all areas, and the CT scan shows that the left kidney is missing and that metallic clips have been applied. There was no sign of any pathology inside the abdomen. The expert's opinion was that the left kidney had been surgically removed without any pathology to justify the removal.

Also both patients presented a surgical scar on the skin typical of kidney surgery which strengthened her conclusions. **C.B.** was asked whether the physical examination was consistent with the removal of a kidney for purposes of a transplant. She explained that in both cases a healthy kidney was surgically removed without any medical condition to presume the need for treatment for a medical condition. When a healthy kidney is collected from a healthy person, the purpose is to transplant to another person. Also, for transplant purposes, as in the cases of **AK** and **D.S.**, the left kidney is used. The left artery and vein are longer and this makes them more appropriate for a transplant.

C.B. was asked whether she is able to determine the time when the surgery to remove the kidney was conducted regarding **AK** and **D.S.** She explained that she cannot say a certain date, but she can say that it is not possible that it was conducted 6 years ago. That is too distant. The date range for **D.S.** and **AK's** surgery can be determined approximately by evaluating their abdominal scars. The time range would be more than 6 months and up to 5 years.

This forensic medical expertise was considered as highly reliable by the panel as it presented a clear line of medical reasoning. Moreover, the opinion of expert corroborates the testimony of **AK** and **D.S.**

## **2. C.B and D.S's Forensic Medical Reports Regarding Kidney Transplants at the Medicus Clinic in 2008**

On 29 May 2012, the court issued an order for medical expertise to C.B. and D.S., both forensic medical doctors at the EULEX Department of Forensic Medicine, with the purpose to establish the following, based on all medical books, all medical records, and any other relevant documents and evidence:

-whether any kidney transplants took place at Medicus clinic, and explain the basis for this opinion,

-if such transplants occurred determine how many, identify donors and recipients by name and other identifying information, such as age, gender, and nationality,

-determine what medical tests were performed prior to surgery for donors and recipients,

-determine the dates of surgery for donors and recipients,

-establish a match for each donor and recipient,

-determine the outcome of the surgeries,

-determine the medications used for both donors and recipients, and explain the purpose,

-identify the doctors and other medical personnel who participated in each of the surgeries, and

-determine the procedures they performed.

The reports prepared by the doctors in response to this order are among the most important reports in the entire case. C.B. assumed responsibility for analysing all surgical cases from March, June, August, October and November 2008; while D.S. assumed responsibility for analysing all surgical cases from May, July and September 2008. (There were no cases from April 2008.) In conducting their analysis, they reviewed a vast amount of documentary materials seized from the Clinic, including anaesthesia logs, medical reports, lab reports, and various protocol books, as well as police reports, flight manifests, trial testimony and other sources of information, all as outlined at the beginning of their reports.

While all sources of information were useful, the anaesthesia logs were a treasure trove of important information. The logs were a contemporaneous record kept by the anesthesiologists in real time during surgical procedures, and was part of their official responsibilities. For this reason the panel accords a high degree of accuracy to these logs. The logs were completed for each patient, and included, among other things, the patients name, the date of surgery, the anaesthesiologists who participated in the surgery, the surgeons who conducted the surgery, and the type of surgery.

After analysing all the information, the medical experts were able to prepare profiles for each patient, which included such data points as name, date of birth, arrival and departure dates at the Medicus Clinic, date of surgery, time of anaesthesia, time of surgery, type of surgery, the anaesthesia team, the surgical team, blood test results, medications received, and status as a donor or recipient.

They concluded that kidney transplants did take place at the Medicus Clinic, and they were then able to match kidney donors with kidney recipients. They presented their findings in both written and graphical form. The graphs (or charts) include all of the important information for each matching pair of donor and recipient on a single page for easy reference.

There were 24 confirmed cases of kidney transplants from donor to recipient in 2008: one in March, two in May, five in June, seven in July, three in August, three in September, and three in October. There was yet another possible kidney transplantation in September, but due to incomplete data, the experts were not able to discover who the recipient was. Each case required surgical intervention on the donor and surgical intervention on the recipient, for a total of 48 interventions. The donors and recipients were in the operating room at the same time, and were operated on sequentially. There were matches for all of the donors and recipients who testified during the trial, as well as matches for the numerous other donors and recipients who could not be located.

Because of the rigorous and sophisticated analysis undertaken by the medical experts, the court accords high credibility to their findings and conclusions. Given the importance of the medical expertise in understanding this case, the charts are reproduced in Annex 3 and incorporated into this judgment as findings of fact by the court.

### 3. Graphical Representation of the Surgeries Performed by Each Doctor

Based on the medical expertise, the chart below shows which doctors participated in each of the kidney transplant surgeries at the Medicus clinic from 8 March 2008 to 31 October 2008, the time frame covered by the indictment. In the bottom line of the chart, the number of transplant surgeries for each doctor is totalled.

Transplant surgery dates:	Doctors:	Y.S.	K.D.	L.D.	D.J.	R	E	S.H.	S.D.	I.B.
		08.03.2008	V	X		X				X
	R	X	X					X	X	X
11.05.2008	V	X		X				X	X	X
	R	X			X			X	X	
15.05.2008	V	X		X				X	X	X
	R	X			X			X	X	X
04.06.2008	V	X		X				X	X	X
	R	X	X					X		X
05.06.2008	V	X		X				X	X	X
	R	?	?	?	?	?	?	?	?	?
06.06.2008	V	X			X			X		X
	R	X			X			X	X	
19.06.2008	V	?	?	?	?	?	?	?	?	?
	R	X	X	X				X		X
20.06.2008	V	X	X					X	X	
	R	X	X		X			X		X
02.07.2008	V	X		X	X	X		X	X	
	R	?	?	?	?	?	?	?	?	?
03.07.2008	V	X		X		X		X	X	X
	R	?	?	?	?	?	?	?	?	?
22.07.2008	V	X	X	X				X	X	
	R	?	?	?	?	?	?	?	?	?
23.07.2008	V	?	?	?	?	?	?	?	?	?
	R	X	X	X	*			X	X	
24.07.2008	V	X		X				X		X
	R	X						X		X
29.07.2008	V	X		X				X		X
	R	?	?	?	?	?	?	?	?	?
18.08.2008	V	X	X	X				X	X	
	R	X						?	?	?
19.08.2008 I	V	X	X					X	X	
	R	X						?	?	?

19.08.2008 II	V	X	X	X				X	X		
	R	?	?	?	?	?	?	?	?	?	
09.09.2008	V	X	X					X		X	
	R	X	X					X		X	
27.09.2008	V	X		X	X	X		X	X		
	R	X	X		X			X	X		
29.09.2008	V	X			X			X		X	
	R	X			X			X	X		
21.10.2008	V	X			X	X		X	X		
	R	X			X			X		X	
26.10.2008	V	X	X			X		X	X		
	R	X	X				X	X		X	
31.10.2008	V	X		X				X	X		
	R	X	X		X			X		X	
<b>TOTAL</b>		46	38	16	16	13	5	1	36	33	21

Notes:

1. \* - One “Dr. B” appears – not identified
2. - V – victim, R – recipient;
3. - X – surgeon; X – anaesthetist; ? – unknown.

#### 4. Entry and Exit Data of Donors, Recipients, Foreign Doctors and Others

During the main trial, the panel acquired information from the Kosovo Border Police on entries and exits of Medicus patients, international doctors involved in kidney transplants, recipients, and in particular the record on **M.H.** and **Y.S.** The so-called Pisces Report is a crucial piece of evidence which corroborates other evidence and supports the allegation that kidney transplants took place on an unprecedented scale at the Medicus Clinic, and that the donors were victims of trafficking.

The entry and exit dates for **M.H.**, **Y.S.** and **K.D.** are nearly identical on the Pisces Report. The Report also supports the evidence of the donors and recipients as to when they arrived, when they left, whom they were with, and the claim that **Y.S.** was a surgeon on every operation. Additionally, this report is clear evidence of “*three or more persons acting in concert together*” and accordingly supports the counts of organized crime and trafficking.

The collation of entry and exit records was presented by SPRK in graphical form that is worth presenting also in the written judgment.

Nr.	Name	Nationality	Entry Date	Exit Date	Observations
1	MY	Israeli	04.06.2008	10.06.2012 ?	Exit date 10.06.2008 as per medical record (C.B. Rep)
2	AO	Israeli	19.06.2008	24.06.2008	

3	FE	Turkish	03.07.2008	07.07.2008	
			22.07.2008	03.08.2008	
			08.09.2008	14.09.2008	
			26.09.2008	04.10.2008	
4	AG	Turkish	22.07.2008	27.07.2008	
5	EM	Israeli	22.07.2008	27.07.2008	
6	AR	Moldovan	24.07.2008	29.07.2008	
7	VS	Russian	24.07.2008	29.07.2008	
8	YC	Turkish	29.07.2008	02.08.2008	
9	AA	Russian	18.08.2008	05.08.2008 25.08.2008	Entry date and alternative exit date as per medical records (C.B. Rep.)
10	VV	Russian	18.08.2008	23.08.2008	Entry date as per medical records (C.B. Rep.)
11	PM	Ukrainian	08.09.2008	12.09.2008	
12	LP	Israeli	27.09.2008	29.09.2008	
13	MG	Ukrainian	27.09.2008	01.10.2008	Entry date as per medical records (D.R.S. Rep.)
14	DS	Kazakhstani	21.10.2008	25.10.2008	
15	AK	Belorussian	26.10.2008	31.10.2008	
16	YA	Turkish	30.10.2008	04.11.2008	
			dep. delayed	19.11.2008	
17	PS	Kosovan	01.04.2008		
18	AG	Turkish	22.07.2008	27.07.2008	
19	JS	No record	19.08.2008	No record	Information from medical records (C.B. Rep), no data from PISCES
20	AM	No record	19.06.2008	No record	Information from medical records (C.B. Rep), no data from PISCES

21	AR	Ukrainian	07.03.2008	10.03.2008	
			10.05.2008	18.05.2008	
22	MM	Israeli	04.06.2008	10.06.2008	
23	YD	Israeli	04.06.2008	12.06.2008	Exit date results from medical records (C.B. Rep)
24	SY	Israeli	19.06.2008	26.06.2008	
25	EK	Turkish	19.06.2008	25.06.2208	
26	LS	Israeli	02.07.2008	08.07.2008	
27	TS	Polish	22.07.2008	28.07.2008	
28	GV	Israeli	22.07.2008	28.07.2008	
29	R.F.	Canadian	24.07.2008	30.07.2008	
30	WJ	German	24.07.2008	30.07.2008	
31	YD	Israeli	18.08.2008	26.08.2008	Information from medical records (C.B. Rep.), No entries in PISCES
32	DE	No PISCES record			
33	KT	No record	19.08.2008	No record	Information from medical records (C.B. Rep.), No PISCES entry
34	IB	Israeli	08.09.2008	14.09.2008	
35	AN	Israeli	27.09.2008	02.10.2008	Information from medical records (D.R.S. Rep)
36	NM	Israeli	27.09.2008	05.10.2008	
37	DZ	Israeli	19.10.2008	27.10.2008	
38	RK	Israeli	26.10.2008	02.11.2008	
39	BS	Israeli	30.10.2008	19.11.2008	
40	YF	No record found			
	EF	Israeli	02.07.2008	08.07.2008	
41	EB	No record	29.07.2008	04.08.2008	Information from medical records, no PISCES entry
42	ID	No record found – see Yishai Damari at 31			

			above		
<b>43</b>	<b>FB</b>	<b>Ukraine</b>	<b>07.03.2008</b>	<b>10.03.2008</b>	<b>Information from medical records (C.B.), no PISCES entry</b>
<b>44</b>	<b>M.H.</b>	<b>Israeli</b>	<b>24.07.2008</b>	<b>30.07.2008</b>	
			<b>?</b>	<b>23.08.2008</b>	
			<b>08.09.2008</b>	<b>09.09.2008</b>	
			<b>26.10.2008</b>	<b>27.10.2008</b>	
			<b>30.10.2008</b>	<b>?</b>	
<b>45</b>	<b>MR</b>	<b>No record found</b>			
<b>46</b>	<b>MS</b>	<b>Israeli</b>	<b>30.10.2008</b>	<b>12.12.2008</b>	
<b>47</b>	<b>ES</b>	<b>Israeli</b>	<b>30.10.2008</b>	<b>19.11.2008</b>	
<b>48</b>	<b>YE</b>	<b>Turkish</b>	<b>08.01.2008</b>	<b>10.01.2008</b>	
			<b>09.02.2008</b>	<b>10.02.2008</b>	
			<b>07.03.2008</b>	<b>?</b>	
			<b>12.03.2008</b>	<b>29.03.2008</b>	
			<b>10.05.2008</b>	<b>?</b>	
			<b>04.06.2008</b>	<b>11.06.2008</b>	
			<b>19.06.2008</b>	<b>26.06.2008</b>	
			<b>02.07.2008</b>	<b>06.07.2008</b>	
			<b>08.07.2008</b>	<b>10.07.2008</b>	
			<b>22.07.2008</b>	<b>03.08.2008</b>	
			<b>?</b>	<b>25.08.2008</b>	
			<b>08.09.2008</b>	<b>14.09.2008</b>	
			<b>26.09.2008</b>	<b>04.10.2008</b>	
			<b>19.10.2008</b>	<b>23.10.2008</b>	
			<b>25.10.2008</b>	<b>29.10.2008</b>	
<b>31.10.2008</b>	<b>?</b>				
<b>49</b>	<b>KD</b>	<b>Turkish</b>	<b>07.03.2008</b>	<b>09.03.2008</b>	
			<b>08.05.2008</b>	<b>?</b>	
			<b>04.06.2008</b>	<b>06.06.2008</b>	
			<b>19.06.2008</b>	<b>21.06.2008</b>	
			<b>02.07.2008</b>	<b>?</b>	
			<b>22.07.2008</b>	<b>25.07.2008</b>	
			<b>08.09.2008</b>	<b>09.09.2008</b>	
			<b>26.09.2008</b>	<b>?</b>	
			<b>25.10.2008</b>	<b>?</b>	
			<b>31.10.2008</b>	<b>01.11.2008</b>	
<b>50</b>	<b>SA</b>	<b>Israeli</b>	<b>15.05.2008</b>	<b>19.05.2008</b>	<b>Information from medical records (D.R.S. Rep)</b>
<b>51</b>	<b>T</b>	<b>Turkish(?)</b>	<b>08.03.2008</b>	<b>12.03.2008</b>	<b>Information from</b>

The below chart presents the same data in a different format. It shows the regularity of visits to Kosovo by Y.S. and L.S. in relation to the various transplant operations. The matches are precise.

	March 2008																															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
Y.S.																																
K.D.																																
"T"																																
F.B.																																

	May 2008																															
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
Y.S.																																
K.D.																																
R.O.																																
"R"																																
A.H.																																
"S"																																

	June 2008																														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	
Y.S.																															
K.D.																															
M.Y.																															
M.M.																															
Unknown																															
"E/S"																															
"AN"																															
Y.D.																															
A.O.																															
S.Y.																															
M.A.																															
E.K.																															

	July 2008																																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1/8	2/8	3/8	4/8	
Y.S.																																				
K.D.																																				
"A"																																				
S.L.																																				
Unknown																																				
E.F.																																				
M.E.																																				
S.T.																																				
A.G.																																				
G.V.																																				
V.S.																																				
F.R.																																				
R.A.																																				
W.J.																																				
B.E.																																				
Y.C.																																				

	August 2008																																		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				
Y.S.																																			
K.D.																																			
AA																																			
LD																																			
JS																																			
DE																																			



origins of kidney transplantations in Medicus and the arrangements that led to trafficking in persons on international scale.

Based on the order of the Judge of the District Court of Pristina, the interception of telecommunications was ordered, and through diplomatic channels the request was transferred to USA since the servers used to exchange emails, namely Google and Yahoo, are located in that country. The panel received the full exchange stored in electronic form as a result. The emails were decoded in a report prepared by IT expert K.U. who testified in person on 13 June 2012. The expert presented his report which was admitted into evidence.

These emails show the extensive preparation and collaboration between **Y.S.** and **L.D.** regarding kidney transplants at the Medicus Clinic. They also shed light on the role of **S.H.** and others.

On 13 December 2007, **Y.S.** emailed **L.D.** and wrote

*Hi, As I promised I send you all the documents (original + English from the notary)... I hope to get the result soon. I would like to thank you one more time for everything. All my best. Y.S. . PS: I send you in 2 mails.*

Attached to the email were the following documents: Identification card information; Education certificates: University Diploma (Medicine); Certificate of Associate Professorship (General Surgery); Certificate of Expertise – General Surgery; Curriculum Vitae (mentioning that between years 1986 and 2006 he carried out more than 2350 kidney transplantations, of which 91 from cadaver donor).

On 21 December 2007, **L.D.** in response sent an email to **Y.S.** stating

*Greetings from Pristina. Could you please send as soon as possible the following documents: License to practice as a Doctor and Certificate that you are working as a doctor and where you are working. Best Regard L.D.*

Then on 22 December 2007, **Y.S.** replied to **L.D.** :

*Dear L.D., I am now in Lithuania and will be in Istanbul Tuesday. What I understood you want from the Turkish Medical Association my “doctor card”. This proves that I do my job as a doctor in Turkey. And meanwhile I will try to send you a paper which I will ask to the notary to translate into English a paper that I am working as a doctor. But as you know I was working in a private hospital. So the doctor ID card and the paper from Turkish Medical Association will be enough for you. I do all this stuff next week and will send you by e-mail. The patients are already waiting for the 20<sup>th</sup> of January... All the best. Y.S. ”*

Further, on 25 December 2007, **Y.S.** wrote

*Dear L.D., Here are all the documents you have asked me in Turkish and translated into English by the Notary. Good luck to you and all the best. Y.S.*

The following documents were attached to the email: Certification of membership and of practice issued by Chamber of Medicine of Istanbul, Turkey; Certificate of employment as General Surgeon specialist issued by Hospital **Y.S.**, Istanbul, Turkey.

Based on the testimony and evidence before the court these emails alone would suggest that in late 2007 **L.D.** was now obviously well along the path to getting **Y.S.** to come to Kosovo to perform medical procedures. **Y.S.** was and is a well-known practitioner of kidney transplants. On 30 January 2008 an invoice and packing list was sent including “a dialysis machine, filters for dialysis machine” it then went on to say “transport by air”. This invoice was addressed to Klinika Urologjike Medicus Kosovo; an invoice priced these goods transport at 7260 USD.

A later email also mentions **S.H.** On 13 February 2008 at 15:33 **Y.S.** recommended to **L.D.** that **S.H.** as anaesthetist, be consulted with regard to the securing of substances needed for the performance of operations (SEVORANE, FORANE etc. which are both anaesthetics used for patients):

*Dear L.D., I have forgotten to discuss with you another matter: if you remember the anaesthetist S.H. had told that you don't have SEVORANE vaporizer, nor the medicament. (...) could you please ask Y.S. if he can bring the 2<sup>nd</sup> machine with FORANE or should I bring FORANE vaporizer for Drager machine from Turkey?*

**L.D.** then replied on 15 of February 2008 at 20:32 with

*Dear Y.S., For the DRAPES we will talk again when you come to Kosova. K.D. is welcome here. S.H. said we have two aesthetic machines but we only have one FORANE vaporizer for Drager, so you can bring one FORANE vaporizer. Please tell me exactly when will we make the operations.*

These emails prove that there was a longstanding agreement between **L.D.** and **Y.S.** to conduct transplantation of human organs in Kosovo and this agreement involved sharing of costs, resources, equipment, surgical personnel and anaesthesiology personnel.

On 29 April 2008 at 13.33 **L.D.** emailed **Y.S.** stating;

*Dear Y.S., According to the commission everything is ok with the Hospital and that we can get license without any further problems. Now we are just waiting for the minister of health to sign the license. Best wishes, L.D.*

And on 6 May 2008 at 13:14 from **L.D.** to **Y.S.** stating

*Dear Y.S., The board has decided to give us the license, we now are waiting to get the license by the end of the week. All the Best, L.D.*

The time sequence would clearly suggest that **L.D.** was speaking about the license for cardio surgery issued by Ministry of Health on the next day 7 May 2008.

Several emails between **L.D.** and **Y.S.** provide compelling evidence as to the due preparations and preliminary arrangements that were made in order to carry out kidney transplant operations, as well as to the material benefit that would result therefrom.

On 6 January 2008 10:33, **L.D.** to **Y.S.** :

*We are waiting for you in 20<sup>th</sup> January. You can bring everything what you need. We can continue as discussed. Best regards, L.D.*

6 January 2008 18:49, **Y.S.** to **L.D.** :

*As you see I stay 1 day in Pristina... I expect to get my work license and the permission to make transplantations while returning back and I will give you the list of the equipment. (...)*

This email exchange evidences the fact that kidney transplants were being discussed long before the arrival of the first recipients or victims. This was a plan that was long in the making.

Further emails on 20 January 2008 (19:15), 21 January 2008 (19:14), 22 January 2008 (22:11), 23 January 2008 (14:20), 30 January 2008 (11:24), 12 February 2008 (12:09), 13 February 2008 (15:23) and others show **L.D.** and **Y.S.** discussing the conditions for acquiring (local acquisition or import from Turkey) the necessary materials for transplant operations including curtains, aprons, vaporizers, lights, operation tables, haemodialysis machine and other medical equipment. On 30 January 2008 (18:08), **Y.S.** sends **L.D.** an email to which he attaches the invoices, customs and transport documents for medical equipment and substances to be transported from Turkey to Kosovo, for the purpose of transplant operations.

E-mails regarding finding patients (donors and receivers of organs) and preparing documentation:

22 January 2008 (22:11) **Y.S.** writes to **L.D.** :

*Dear L.D., tomorrow I will try to send you all that you need. Meanwhile I prepared enough patients for many weeks : ) all the best, Y.S.*

23 January 2008 (14:20) **Y.S.** writes to **L.D.** :

*(...) I plan to come this Monday or Tuesday for 1 day to talk for the last time before the operations. I plan to make 2-3 operations like 7-8 or 9<sup>th</sup> of February if you accept. The patients are fine without any serious problem. Easy cases! Together with me I plan to bring some of the medicaments and instruments without any paper. So I need someone to meet me in the airport to help me because I could have problems with the custom control. For these first cases we will not have probably Haemodialysis support with us in the hospital so if we need we must get this help from out of the hospital; I mean if the patients need haemodialysis they must be sent to some haemodialysis center in Prishtina. (...)*

5 February 2008 - **Y.S.** writes to **L.D.** :

*Dear L.D., I have bought my ticket: we are coming this Saturday 09.02.2008 landing at 14:15 at Pristina together with the technician. (...) Also I try to bring more instruments and medication which we will need in the future. I ordered yesterday some items which I would like you to buy for these 2 cases. Because after I left in couple of days I will come as I have told you one more time and more and more I expect : )))*

*I will bring also some documents that probably we need to prepare in between us and for the patients. By the way I will be happy to be there three or more time as I have told to many people here. I am lucky to meet someone as YOU are whom even I do not need to talk*

*because I feel WE are very similar persons and even without talking we understand PERFECTLY each other. Thanks a lot for your friendship L.D. All my best, Y.S.*

These emails are all indicative of the planning that went into these transplants, the parties involved, their knowledge of what was going to be undertaken and their wholehearted participation in these plans. There can be no doubt that **A.D.** and **L.D.** were well aware of what they were involved in.

On 13 February 2008 (15:23) **Y.S.** writes to **L.D.** an email which reveals that the transplant operations had been planned with a view to making profits and a possible extension of the activity was foreseen to the transplantation of other organs.

*Dear L.D., 1. After discussing with many people finally I have got a good offer from a Turkish company (...). 2. Yesterday K.D. came to my hospital and we talked a lot. He wants also to come to the operations and for our cases and for General Surgery cases from the beginning. I have told him about what we talked in between you and me about the money. **So he will not touch to your money but we will share me and K.D. my part** . I think it is good because starting from the end of February we will have really many many patients and we need to work like 2 tables. And as I have told you I would like to start also LIVER! So I need a general surgeon any case to help me. That's why trust me it is good. I wait for your mail to plan my things. All the best. Y.S.*

From the emails it is more than clear that money was a key aspect of this relationship and was the real reason these men were involved in this organised criminal activity.

On 15 February 2008 **Y.S.** emailed **L.D.** regarding the problems concerning matching compatible patients (“couples”) which again shows A.D.’s knowledge and participation in the organised criminal acts :

*Dear L.D. I would like you know that I do of my best to come as soon as possible. For the moment my only problem are the “couples”! As you know it is quite difficult to cross the couples. There are many patients and when we start the first one I am sure that we will have more than expected! Do you remember what I have asked you? You told me that you will try to find... We need that one especially in the future! I wanted very much to be there on the day of your INDEPENDENCE! I wish we will celebrate one more time after I come. I tried to send several SMS to A.D. but I didn't get any answer from him uptill now. Could you please remind him to check his mail box. I would like him to check one more time what we have and what we do not have. I have sent him a list. All the best. Y.S.*

On 4 March 2008 **Y.S.** wrote to **L.D.** an email concerning other formalities necessary to simulate the legality of consent and ensure protection against liability, including the so called “ethical committee”:

*Dear L.D. Finally we are coming this Friday. I will let you know the details later. But as I have told you before I stay in hospital and the technician K.D. too... Probably K.D. will come also! Please as I have told you before we need the what so-called “ethical committee” which consists of at least 3 persons. 1 lawyer-notary, 1 from the hospital (could be A.D.) and the last one fairly talking I prefer the brother in law of **L.D.**, clarification added. I have told you the reason before. But I still respect you as the boss of the hospital so you have, you must have the “LAST WORD”! I bring with me the “vaporizer”. And some other medication that*

*we need (they are not expensive). So we will work on Friday or Saturday! Or may be 1 Saturday and 1 Friday according to the performance of the team.*

*Please do not forget to turn the “heating” ON of the second floor and the intensive care unit even from Wednesday! I don’t want the patients to get common cold :)*

*I will bring with me the “example” of operating covers which will cost less than 25 each one I believe!*

*Good luck for everybody. All the best, Y.S.*

The panel finds that these emails between **Y.S.** and **L.D.** are of great probative value regarding the relationship between these two men, and their extensive planning for transplant surgeries. They also show knowledge and active involvement on the part of **A.D.** had and how preparations for the transplants were set in motion long before the first operations in March 2008.

#### **b. L.D. and M.B.**

Another set of emails is important with regard to the communications between **M.B.** and **L.D.**

**L.D.** sent an mail to **M.B.** regarding kidney transplants (22 March 2008, 14:42) – in German (unofficial translation)

*For the past 2 weeks I have been talking with many cardiologists. I hope that this week we shall start working. I wanted to know what T.B. said. We could also start with dialysis. I discussed with people here in Kosovo and in Turkey as well. We started to carry out kidney transplants. The first case has been done already. Another one shall be done on the 28<sup>th</sup> this month. If you want to sell your shares, we could discuss about it. For anything I shall contact you next week. (emphasis added)*

*Happy Easter to you and your family.*

*L.D.*

This particular email is striking evidence of the knowledge of **L.D.** that transplants were being undertaken in March 2008 and that he was deeply involved in organizing the transplants. He knew when transplants had been undertaken and when they would be undertaken in the future. It is obvious that after one kidney transplant he anticipated earning enough money to allow him to buy out **M.B.**’s shares and continue to reap a significant profit for himself.

On 23 March 2008 an email regarding organisational and license problems at the clinic and **T.B.**’s resignation was sent by **M.B.** to **L.D.** (23 March 2008, 07:29) – in German (unofficial translation).

*Hello L.D.*

*As established I am sending you T.B. statement to which I have specific questions. Seems that in the meantime, the clinic is terminated? Has the clinic in the meantime (obtained) a license for cardiology? Please send me a copy by fax. What did A.D. actually do? The evaluations that he sent me were always upon my request and never spontaneously as we agreed. They never appear to be plausible excuses. How often did T.B. go to Voustry? Moreover, I would be grateful if you could answer my questions from yesterday. I shall be still in Berlin by Wednesday and I would propose to discuss further over the phone then.*

*Many greetings*

*Happy Easter*  
*M.B.*

(Forwarded message that follows is in English):

*From: T.B.*

*Date: Mon, 10 Mar 2008 16:14:30*

*To: M.B.*

*Subject: Re: cardio medicus*

*Dear Professor,*

*No, I did not want and I did not need to explain the reasons.*

*You ask, and I have collegial and moral obligation to explain. Of course, if you want to read about it.*

*So, you can find this explanation in attachment. If you are not interesting, just do not connect attach file.*

*I am sorry for delay! Simple, I forgot!*

*My best regards*

*T.B.*

The attachment consists of a letter written by T.B. in which he explains his personal reasons for resigning from the Medicus clinic and discloses several deficiencies in terms of organisational and medical practice in the activity of clinic.

Excerpt (original in English):

*The equipments are old, rooms are outdated and there is a defective sewage system (Para. 6) Despite our warnings, L.D. has neglected for months the issue related to the application for licensing of the institution and the staff. He has reacted to this only after the unfortunate death three months ago (the death of the patient operated at the Medicus and the media "pressure" that followed).*

*Now we have a legal framework for functioning of private hospitals in Kosova, and I believe that this "Medicus" needs a thorough and immediate reformation, otherwise it will sink (with respect to cardiology and cardio-surgery). We have put forward our concerns to L.D. but couldn't convince him to act. This is why I have often asked myself whether L.D. is really dedicated to his Cardio-surgical Hospital or he views it only as a temporary annex for urology. (Para. 11, 12)*

*(...) They performed their first coronary angiography (the patient has requested for weeks his discharging list following the procedure). The second procedure ended fatally because the patient died in the catheterization room. This may happen, but what is not allowed to happen is the deletion of recordings from the computer attached to the angiograph, which is an unforgivable mistake (especially from the legal point of view). This has occurred my absence, the day I was doing a 24 hours shift at the University Clinical Center. It made me very angry!*

This exchange and the comments of **T.B.** show that **L.D.** was well aware of the licensing issues.

## 6. Signatures on Key Documents – Graphologist’s Reports.

During the course of investigation, the prosecution collected documents of significant importance, namely letters of invitation/guarantee from the Medicus Clinic that were intended to facilitate both donors and recipients to enter Kosovo. Additionally, through international channels of legal cooperation in criminal matters the panel acquired some deeds of donation, documents from the so-called ethics committee, and receipts for payment on Medicus letterhead. Since these documents contained hand written signatures of **L.D.** and **A.D.**, the panel sought handwriting expertise, then admitted into evidence the opinion of the expert witness on graphology.

Expert witness M.T. prepared three reports in written form and presented them during the main trial.

The first of M.T. reports was dated 18 January 2013. The expert had been requested to examine disputable documents and determine the author of handwritten signatures that appear thereon. The report puts forth the following conclusions:

- a) Documents submitted as evidence 1 to 6 (“MEDICAL REPORTS” regarding Y.S., D.E., “PERMISSION FOR KIDNEY TRANSPLANTATION” regarding Y.S., E.F., “DONATION ACT” regarding Y.S., E.F.) have not been examined due to the fact that they were fax prints and the hand writing did not have enough characteristics as to support a conclusion.
- b) With regard to the document entitled “STATEMENT” dated 18 December 2007 (Statement regarding administration of taxes) and submitted as evidence 7, the expert determined that the signature on the part where it was mentioned “A.D.” had been executed by **A.D.** (identification conclusive);
- c) With regard to the document entitled “AUTHORISATION” dated 14 February 2005 (Authorisation issued by M.B. to the lawyer F.B.) and submitted as evidence 8, the expert determined that the signature on the part where it was mentioned “AVOKAT-LAWYER – F.B.” had been executed by **A.D.** (identification conclusive).
- d) With regard to the document entitled “REQUEST” dated 20.06.2005 (the request to the Licensing Board of the Ministry of Health) and submitted as evidence 9, the expert determined that the signature on the part where it was mentioned “**L.D.**” had been executed by **L.D.** (identification conclusive).

In his second report of 10 February 2013, the expert had been requested to examine 6 documents (noted E#1 to E#6) and determine the author of handwritten signatures that appear thereon. The expert concluded the following:

- a) The signature on the documents entitled “MEDICAL REPORT” and “KIDNEY TRANSPLANT CLEARANCE FORM” (E#1 and E#2), both referring to the medical procedures for **Y.S.**, of “**L.D.**” may have been executed by **A.D.** (positive but uncertain conclusion); On the same evidence the expert concluded that said signature may have not been executed by **L.D.** (negative probability conclusion);

b) The document entitled “MEDICAL REPORT” dated 19.08.2008 regarding medical procedures for D.E. and submitted as evidence 3 (E#3), was not examined due to the fact that it had been a fax print. The handwriting did not have enough characteristics as to support a conclusion (without conclusion);

c) With regard to the signatures at the part where it was mentioned “F.B. – lawyer” on the documents entitled “KIDNEY TRANSPLANT CLEARANCE FORM” dated 19.06.2008 regarding transplant operation of Y.S. and submitted as evidence 2 (E#2) and dated 02.07.2008 regarding transplant operation of D.E. submitted as evidence 4 (E#4), the expert determined that there were insufficient identification or elimination features as to result in formulation of a conclusion (without conclusion);

d) With regard to the signatures on the part where it is mentioned “S.S – Psychiatrist” on the documents entitled “KIDNEY TRANSPLANT CLEARANCE FORM” dated 19.06.2008 regarding transplant operation of Y.S., submitted as evidence 2 (E#2); and dated 02.07.2008 regarding transplant operation of D.E., submitted as evidence 4 (E#4), the expert determined that they had not been executed by S.S. (negative certitude conclusion). This demonstrates the bogus nature of the so-called ethics committee.

e) The document entitled “DEED OF DONATION” dated 02.07.2008 regarding the patient E.F., submitted as evidence 6 (E#6), with regard to the signature near the name of R.R. – Notary lawyer, was not examined by the expert due to absence of samples for comparison.

In his third and final report of 25 February 2013 the expert had been requested to examine 19 documents noted #a to #s, representing guarantees issued by MEDICUS clinic and other documents, and to determine the author of the handwritten signatures that appear thereon. The report reached the following conclusions:

Regarding the documents entitled “KERKESE/request” dated 20.06.2005 representing a request to the Ministry of Health and submitted as evidence #h, the expert determined that the signature on the part where it was mentioned “**L.D.**”, had been executed by **L.D.** (identification conclusive);

Regarding the document entitled “GARANCION/guaranty” dated 20.10.2008 (for S.D.) and submitted as evidence #s, the expert determined that the signature on the part where it was mentioned “Dhinesi i garancionit” had been executed by **L.D.** (identification conclusive);

In relation to the documents submitted as evidence #a to #i and #j to #r, namely guarantees issued by the Medicus Clinic for patients (A.G., D.I., D.E., A.A., V.V., T.K., S.J., **Y.A.** (2 documents), S.B., A.K., R.F., A.R., J.W., V.S.), the expert determined that the signature on the part where it was mentioned “**L.D.**” had been **executed by A.D.** (identification conclusive);

The conclusions drawn in the report as well as the methods and equipment used in expert examination were presented before the court. There are no doubts that the expert witness conducted his duty in a professional manner with due diligence, using scientifically accepted methods. The conclusions were rightly justified and are accepted by the court.

The panel attached considerable weight to the opinion of this expert witness since it clearly shows, through verified signatures on critical documents, the considerable involvement of both **A.D.** and **L.D.** in the criminal enterprise.

#### 7. Other Witness with knowledge of the Activities at the Medicus Clinic

- a. **B.G.** He testified on 20 and 25 October 2011, and on 8 March 2013.

On 20 October 2011, **B.G.** testified that he is a licensed nurse. He worked part at the Medicus Clinic for a period of 5-6 months monitoring post-surgery patients. The chief of the Medicus Clinic was **L.D.** The witness was able to identify him in court. He did not know who managed the clinic, but knew that **A.D.**, the son of **L.D.**, worked at the Clinic. He had no contact with **A.D.**, and was unaware of his duties. **B.G.** worked in the intensive care unit on the first floor. He did not work on the ground floor. He worked 12 hour shifts which included 7-8 nurses. They were not told, and did not ask, what the surgeries were. He was not interested in knowing. He provided a statement to the police, but did not review it before testifying. He treated patients from foreign countries, but did not know which countries. Their communications were in English. One of the persons who monitored their work was **Y.S.** from Turkey who gave instructions in advance about therapy and treatment, and told them to take special care of his patients.

The total amount of actual time he worked at the Clinic during the five or six months of part time work equalled about one month. When he worked the day shift he would occasionally see **L.D.** who was there from 3 to 5 PM. He saw him upstairs but couldn't say how often. He did not notice a license posted on the wall, and wasn't familiar with the protocol book.

**B.G.** continued his testimony on 25 October 2011. He recalled giving a statement to the police on 4 November 2008, and he had a few moments to read his statement before testifying. He stood by his statement to the police. He can confirm that they were foreign patients. He does not deny that there were organ transplants, but the staff was not told that this was the case. The police asked how many kidney transplants took place, and he did not deny telling them 3-4 cases involving foreign patients. He was evasive about the source of this information, and it seemed clear that he was equivocating regarding his knowledge of kidney transplants.

He was able to recognize **L.D.** and **A.D.** , who was a manager; **S.H.** , an anesthesiologist who worked at Medicus; **I.B.**, an anesthesiologist who worked at Medicus; and **S.D.** , also an anesthesiologist who worked at the Clinic.

The nurses had no responsibility for cleaning and dressing surgical wounds. This was done by **Y.S.** whom he observed doing so 5-6 times. The surgical wounds were in the area of the abdomen.

The panel considered the statement of this witness as partially credible. The witness used to work in the clinic for considerable time and on regular basis, and as the male nurse he had direct contact with patients being responsible for taking care of them. It is common knowledge that post-surgical care requires change of dressings, so he had to know the type of surgical intervention conducted in every patient he look after. Besides, he was directly

instructed by **Y.S.** how to treat the patients, so the witness knew that the patients were subjects of kidney surgeries. The witness knew these were internationals as they did speak either Albanian nor Serbian. The panel drew an inference from his statements that this witness was aware that in Medicus kidney transplantations took place. The reason this witness was so evasive was that he was concerned he may face criminal prosecution for co-perpetration in these criminal acts.

**b. SH.M.** She testified on 10 November 2011.

**SH.M.** has been a registered nurse for ten years. She started working at the Medicus Clinic in 2004-05, and **L.D.** was her boss. **T.P.** was another local doctor working at the Clinic, in urology on the ground floor. **L.D.** was in charge of the urology department. On the first floor was a cardiology unit staffed by two German doctors who would come and go, and who would perform heart surgeries. She didn't know if the patients were foreigners.

She worked at the Clinic until it closed in 2008, but did not work full time. She worked only 2-3 hours at a time, and not every day, only when surgeries were conducted. Her job was to sterilize the surgical instruments, and in so doing she dealt with several doctors and the nursing staff. She was able to identify **L.D.** and **A.D.** in court. She saw **A.D.** several times at the Clinic, but did not know what he did. She was also able to identify **S.D., I.B. and Y.S.** as anesthesiologists working at the Clinic. She also recognized **D.J.**, whom she saw several times walking around the Clinic.

She did not work at the Clinic on the day the police arrived, but did work during late October. She was an attending nurse during surgery but does not know if the patients were foreigners. She remembers a Turkish doctor, **Y.S.** She prepared his instruments for surgery. She worked with him several times, but could not recall how many. He would perform surgery in relation to kidney illness, but she didn't remember if the surgery involved kidney transplants. She was never told to prepare instruments for kidney transplants.

The court took a recess, and the witness was given time to read her statement of 24 June 2010. She then recalled working with **Y.S.** around 20 times or more, on the first floor. She also recalled the other doctors who worked with **Y.S.**, including doctors **L.D., Y.S., S.D.** and **I.B.** **Y.S.** worked with these other doctors during surgery several times; it might be 20 times, but she didn't remember. **L.D.** was present several times during these surgeries—"a lot of them, some of them, almost every time." The anesthesiologists she identified were the only ones who worked with **Y.S.** The surgeries always took place on the first floor, cardiology.

She also saw **D.J.** working with **Y.S.** 10-20 times. She prepared the instruments. She did not know where the patients were from or who were operated on by **Y.S., D.J. and L.D.**

She was the only sterilization nurse at the Clinic, so she participated in all surgeries. She did not remember an occasion when two patients were in the surgery room at the same time.

She remembered seeing **D.J.** wearing green clothing which is required to enter the operating room. She stayed in the surgery room all the time during surgery. She did not recall helping **D.J.** put on gloves, and did not recall ever handing him any instruments, just **Y.S.** She was not aware that kidney transplants were taking place until she saw the news on TV. She cannot be certain about never seeing two patients in the operating room at the same time because it

was a long time ago, and she also works at the Pristina Clinic. She repeated that all of the accused except for **A.D.** and **I.R.** participated in the surgeries with **Y.S.**

The statement of the witness **SH.M.** is of crucial importance for this case. The witness provided eye-witness statements on the surgeries that took place in Medicus clinic, as the only sterilization nurse responsible for preparing medical instruments. It is fair to state that she took part virtually in every kidney extraction and transplantation in Medicus. The witness identified all surgeons and anaesthesiologists who operated on international patients. In this respect, the panel considered the testimony of this witness, after she was allowed to refresh her memory, as fully credible. Any initial prevarication on her part can be explained by her desire to avoid criminal responsibility.

c. **T.P.**. He testified on 15 November 2011.

**T.P.** started working at the Medicus Clinic as a urologist on the ground floor in 2003. He invested in the urology unit along with **L.D.**, approximately 40,000 Euros. He doesn't know anything about the first floor, the cardiology unit. He was hired by **L.D.** as an urologist, and performed the normal duties of an urologist. **L.D.** was the head of the clinic and handled administration on the ground floor, but he doesn't know anything about the first floor. He doesn't know if **L.D.** is qualified to perform kidney transplants.

He recognized **A.D.** whose duties at the Clinic were to keep the accounts, at least in relation to the ground floor. He recognized **S.H.** who worked as an anaesthesiologist whenever there was a need for surgical intervention, as well as **D.J.** and **I.B.** who worked as **S.H.**'s assistants. They were the only anaesthesiologists working at the Clinic as far as he knows, at least for the ground floor. He has no knowledge of any activity on the first floor. There was a small profit on his investment.

He is not aware of any foreign doctors working on the first floor, but German doctors came to the cardiology floor. He received a salary and the profit was shared equally—approximately 3-4 thousand monthly. Even though he had a financial interest in the Clinic, he never asked what was going on upstairs. He never saw any foreigners going to the cardiology clinic. He never met **Y.S.** or heard his name mentioned in the Clinic. He never participated in transplants abroad where he specialized of here in Kosovo. He doesn't know what is required. There was a transplant performed by Italian doctors at the gynaecological clinic, but urologists weren't invited.

The account of witness **T.P.** was considered by this panel as credible; at least the prosecution did not provide any grounds to come to different conclusions. During the investigation **T.P.** was a subject to the criminal investigation but the charges were dropped and investigation against him was terminated. This witness did not know anything about kidney transplantations in the clinic as he was not familiarized with criminal activities of his business partner **L.D.**

d. **D.I.** He testified in person on 11 September 2012.

**D.I.** who was a nurse at the Medicus Clinic also gave evidence on 11 September 2012. He worked at the University Hospital and from 2006/2007. He also worked part time at the Medicus Clinic on the second floor which he testified was the cardiography floor. He saw **L.D.** on the second floor and he also saw **Y.S.** there. However he himself was not in the

surgery theatre itself; indeed he was not allowed go in there as it was not in the scope of his work. When on occasion patients handed him money for the services performed by **D.G.** he handed that money on to **A.D.** “because when the shift ended I had to hand over the money”. This evidence again points to the key fact that **A.D.** was a major figure at the Medicus clinic. **A.D.** handled both the administrative and financial facets of the clinic.

Like many of the witnesses in this trial the witness was deliberately evasive when pushed regarding what exactly went on in the clinic by both the Prosecutor and the Judges. **D.I.** claimed as a nurse he was not aware of what type of medical procedures patients had been subject to as the nurses just provided post-operative treatment. It was obvious from the testimony of **D.I.** that he was worried and only admitted to knowing about one kidney operation which took place with **Y.A.**. To suggest that nurses could give post-operative care without knowing what the procedures the patients had been involved in beggar’s belief. he patients were placed under general anaesthetic and had open surgery over several hours. They then remained in the clinic for several days recovering and being cared for by the medical staff at the clinic. The nurses had to know exactly what operations were being performed.

**e. N.S.** He testified in person on 22 November 2011

The witness **N.S.** testified on the 22 November 2011. He was a medical technician at the Medicus clinic and was hired by **L.D.** who was the director of the clinic. He began work at the Medicus clinic when it opened. As a medical technician his tasks included “injections etc., tasks such as providing assistance to both doctors, **L.D.** and **T.P.** during their medical visits”. He also testified that **A.D.** was the accountant for the clinic. This witness also claimed to know nothing about operations on this first floor as he only worked on the ground floor.

**f. A.A.** She testified in person on 29 November 2011

**A.A.** testified in court on the 29 November 2011. She worked as a nurse at the Medicus clinic on the ground floor. She testified that **I.B.** was an assistant anaestheologist. Also she stated that payments were made through payment slips and these matters were dealt with by **A.D.** and that **L.D.** was the chief of the clinic. She also stated clearly that even on the ground floor (as this where she worked and therefore testified upon) **L.D.** was the chief and not **T.P.**

**g. I.A.** He testified in person on 29 November 2011

**I.A.** testified in court on 29 November 2011. He worked as a nurse at the Medicus clinic and he testified that **L.D.** was the chief at the clinic and that **A.D.** had offered him the position to work at the Medicus clinic. He worked upstairs on the first floor in the intensive care unit (ICU). His employment involved following “the cases or the case after surgery”. He was there “to keep an eye on the vital signs of the patients such as blood pressure, the pulse, this kind of thing”. This amounted to post-operative care. Some of the patients he dealt with spoke Albanian and some English. He testified that his previous statement given to the police was correct with regard to the fact “that two patients from different countries usually from Turkey or Israel always come.”

The issue of the witnesses testifying truthfully again arose with this witness. **I.A.** stood by his statement that “I have met four patients where it is suspected that kidneys were removed and placed in other patients who were under our care for five days”. He also agreed that he had seen **Y.S.** and two other foreign doctors. He saw **Y.S.** “quite often” at the clinic. It was once again clear that witnesses were very worried about telling the truth before the court. **I.A.**

testified that he had to dress and clean the scars in the post-operative phase of the patients' care according to **Y.S.**'s instructions. These scars were on the left side of the abdomen. On the day the police arrived at the clinic he was in the Intensive Care Unit (ICU) caring for a patient who "apparently had a kidney transplant". **I.A.** testified that **D.J.** worked on the first floor in surgeries including those with **Y.S.** as did **L.D.**, **S.H.** and **I.B.**

**h. R.D.** He testified in person on 29 November 2011

**R.D.** who is the son of **L.D.** and brother of **A.D.** testified before the court on 29 November 2011. He testified that he recalls meeting **Y.S.** at the Baci Hotel and that he first met him three to four months previously when he went to the Medicus clinic to deal with a computer problem and **Y.S.** introduced himself "on the second floor at the cardio ward" as the new surgeon from Istanbul working there. After that he saw him on several other occasions at the clinic before he met him again at the Baci hotel. **R.D.** established that the clinic was 'his fathers'. After the media arrived at the clinic **R.D.** received a call from **Y.S.** looking for him to return a rental car he had. **Y.S.** was afraid, this as he was involved in illegal kidney transplants in concert with the accused in this case.

**i. T.B.** He testified in person on 29 November 2011

**T.B.** testified in person on 29 November 2011. He is a cardiologist and he utilised the facilities at the Medicus clinic. He had communications with both **M.B.** and **L.D.** about working there and did so using their angiograph instrumentation. **A.D.** was the director at the clinic to the best of his knowledge; however, he never saw this in an official document. He was always paid in cash through one of the technicians and he was given 33% of the fee paid. He conducted his last examination at the clinic on 16 February 2008. **S.H.** was head of the anaesthesiology at the clinic **T.B.** stated. **D.J.** and **I.B.** who were anaesthesiologist provided "assistance in the ICU".

## 8. Metering of Telephone Calls

During the pre-trial phase, the then prosecutor obtained an order from the pre-trial judge for the metering of telephone calls involving **L.D.**, **A.D.** and **Y.S.** The metering demonstrates that there was ongoing contact between and among these perpetrators, and in particular it demonstrates the involvement of **A.D.** in the logistical aspects of this case. He was in constant contact with **Y.S.**, and he attended to many of the logistical and operational details, such as transportation, scheduling and obtaining the necessary supplies.

## 9. The "Ethics Committee"

**Y.S.** suggested to **L.D.** in one of their email exchanges that a so-called ethics committee must be created. He also suggested possible participants, including a lawyer/notary, someone from the Clinic (**A.D.**) and a third member, **S.S.**. The committee was created, at least on paper, and included attorney **F.B.**, **A.D.** and **S.S.** The ostensible purpose of the committee was to show that the donors were donating their kidneys for altruistic reasons or to a relative. All donors and recipients were required to complete a Kidney Transplant Clearance Form, often under duress, that they had appeared before the committee. The form was signed by the donors and recipients, and supposedly by members of the committee.

In fact, the committee was a sham. Not one donor or recipient testified that he or she ever actually appeared before an ethics committee, even though they signed the forms.. This whole procedure was concocted to make it appear that the kidney transplants were legal, when the perpetrators—**Y.S.**, **L.D.** and **A.D.** —knew they were not.

## 10. Letters of Invitation

Many of the donors and recipients were provided with letters of invitation from the Medicus Clinic in order to facilitate their entry into Kosovo in the event they were questioned by Border Police. These letters were ostensibly signed by **L.D.**, when in fact they were signed by **A.D.** These letters demonstrate that **A.D.** had an active role in the functioning of the Clinic with regard to the foreign patients who were scheduled for surgery at the Clinic.

## VIII. Summary of Essential Findings of Fact

Based on the voluminous and compelling evidence in this case as summarized above, the court finds that the following facts have been proved:

1. **L.D.** and **M.B.**, a German doctor residing in Germany, had a close personal and professional relationship, going back to the time of the war. After the war, in the early 2000s, they agreed to develop the Medicus Clinic. At the time, **L.D.** had set up a urology clinic on the ground floor, and they discussed the best utilization of the first floor.
2. **L.D.** expressed an interest in kidney transplants. However, **M.B.** was not in favor of such procedures because of poor post-operative care in Kosovo. Thus, they agreed to establish a cardiology clinic on the first floor.
3. Over time, **M.B.** had made a substantial financial investment in the cardio clinic, but rarely travelled to Kosovo, and was not present at all during 2008. He had no involvement with the ground floor urology clinic, and was not involved in any way in the illegal kidney transplant operations.
4. **L.D.** continued to be interested in the idea of performing kidney transplants at the Medicus Clinic. In 2005 or 2006, **L.D.** made inquiries at a conference in Istanbul about collaborating with a transplant surgeon who would perform kidney transplants at the Medicus Clinic. Eventually, **Y.S.** contacted **L.D.** and they began a collaboration.
5. **Y.S.**, a Turkish national, was an experienced transplant surgeon and had conducted well over 2,000 kidney transplants around the world. Indeed, he was notorious for allegedly conducting illegal transplants in various countries, which should have been well known to **L.D.**.
6. The purpose of the collaboration between **L.D.** and **Y.S.** was to conduct kidney transplants at the Medicus Clinic, and to do so for a financial profit. The financial aspect of this scheme was discussed in email correspondence between **L.D.** and **Y.S.**
7. In late 2007, **L.D.** assisted **Y.S.** in applying for a Kosovo license to practice surgery. **Y.S.** was granted a temporary license to conduct surgery in Kosovo by the Central Board for Licensing Non-Resident Doctors. The license was subsequently extended,

and covered the period in question. One of the conditions of his licensure was that the clinic itself must become licensed.

8. A different Board at the Ministry of Health—the Board of Licensing for Private Health Institutions—was responsible for licensing private health care institutions, such as the Medicus Clinic. The requirement that such institutions become licensed became operative in 2007 with the promulgation of an Administrative Directive.
9. The Medicus Clinic applied for, and received, a license from the Board for cardiology clinic (**M.B.**) on 7 May 2008.
10. In early 2008, **L.D.** submitted an application to the Board of Licensing for Private Health Institutions for a license for the urology clinic. However, a urology license was never issued at any time.
11. In addition to the fact that Medicus was never licensed as a urology clinic, it was likewise never licensed or authorized to conduct kidney transplant surgeries, despite the vigorous efforts of **L.D.** and **A.D.** . Indeed, article 46 of the Kosovo Health Law expressly prohibited human organ transplants.
12. The letter of 12 May 2008 from **I.R.** , chairman of the Board of Licensing for Private Health Care Institutions and Acting Permanent Secretary of the Ministry of Health, to **A.D.** was not a license or authorization; it was not intended to be a license or authorization; it could not reasonably be construed as a license or authorization; and it was never presented to donors, recipients or anyone else as a license or authorization.
13. **L.D.** and **A.D.** knew that the Medicus Clinic was not licensed or authorized to conduct kidney transplants. Indeed, they contacted the Ministry of Health in August 2008 to complain about the fact that the Ministry had not acted on their earlier request for a license to conduct transplants. Any claim that such a license or authorization had been issued is totally contrary to the weight of the evidence.
14. Nevertheless, **L.D.** and **A.D.** , with guidance and suggestions from **Y.S.**, set up a sophisticated medical facility with all of the necessary staff, equipment, supplies and procedures, with the purpose of conducting illegal kidney transplants. They also created a bogus ethics committee.
15. In 2008, 24 illegal kidney transplant were performed at the Medicus Clinic, starting on 8 March and ending on 31 October. Each one involved both a donor and recipient for a total of 48 separate, but contemporaneous, surgeries. The surgeries were all conducted on the first floor in the cardiology clinic, to which **L.D.** and his team had access, not the ground floor in the urology clinic.
16. **Y.S.** was the lead surgeon in all, or virtually all, of the operations. **K.D.**, also a Turkish national, was also involved in many of the operations. **L.D.** was involved in many of the operations, as was **D.J.**
17. **S.H.** was the lead anesthesiologist in virtually all of the operations. He was assisted by **I.B.** and **S.D.** , also anesthesiologists, in many of the operations. The anesthesiologist have different levels of involvement in what was occurring at the clinic, and thus different levels of criminal responsibility.
18. **S.H.**, as the lead anesthesiologist, interviewed all the prospective donors and recipients about allergic reactions and similar matters prior to surgery, and he obviously knew that they were all foreign nationals. This fact alone should have put **S.H.** on notice that something was wrong. He chose to ignore the obvious warning. As an active participant in the surgeries, he also knew that they involved kidney transplants. As a

- practicing physician, he should have been aware that kidney transplants were illegal in Kosovo and that Medicus was not licensed or authorized to conduct transplants.
19. The other two anesthesiologists simply showed up for surgery at **S.H.** direction, but they had to know that all of the transplant patients were foreign nationals, which should have aroused their suspicion. They also should have been aware that transplants of human organs in Kosovo was illegal
  20. The kidney donors who testified at the main trial were all foreign nationals from poor countries, generally in Eastern Europe, and were personally experiencing acute financial distress. They were recruited through the internet or through advertisements in newspapers, and were promised considerable sums of money for their kidney. They were easily susceptible to recruitment by skilful operatives because of their financial distress.
  21. After deciding to be a donor, they then had medical tests in their home country for suitability as a kidney donor, and once a potential recipient was found, they started their journey to Kosovo. The donors first travelled from their home countries to Istanbul, one of the primary places of operation of **M.H.**, the chief facilitator in this criminal enterprise. In Istanbul, they had further medical tests to confirm their suitability as a kidney donors. All logistical arrangements—hotels, meals, plane tickets, etc.-- were made by **M.H.** or other facilitators..
  22. Prior to leaving Istanbul, they were often given letters of invitation from Medicus which could facilitate their entry into Kosovo if they were questioned by customs officers. Typically, the letters said they were arriving for non-specific medical treatment. The letters bore the signature of **L.D.** , but were actually signed by **A.D.** as proven by the handwriting expertise, The donors were told to answer generally, and not to mention kidney transplants if questioned by the Border Police.
  23. From Istanbul, the donors all travelled to the Medicus clinic in Kosovo. Typically, the donors were met at the Pristina Airport by **A.D.** and driven to the Medicus Clinic. He was the manager of the Medicus Clinic and was involved in all non-medical phases of the Clinic, such as supplies, transportation, accounting, scheduling, and paperwork, and was intimately familiar with, and knowingly participated in, the illegal activities of the clinic. He maintained close contact with **Y.S.** as demonstrated by telephone metering.
  24. The donors were never given an explanation about the serious risks of kidney removal by anyone in their home country, in Istanbul or at the Medicus Clinic. They were told only that it was a simple operation with no adverse consequences. This constitutes “deceit.”
  25. They were required to sign Deeds of Donation stating that they were donating a kidney for altruistic reasons or because the recipient was a relative. In all cases, this was false. Also, they never appeared before an ethics committee, even though there was a document stating that they did (the Kidney Donation Clearance Form), and in fact there was no ethics committee. These documents were created as a sham to create an appearance of legal legitimacy to the illegal transplants.
  26. Certain of the donors had serious second thoughts just before the surgery, but were given no opportunity to decline the surgery. Instead, they were wheeled into the operating theatre, tranquilized and operated on, despite their hesitation. They were

- alone, isolated, did not speak the local language, and had no one to consult as to their best interests. This constitutes coercion.
27. The donors were told that a kidney removal operation was a simple procedure without any adverse or long-term consequences, which was false and constituted deception.
  28. The donors were informed that kidney transplants in Kosovo were legal, when in fact they were not. This was an important consideration to at least several of the donors, and they were deceived in this regard, and would not have proceeded with the operation if they were aware of the illegality.
  29. By the removal of their kidneys, the donors were exploited.
  30. By removal of their kidneys, they also suffered grievous bodily harm since they have been deprived of 50% of a vital organ system, and have no reserve in the event of a problem with their remaining kidney. The donors were left with a single kidney, and therefore had no reserve, or back-up system, in the event that later in life they should experience problems with the remaining kidney.
  31. The surgeons and anesthesiologists involved in the surgeries knowingly and intentionally removed the kidneys from the donors for transplantation, which was an illegal procedure in Kosovo. As medical doctors, they knew that removal of one kidney would permanently and substantially weaken this critical organ system.
  32. As victims of trafficking, the donors were legally incapable of consenting to kidney removal for transplantation.
  33. Some of the donors were not paid the full amount they were promised, and at least one donor was not paid at all. This constitutes “fraud.”
  34. Some of the donors have experienced ongoing health problems as a result of the kidney removal. They were not provided with any information about long-term aftercare, and were simply discharged from the Clinic after several days of recuperation. In essence, they were treated like a commodity.
  35. All of the donors consider themselves victims and seek compensation.
  36. In view of the above findings of fact, it is clear that the donors were all “recruited” in foreign countries, “transported” to Kosovo through Istanbul, “transferred” from the Pristina Airport to the Medicus Clinic, “received” at the Clinic, and “harboured” at the Clinic until the kidney removal was accomplished. The perpetrators were able to accomplish these activities by abusing the donors’ position of financial vulnerability.
  37. The perpetrators also employed means of deception by claiming that kidney transplants in Kosovo were legal when they were not; coercion by not providing valid information about the risks of surgery, requiring that the various forms be signed immediately upon arrival at the Clinic, and then giving no reasonable opportunity to decline the surgery; and in some cases fraud because they were not given the amount of money they had been promised or none at all.
  38. There can be no reasonable claim that **L.D.** and **A.D.** did not know that the donors were being abused and exploited because of their vulnerability. They were all foreign nationals from poor countries who were providing their kidneys to other foreign nationals. It was obvious that the donors and recipients were not related, and that the donors were not acting for altruistic reasons. The only plausible explanation was that the donors were in desperate financial straits and were being paid for their kidneys, all of which was known to these perpetrators.

39. All of the donors who testified at trial told a remarkably similar story of abuse and exploitation. It is reasonable to conclude that all of the other donors-- those who could not be located, but were likewise from poor Eastern European countries-- were similarly abused and exploited.
40. The kidney recipients were all wealthy men, mostly from Israel, who desperately needed a kidney transplant in order to survive, and were able to pay, and did pay, large sums of money for the operation. The recipients were generally recruited in Israel and made payment to intermediaries, such as the Etgar Company, and/or to M.H., the key facilitator, and/or to Y.S.. Like the donors, they also travelled through Istanbul on their way to Kosovo.
41. The recipients paid, in total, hundreds of thousands of euros. Only a small fraction of this money ever made its way to the donors. Although it was not possible for the court to trace large sums of money to L.D. and A.D. , it is reasonable to conclude that they did receive financial remuneration. In certain cases, money actually changed hands at the Clinic, and a receipt was provided on Medicus letterhead.
42. For the most part, the transplants were successful, and the recipients were grateful.
43. M.H., as well as other intermediaries, occasionally accompanied the recipients to the Clinic, and they were often seen in the Clinic. Certain of the donors were actually paid cash in the clinic in a clandestine manner by intermediaries.
44. This case involved a vast international enterprise—an organized and well structured criminal group-- which profited greatly. The enterprise was extremely well organized; it consisted of many persons including L.D., A.D. , Y.S., K.D., M.H. and others; and it involved many interrelated functions, such as recruitment, logistics, payment, transportation, availability of a suitable medical facility (Medicus Clinic), availability of trained medical doctors, and the performing of specialized medical procedures (kidney transplants). While all of the participants did not necessarily know each other, they were all part of a structured group that produced a seamless criminal endeavour, namely the trafficking in persons and organized crime.

## **IX. Analysis of Criminal Liability of Each Defendant**

Based on all the evidence in this case and the Essential Findings of Fact, the court has made the following determinations concerning the criminal liability of each defendant.

### **A. The Specific Charges**

#### **Count 1, Trafficking in Persons**

L.D. and A.D. are guilty of the criminal offences of Trafficking in Persons in violation of Article 139, paragraph 1, of the Criminal Code of Kosovo, committed in co-perpetration.

The legal description of the offenses is as follow:

#### **Trafficking in Persons**

Under Article 139 of the Criminal Code of Kosovo (CCK), trafficking in persons in paragraph (8) 1) “*means the recruitment, transportation, transfer, harboring or receipt of*

*persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”*

The term “*exploitation*” as “*used in subparagraph 1 of the present paragraph shall include, but not be limited to, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*”

Furthermore, “*the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in subparagraph (1) of the present paragraph have been used against such victim.*”

Therefore any individual who performs one of the actions outlined in section (8) 1) for the purposes of “*exploitation*” which includes “*the removal of organs*” is guilty of the offence of trafficking even if the individual who has been trafficked has consented “*to the intended exploitation*”. They have by engaging in these actions completed the *actus Reus* of the offence of trafficking.

In order to be convicted of an offence the accused must have the requisite intent needed to commit the underlying *actus reus*. This standard of intent can be met according to Article 15 of the CCK where,

- (1) A criminal offence may be committed with direct or eventual intent.*
- (2) A person acts with direct intent when he or she is aware of his or her act and desires its commission.*
- (3) A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence.*

It has been proven beyond a reasonable doubt that **L.D.** and **A.D.** committed the offence of trafficking in persons; all of the statutory elements of the offense have been met with overwhelming evidence.

It is indisputable that the kidney donors were recruited, transported, transferred, received and harboured. It is also indisputable that they were all subjected to abuse of their position of vulnerability, coerced, deceived and defrauded. Moreover, they were exploited by the removal of their kidneys. As victims of trafficking, any consent they may have given is legally irrelevant. **L.D.** and **A.D.** were directly involved in these activities, were fully aware of the acts they were committing and desired their commission, and therefore they committed the offense by direct intent.

The charge of trafficking against **S.H.** was requalified to trafficking by negligent facilitation. Certain criminal offences can also be committed by negligence if the statutory definition of the crime includes negligence. Such is the case with the statutory definition of trafficking in persons. Under article 139 (4), “Whoever negligently facilitates the commission of trafficking shall be punished to imprisonment of six months to five years.”

Article 16 of the CCK provides that,

- (1) *A criminal offence may be committed by conscious or unconscious negligence.*
- (2) *A person acts with conscious negligence when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission but recklessly thinks that it will not occur or that he or she will be able to prevent it from occurring.*
- (3) *A person acts with unconscious negligence when he or she is unaware that a prohibited consequence can occur as a result of his or her act or omission, although under the circumstances and according to his or her personal characteristics he or she ought and could have been aware of such a possibility.*

It is the court's conclusion that **S.H.** committed the offense of trafficking in persons by unconscious negligence. The evidence presented against this defendant in this respect was the significant number of operations (36) in which he participated, his direct interaction with all the patients before the surgery and his knowledge that they were all foreign nations, and the fact that his name was mentioned in the email exchange between **Y.S.** and **L.D.** .

Furthermore he was the lead anesthesiologist at the clinic. Indeed, he hired **I.B.** and **D.J.**, and was responsible for the distribution of the work to them. He had to be aware that the operations involved kidney transplantations. This evidence is sufficient to find **S.H.** guilty of trafficking in persons by negligent facilitation. While the evidence is lacking that he had either direct or eventual intent to engage in trafficking, the evidence clearly establishes that under the circumstances and based on his personal characteristics, he ought to have been aware, and should have been aware, that he was engaged in trafficking.

**S.H.** adopted a very unreliable line of defence by saying that he was so busy that he did not pay so much attention to these international patients and never asked **L.D.** for explanations. These suspicious circumstances should have been clarified by **S.H.**, but he failed to make an attempt to understand his position. This situation falls under the scope of unconscious negligence as per Article 16 (3).

However, this is not the end of the discussion when considering the criminal responsibility of **S.H.** Article 2 of the CCK provides that, "(2) In the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply." The court compared the elements of the crime of trafficking in persons under Article 139 of the CCK that was in force when the criminal offence was committed with the elements of trafficking under Article 171 of the recently revised Criminal Code of Kosovo. A comprehensive and comparative analysis of both articles leads to the conclusion that facilitation of trafficking in persons by negligence is no longer criminalized, and **S.H.** is entitled to the benefit of the more favourable law. Thus, based on Article 389, paragraph 4 of the Criminal Procedure Code of Kosovo, this count was rejected.

## **Count 2, Organised Crime**

**L.D.** is guilty of Organized Crime in violation of article 274, paragraph 3.

The legal description of the offence of organized crime is as follows:

Under Article 274 (1) of the CCK, "*whoever commits a serious crime as part of an organized criminal group shall be punished by a fine of up to 250.000 EUR and by imprisonment of at*

*least seven years*". Under Article 274 (3), "*whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.*"

The term organized crime is set out under Article 274(7) 1) as "*a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit.*"

An organized criminal group is defined 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*" under Article 274 (7) 2).

A "*structured group*" is defined 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 court has found **L.D.** guilty of organized crime under article 274 (3) for organizing, establishing, supervising, managing or directing the activities of an organized criminal group. In 2008, he organized the Medicus Clinic as a sophisticated, well supplied and well equipped facility where illegal kidney transplants could be performed, and he supervised, managed and directed the activities at the clinic in connection with an organized, international criminal group. The organized criminal group was a structured group, which existed for at least several months during 2008, and consisted of numerous people, including **L.D.**, **A.D.**, **Y.S.**, **K.D.**, **M.H.** and others. The group existed for the purpose of committing a serious crime, namely trafficking in persons, and did so to obtain a financial benefit, namely the receipt of large sums of money.

### Count 3, **Organized Crime**

**A.D.** is guilty of Organized Crime in violation of article 274, paragraph 1. It is clear that he committed a serious crime—trafficking in persons—as part of the same organized, structured criminal group, and did so for the same reason—to obtain a financial benefit..

**S.H.** is acquitted of the charge of organized crime in violation of article 274 (1). While it is clear that he participated in virtually all of the kidney transplant surgeries, the evidence was insufficient to prove his knowledge of, or participation in, an organized, structured criminal group. Nor is there any evidence of a financial benefit. No compelling evidence was discovered that **S.H.** was aware that such an organized group was formed and existed, or that he willingly participated in the organized group. He cannot be found guilty of organized crime simply because he participated in a large number of kidney transplants, and that he interacted before hand with the patients; more evidence is needed, and it was not forthcoming.

### Count 4, **Unlawful Exercise of Medical Activity**

**L.D.**, **D.J.**, **I.B.**, **S.D.** and **S.H.** have been charged with unauthorized exercise of medical activity in violation of Article 221, paragraph 1, CCK, committed in co-perpetration, Article 23, CCK.

Article 221 (1) provides that *“Whoever, without possessing professional qualifications or legal authorization, carries out medical treatment or engages in some other medical activity for which specific qualifications are required shall be punished by a fine or by imprisonment of up to one year.”*

It is clear from the evidence and from the Essential Findings of Fact that all of these defendants committed this offense. They all participated actively and knowingly in kidney transplants at the Medicus Clinic for which there was no legal authorization. They were all licensed medical doctors, and had to have known that organ transplants were illegal under article 46 of the Law on Health. In any event, lack of knowledge as to the illegality is certainly not a defense to this crime; one is presumed to know the law.

However, as discussed below, they obtain the benefit of the statute of limitations, and the charge must be rejected under article 389, paragraph 4, of the KCCP, in conjunction with article 90, paragraph 6, and article 91, paragraph 6 of the CCK.

### Count 5, **Abusing Official Position or Authority**

The charge of abusing official position or authority against **D.J.** in violation of Article 339, paragraph 3, CCK, is re-qualified to a violation of article 339, paragraph 1, and is rejected.

The provisions of article 339 (1) and (3) read as follows:

*(1) An official person who, with the intent to obtain an unlawful material benefit for himself, herself or another person or a business organization ..., abuses his or her official position, exceeds the limits of his or her position or does not execute his or her official duties shall be punished by imprisonment of up to one year*

*(3) When the offence provided for in paragraph 1 of the present article results in a material benefit exceeding 5,000 euros, the perpetrator shall be punished by imprisonment of one to eight years.*

This count has been rejected under the statute of limitations as discussed below. However, if this count had not been rejected on procedural grounds, **D.J.** would have been found guilty under the re-qualified violation of article 339, paragraph 1. First, it has been proven that **D.J.** abused his position as a medical doctor with OSCE, since he was responsible for monitoring health facilities which could be used by OSCE employees. While so employed by OSCE, he participate in multiple transplant surgeries, and additionally did not report to his superiors in OSCE that such an illegal activity was taking place at Medicus.

However, there was no evidence of a violation of paragraph 3, requiring an intent to obtain material benefit for himself or another person exceeding 5000 Euros. **D.J.** was only employed in Medicus part time, and there is no evidence that he had any knowledge of the financial aspects of the operation. But there is evidence that medical doctors were paid by the procedure or on a monthly basis, but the amounts never exceeded several hundred euros a month, even for a doctor employed full time. It is reasonable to infer that **D.J.** did receive some modest remuneration for his participation, but certainly not enough to qualify under paragraph 3, or even under paragraph 2 (2,500). Thus, his liability falls under paragraph 1 which has no monetary threshold.

### Count 6, **Abusing Official Position or Authority**

**I.R.** is acquitted of the charge of abusing official position or authority in violation of article 339, paragraph 3 because the prosecutor failed to prove the offence against him.

The statutory definition of this offence is set out above under count 5. It requires, at a minimum, an abuse of authority with an intent to obtain a material benefit.

The prosecution has failed to prove that **I.R.** abused his position as chairman of the Board of Licensing of Private Health Institutions or Acting Permanent Secretary of the Ministry of Health. The gravamen of the charge is that he abused his position by sending the letter of 12 May 2008, which according to the prosecution was meant to provide “cover” to the clinic so they could conduct transplants with legal impunity. However, as discussed at length in the section dealing with whether the Medicus Clinic was licensed or authorized to conduct kidney transplant surgeries, the court has determined that this letter was merely informative, and was not intended to be, or pass for, a license or authorization or any other type of “cover” for an illegal enterprise. Moreover, there was no evidence of any intent on the part of **I.R.** to obtain a material benefit.

### Count 7, **Grievous Bodily Harm**

In the amended indictment the prosecutor pressed charges against **L.D., S.H. I.B., S.D.** and **A.D.** for grievous bodily harm in the new count 7.

Pursuant to Article 389, paragraph 4, of the Criminal Procedure Code of Kosovo (CPCCK), the charge of *Grievous Bodily Harm* of the CCK is **rejected** against **L.D.**,

**Because**, pursuant to article 389, paragraph 4, there are circumstances that preclude criminal liability, namely that this charge constitutes an element of trafficking in persons.

**A.D.** is **acquitted** of the charge of *Grievous Bodily Harm in Co-perpetration*, Article 154, paragraph 1, subparagraph 2, and Article 23, CCK,

**Because**, pursuant to article 390, paragraph 3, of the Criminal Procedure Code of Kosovo, it has not been proven that the accused committed the offence with which he has been charged. The panel decided to acquit **A.D.** from this criminal offense as this crime was committed by doctors during surgical intervention. **A.D.** is not doctor and he never assisted in the operations. He was not qualified to assess the medical implications of removing a kidney, and thus could not be found guilty of this criminal offence.

However, **S.H., I.B. and S.D.** have been found guilty of the charge as qualified by the panel. The panel qualified this offense as a violation of article 154, paragraph 1, subparagraph 2-- permanently and substantially weakening an organ of the other person.

Article 154 (1) of the CCK sets out that “*whoever inflicts bodily harm upon another person or impairs the health of another person to such an extent that it may result in:*

- 1) *Endangering the life of the other person;*
- 2) *Destroying or permanently and substantially weakening an organ or a part of the body of the other person;*

- 3) *Temporarily and substantially weakening a vital organ or a vital part of the body of the other person;*  
4) *Temporarily destroying, temporarily and substantially diminishing or permanently diminishing the capacity of the other person to work; or*  
5) *Temporarily and seriously impairing or permanently impairing the health of the other person shall be punished by imprisonment of six months to five years.”*

The panel admitted the opinion the forensic doctor **C.B.** to understand the medical aspects of kidney transplants and consequences thereof to the donors. The panel fully accepts the conclusion of the **C.B.** that kidney transplantation causes certain temporary consequences to the health of the donor until the remaining kidney becomes fully functional. From a medical point of view, the functions of the missing kidney are taken over almost completely (up to 96%) by the remaining kidney. However, the medical perspective does not correspond with the legal concept of bodily harm.

The panel adopted the following understanding of serious bodily harms, considering the arguments presented in the commentary on Article 53 of the Criminal Code of Serbia.

Article 53 (1) alternatively determines special forms of serious bodily injury, considering the seriousness of the consequence caused. Those particularly serious forms of bodily injury exist *inter alia* if: an important body part or an important organ of the injured party was weakened permanently and to a significant extent.

An important part of the body or an important organ is weakened when, after an injury, this body part or this organ is no longer usable, enduring or functioning in the same power as it did before. This consequence must be “permanent,” and it is considered permanent not only if it is a certainty, but also in the case when it is uncertain but there is a possibility of its permanent duration.

There is no doubt that kidneys are organs crucial for the proper function of the body. The fact that they are in pairs, and in case of the removal of one of them the role of missing organ can and is taken over by the remaining organ, does not change the overall situation of the injured party, whose health condition should be considered not only after organ removal and soon after recovery, but from the broader perspective of the span of the donor’s life.

The health condition of the donors can change, the proper function of remaining organ may be damaged, and it may never be restored. These possible consequences have to be considered by the panel; the kidney is not an organ that naturally regenerates, and there is always the possibility that the health of donors may deteriorate and there will be no additional kidney that takes over all the necessary functions. This panel understands that kidney transplantation is now a standard procedure, but the legal perspective does not necessarily correspond with the medical perspective, because from a legal point of view the long-term consequences to the health of donor must be considered.

For the panel, it was established beyond any doubt that S.H., I.B., and S.D. were guilty of the offense of causing grievous bodily harm by permanently and substantially weakening a vital organ, namely by removing a kidney. The illegality of this medical procedure is what creates this crime; the grievous bodily harm flows from the illegality of the procedure. These three defendants were medical doctors who either knew that kidney removal for purposes of transplantation was illegal under Kosovo law, or were presumed to know of the illegality.

Thus, lack of knowledge cannot be posed as a defense. Also, they were fully aware that they were participating in the removal of kidneys for transplantation, and they desired to do so; in this regard they acted with direct intent.

The fact that the donors may have consented to kidney removal does not waive the criminal responsibility of the doctors who took part in the surgery, since consent to an illegal medical procedure is invalid.

#### Count 8, **Fraud**

**L.D.** and **A.D.** were charged with the offence of fraud in violation of article 261, paragraph 2, CCK. The charge is rejected under article 389, paragraph 4, since fraud is one of the elements of the offence of trafficking in persons, for which they have been found guilty.

#### Count 9, **Falsifying Documents**

**L.D.** and **A.D.** were charged with the offense of falsifying documents in violation of article 332, paragraph 1, CCK. The charge is rejected under article 389, paragraph 4, KCCP, and article 90, paragraph 1, subparagraph 6, and article 91, paragraph 6, CCK, because the period of statutory limitation has expired.

However, even if the charge were not rejected on the basis of the statute of limitation, the defendants would be acquitted of this charge.

Article 332, paragraph 1, states that, *“(1) Whoever draws up a false document, alters a genuine document with the intent to use such document as genuine or knowingly uses a false or altered document as genuine shall be punished by a fine or by imprisonment of up to one year.”*

This charge is based on the letters of invitation which were provided to many of the donors and recipients to facilitate their entry into Kosovo in the event they were challenged by border police. The letters were general in nature and simply said that the person was going to the Medicus Clinic to seek medical treatment. Indeed, this was the case; the letters were not false or altered, even though they did not specifically mention kidney transplants.

#### Count 10, **Falsifying Official Documents**

The charge of falsifying official documents against **I.R.** in violation of article 348, paragraph 1, is rejected because under article 389, paragraph 4, KCCP, and article 90, paragraph 1, subparagraph 5, of the CCK, the period of statutory limitation has expired.

If this charge were not rejected on procedural grounds, the defendant would be acquitted because the prosecution did not prove that the accused committed the offence as charge.

Article 348, paragraph 1, states, in pertinent part, that: *“(1) An official person...who, in an official...document...enters false information or fails to enter essential information...shall be punished by imprisonment of three months to three years.”*

Like count 6, this charge is based on the letter from **I.R.** to **A.D.** dated 12 May 2008. While **I.R.** was an “official” within the meaning of the statute, he did not enter false information into the letter or fail to enter essential information. Although the caption of the letter could be construed as misleading, the body of the letter makes it clear that it was not intended as a license or authorization to conduct kidney transplants. Also, there was never any intent on the part of **I.R.** to convey false information, and the letter was never understood or used by anyone as a license or authorization. Indeed, about two months later, **L.D.** complained to the Ministry of Health that his request for a license to conduct transplants had not been acted upon.

## **B. Statutory Limitation on Criminal Prosecution**

Three of the counts in the amended indictment implicate the provisions of the Criminal Code of Kosovo (CCK) dealing with statutory limitations on criminal prosecutions (article 90, et seq.):

Count 4, unlawful exercise of medical activity, contrary to article 221 (1), CCK, against **L.D., D.J., S.H., I.B.** and **S.D.;**

Count 9, falsifying documents, contrary to article 332 (1), CCK, against **L.D.** and **A.D.** ; and Count 10, falsifying official documents, contrary to article 348, CCK, against **I.R.** .

Count 4 was contained in the original indictments, filed on 15 October 2010 and 20 October 2010, respectively, and is carried forward in the amended indictment which was filed on 22 March 2013. Counts 9 and 10 are new counts which have been added in the amended indictment on 17 April 2013.

The offenses of unauthorized medical activity in count 4 were alleged to have been committed on an ongoing basis during the period from 8 March to 31 October 2008. Since these were offenses of an equal nature, each offense triggered a new period of limitation under article 91 (4) and (5). Thus, for purposes of calculation, the date of 31 October 2008 controls for **L.D., D.J., S.H., B.I.** and **S.D.** since all five of these doctors were involved in the kidney transplant surgery involving **Y.A.** and **B.S.** on that date.

The offense of falsifying documents against **L.D.** and **A.D.** in count 9 is based on letters of invitation and letters of guarantee which were alleged to have been issued and used between 8 March and 4 November 2008. Since these were also ongoing offenses of an identical nature, the date of 4 November 2008 is the critical date for purposes of calculation.

The offense of falsifying official documents against **I.R.** in count 10 is based on the document dated 12 May 2008 which is the critical date for purposes of calculation.

The offenses of unauthorized exercise of medical activity and falsifying documents (counts 4 and 9) carry maximum punishments of up to one year imprisonment. Thus, the relative statutory limitation—the period during which criminal prosecution must be commenced—is two years under article 90 (1), paragraph 6. The offense of falsifying official documents (count 10) carries a maximum punishment of up to three years. Thus, the relative period of limitation is three years under article 90 (1), paragraph 5.

In this case count 4 was timely filed since the original indictment containing this count was filed within the two year window, although only a few of days before the criminal charge reached statutory limitation. Even though the filing was timely, this count was inserted in the indictment of a very complex and serious case with a high degree of risk that the main trial would take more than one year, in which event the absolute bar on criminal prosecution would be reached.

However, counts 9 and 10, which were added in the amended indictment filed on 22 March 2013, were not timely filed since the respective two and three year periods of statutory limitations had long since elapsed. The defendants were not formerly charged with these counts until that date, and the prosecution had not taken any steps with regard to the defendants which would interrupt the period of statutory limitation as required by article 91, 3.

Also, these counts were not committed by the defendants during the main trial, nor were discovered in the course of the main trial. Both counts 9 and 10 were simply the result of legal qualification undertaken by the prosecution, based on the same set of facts and circumstances already known to the prosecutor on the date he compiled the original indictment. In other words, the prosecutor at a very late stage added these two counts based on the evidence collected during the investigation. The prosecutor had sufficient grounds to file these two charges,- 9 and 10, in the initial indictment. Failure to do so now results in rejection of these charges due to the statute of limitation.

The prosecutor argues that article 376 and 377 of the Kosovo Code of Criminal Procedure (KCCP) render the relative statute of limitation irrelevant since the prosecutor may amend and extend an indictment without being subject to confirmation. However, this argument ignores article 389, paragraph 4, KCCP, which requires the court while issuing its judgment to reject any charge for which the statute of limitation has expired. Thus, while the prosecutor has the authority to amend and extend the indictment, there is nothing in the code which provides that the court's duty under article 389 is cancelled when the prosecutor does so. Accordingly, counts 9 and 10 must be rejected as barred by the relative statute of limitation.

Moreover, although the prosecution is granted the possibility of amending the indictment, nowhere in the law is it stated that statutory limitation is to be observed solely by the court. Indeed, Article 224 (1), paragraph 3, provides,

*The public prosecutor shall terminate the investigation if at any time it is evident from the evidence collected that*

*3) the period of statutory limitation for criminal prosecution has expired.*

Thus, the law provides that the prosecution is also obliged to strictly observe the legal provisions, and if statutory limitation is in question, is obliged to terminate the investigation, which was not done in this case.

There is also an absolute bar to criminal prosecution under article 91 (6), CCK, which provides as follows:

*Criminal prosecution shall be prohibited in every case when twice the period of statutory limitation has elapsed (absolute bar on criminal prosecution).*

Since, as noted, the relative period of statutory limitation is two years from the date of the offense for unauthorized exercise of medical activity and for falsifying documents (counts 4 and 9), the absolute bar on criminal prosecution comes into effect after a period of four years from the date of the offense. Here, it is obvious that more than four years have elapsed. The four year period expired no later than 31 October 2012 and 4 November 2012, respectively. Thus, under article 91 (6), criminal prosecution is prohibited, and these charges must be rejected pursuant to article 389, paragraph 4, KCCP. With regard to count 9, falsifying documents, the charge is therefore rejected under both the relative and the absolute bar.

The applicability of the absolute bar is supported by the Commentary on Article 96 of the Criminal Code of the Federal Republic of Yugoslavia, 1996, 5th Edition. With regard to paragraph 6 of the article 96, which is virtually identical to paragraph 6 of article 91, CCK, the Commentary states:

“Regardless of one or more suspensions and regardless of one or more recesses for the statute of limitations for criminal prosecutions, the statute of limitations for criminal prosecution comes into effect in every case if the time period has elapsed twice with regard to what the law describes for the statute of limitations for criminal prosecution. That is a so-called absolute statute of limitations. (emphasis added).”

Although these charges must be rejected, it was still necessary to describe the facts underlying the charges in order to present a complete picture of this complicated case. This is accomplished in section immediately above.

### **C. Calculation of punishment.**

Pursuant to Article 64 (1) of the CCK the court when rendering a judgment has to take into the consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment-- in particular, the degree of criminal liability, the motives of committing the act, the intensity of danger to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the personal circumstances and his behavior after committing the criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.

### **L.D.**

In the case of this defendant, the panel found as mitigating circumstances only his past conduct as head of his family and a respective member of local society providing needed medical services to inhabitants of Kosovo, and his lack of a criminal record. The list of aggravating circumstances includes his selfish motives, namely generating handsome illegal income. As a doctor, his first and primary obligation was to help patients by following Hippocrates' oath, not using his highly regarded and respected position as a source of illegally accrued financial income. His unacceptable actions brought Kosovo to the attention of the international community as the place where kidneys transplants are conducted, thus creating a widespread perception of Kosovo as the country where the law is not observed. Many vulnerable persons were injured and their lives exposed to a potentially life threatening situation, leaving them with real danger that life conditions could suddenly deteriorate and they could end up as patients in urology wards waiting for dialysis or transplants. An

additional aggravating factor was the professional method of setting the clinic up on an international scale.

Taking all these circumstances into careful consideration this panel found that imprisonment of 8 (eight) years and 10.000 (ten thousand) Euro for trafficking and organized crime will be appropriate and necessary to serve all purposes of punishment.

#### **A.D.**

In the case of this defendant, the panel found only one mitigating circumstances, namely the fact that he does not have previous criminal convictions.

As for the aggravating circumstances, the panel would reiterate the same argument that he acted propelled by desire to acquire substantial material benefit at the expense of innocent and vulnerable people. He held the position of main administrator of this illegal criminal organization in Kosovo, being responsible for all administrative and factual arrangements, and without him this criminal enterprise would not have succeeded.

Taking all these circumstances into careful consideration this panel found that imprisonment of 7 (seven) years and 3 (three) months and 10.000 (ten thousand) Euro for trafficking and organized crime will be appropriate and necessary to serve all purposes of punishment.

#### **S.H.**

In the case of this defendant, the panel considered as a mitigating circumstance that he was not convicted previously. As aggravating circumstances the panel considered that this defendant held an important position as a senior anesthesiologist, being the most experienced and trained, and as such he should be an example to other anesthesiologists working in the clinic. He decided, as he claims, not to ask what sort of medical procedures were conducted in the clinic, which was a very opportunistic approach as **S.H.** had ample opportunities to ask and get definitive answers. On top of that, **S.H.** participated as an anesthesiologist in the most operations, participating very actively in this medical factory aimed at collecting money.

Taking all these circumstances into careful consideration this panel found that imprisonment of 3 (three) years for grievous bodily harm will be appropriate and necessary to serve all purposes of punishment. **S.H.** doesn't deserve the same lenient policy as the other two anesthesiologists since as the main anesthesiologist he should have been more conscious of the legal consequences of these illegal operations, and additionally he was involved in the majority of operations.

#### **S.D. and I.B.**

The situation of these two defendants is almost identical. They both used to work as anesthesiologists in Medicus and assisted in many operations. Unsuccessfully, they wanted to present themselves in front of the panel as nothing more than simple technicians who followed orders. The panel was of different opinion, as **S.D.** and **I.B.** are both certified doctors who completed universities and earned degrees allowing them to practice medicine in Kosovo. It is common understanding that anesthesiologists are present all the time during surgery so they were aware what sort of surgical intervention was conducted. As practitioners they were aware that in fact they assisted organ transplants. Despite that circumstances they

claimed they did not asked **L.D.** about these suspicious operations. So they share criminal responsibility as they caused serious bodily injuries to donors.

As a mitigating circumstance, the panel considered that they do not have previous criminal records.

Taking all these circumstances into careful consideration, and most of all their lesser degree of culpability, this panel found that imprisonment of 1 (one) year for grievous bodily harm will be appropriate and necessary to serve all purposes of punishment.

In the cases of **S.D.** and **I.B.** , the panel came to the conclusion that they deserve to be treated more leniently, and the execution of the punishment will be suspended for the period of 2 years. The purpose of punishment will be achieved as there are little chances the doctors will reoffend the same criminal offence. This assessment is based on the fact that they do not have any criminal records, they led exemplary lives as a family members and respected members of local society.

#### **D. Accessory Punishment**

Pursuant to Article 57, paragraph 1 and 2 of the CCK the panel imposed accessory punishment, namely prohibition from exercising profession as urologist and anesthesiologist for **L.D.** and **S.H.** , respectively. The criminal offenses committed by these two doctors represent great danger to public safety as they exposed patients in particular donors to unprecedented danger. These doctors were persons of public trust, and as such should have presented a high level of moral integrity. That behavior should be strongly condemned by this accessory punishment.

#### **E. Partial Compensation**

Based on article 112 of the Criminal Procedure Code of Kosovo the identified victims who provided testimonies were partially awarded material compensation for the psychological and physical damages sustained during kidney transplantations in the amount of 15.000 Euro.

Presiding judge  
Arkadiusz Sedek

Panel member  
Dean Pineles

Panel member  
Vaid Halili