COURT OF APPEALS

Case number: **PAKR 1121/12**

(Basic Court of Pristina, P 408/11)

Date: **25 September 2013**

THE COURT OF APPEALS OF KOSOVO in a Panel composed of EULEX Judge Annemarie Meister as Presiding and Reporting Judge, and EULEX Judge Tore Thomassen and Judge Vahid Halili as members of the Panel, with the participation of Beti Hohler, EULEX Legal Officer, acting as Recording Officer,

in the criminal proceeding against the accused

> **Z.K.,** born on xxx in village xxx, Municipality of xxx, Kosovo xxx, xxx and Kosovo citizenship, with xxx school education, xxx with xxx children, in detention on remand since xxx;

indicted for committing the criminal offences: *War Crime against Civilian Population* pursuant to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette SFRY no. 44/1976, hereinafter: CC SFRY) and *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328(2) of the Criminal Code of Kosovo (hereinafter: CCK)[1] and found guilty of two counts of *War Crime against Civilian Population* pursuant to Articles 22 and 142 CC SFRY and of one count of *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328(2) CCK by the Trial Panel of (then) District Court of Pristina through Judgment no. P 408/11 dated 11.05.2012 and sentenced to an aggregate punishment of 14 (fourteen) years of imprisonment and 500 EUR fine;

***acting upon* the following appeals filed on behalf of the accused Z.K. against the *Judgment of District Court in Pristina/ë no. P 408/2011 dated 11.05.2012* (hereinafter: Impugned Judgment):**

- **Appeal of the accused Z. K., filed on 13.07.2012,**
- **Appeal of Defence Counsel Miodrag Brkljac, filed on 16.07.2012,**
- **Appeal of Defence Counsel Shefki Sylaj, filed on 17.07.2012,**
- **Appeal of Defence Counsel Zivojin Jokanovic, filed on 17.07.2012,**

having considered the Response of the Special Prosecutor to the Appeals, filed on 14.08.2012;

[1] Criminal Code in force from 06.04.2004 until 31.12.2012.

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having considered the Response of the Appellate State Prosecutor of Kosovo no. PPA 456/12 dated 31.10.2012;

after having held a public session on 25.09.2013 in the presence of the accused **Z.K,** his Defence Counsel Shefki Sylaj, Miodrag Brkljac and Zivojin Jokanovic and Appellate State Prosecutor Idain Smailji;

having deliberated and voted on 25.09.2013;

pursuant to Articles 420 and the following of the Kosovo Code of Criminal Procedure (hereinafter: KCCP)

renders the following

JUDGMENT

I. The Appeals of the Defence are partially accepted.

II. Items 1 and 2 of the enacting clause of the Judgment of the District Court of Pristina no. P 408/11 dated 11.05.2012, and the corresponding provisions on sentencing, are hereby modified as follows:

> ***"1. The accused Z. K, as identified above, is found guilty and is criminally liable for committing the criminal offence of War Crime against Civilian Population pursuant to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia read in conjunction with Common Article 3 of the four Geneva Conventions of 12.08.1949 and Articles 4 and 5(1) of the Protocol Additional to the Geneva Conventions of 12.08.1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 08.06.1977, because he***
>
> ***i) on or about 24.05.1999, after prisoners from Dubrava Prison had been transported to Lipjan Prison, G. M., along with an unidentified number of other Albanian prisoners was forced to pass through two lines of Serbian prison guards, police and paramilitaries, and was treated inhumanely in that his bodily integrity was violated by beating by the accused and others with weapons, punches and kicks, thereby suffering injuries from which G. M., died at some point of time between the beating and 25.05.1999;***
>
> ***ii) on or about 24.05.1999, after prisoners from Dubrava Prison had been transported to Lipjan prison, J.R., along with an unidentified number of other Albanian prisoners was forced to pass through two lines of Serbian***

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prison guards, police and paramilitaries, and was treated inhumanely in that his bodily integrity was violated by beating by the accused and others with weapons, punches and kicks, thereby suffering injuries.

Pursuant to Article 38 and Article 142 CC SFRY, Z.K. is hereby sentenced to a punishment of 14 (fourteen) years of imprisonment.

Pursuant to Article 50(1) CC SFRY the time the accused spent in detention on remand, namely from 07.04.2011 onwards, shall be accredited towards the sentence."

REASONING

1. Procedural History

1. The events giving rise to the charge of *War Crimes against Civilian Population* took place in May 1999. The investigation in the case was initiated in 2011. On 01.08.2011 the Special Prosecutor of the Special Prosecution Office of Republic of Kosovo (SPRK) filed an Indictment against the accused with the (then) District Court of Pristina. The Indictment was confirmed on 26.08.2011 through the Ruling of the Confirmation Judge no. KA 538/11 with a modification made to one of the counts. The Indictment also included the charge of *Unauthorized ownership, control, possession or use of weapons* pursuant to Article 328(2) CCK to which the accused pleaded guilty already at the confirmation hearing. The accused pleaded not guilty to the *War Crime* charges.

2. The main trial in the criminal proceeding was held before the Trial Panel of the (then) District Court of Pristina with sessions held on 01.11.2011, 02.11.2011, 03.11.2011, 17.11.2011, 02.12.2011, 06.12.2011, 10.01.2012, 11.01.2012, 29.03.2012, 30.03.2012 and 08.05.2012. The Trial Panel announced the Judgment on 11.05.2012. Having announced the Judgment, the Trial Panel also extended detention on remand against the accused until the Judgment became final. The accused has been held in detention on remand since 07.04.2011.

2. The Impugned Judgment

3. The Trial Panel found the accused:

- guilty of criminal offence *War Crime against Civilian Population* pursuant to Articles 22 and 142 of the CC SFRY in violation of Common Article 3 of the Four Geneva Conventions of 12.08.1949 and of Articles 4 and 5(1) of Additional Protocol II of 09.06.1977, because on or about 24.05.1999, after prisoners from Dubrava prison had been transported to Lipjan prison, G.M., along with an unidentified number of other Albanian prisoners were forced to pass through two lines of Serbian prison Guards, police and paramilitaries, and was treated inhumanely in that his bodily integrity was

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violated by beating by the defendant and others with weapons, punches and kicks, thereby suffering injuries from which G.M. died at some point of time between the beating and 25.05.1999 (Item 1 of Enacting Clause),

- guilty of criminal offence *War Crime against Civilian* population pursuant to Articles 22 and 142 of the CC SFRY in violation of Common Article 3 of the Four Geneva Conventions of 12.08.1949 and of Articles 4 and 5(1) of Protocol II of 09.06.1977, because on or about 24.05.1999. after prisoners from Dubrava Prison had been transported to Lipjan prison, J.R., along with an unidentified number of other Albanian prisoners were forced to pass through two lines of Serbian prison Guards, Police and paramilitaries, and was treated inhumanely in that his bodily integrity was violated by beating the defendant and others with weapons, punches and kicks, thereby suffering injuries (Item 2 of Enacting Clause),
- guilty of criminal offence *Unauthorized Ownership, Control, Possession or Use of Weapons* pursuant to Article 328(2) CCK, because on 07.04.2011, in Dobrotin village the accused was in possession of a Zastava TT type revolver, 7.62 calibre, serial number 1878, two magazines and 37 bullets, all functional without a valid weapon permit (Item 3 of Enacting Clause).

4. The First Instance Court sentenced the accused to 10 years of imprisonment for the criminal offence under Item 1 of the enacting clause, to 6 years of imprisonment for the criminal offence under Item 2 of the enacting clause and to 500 EUR fine for criminal offence under Item 3 of the enacting clause. The Court thereafter imposed on the accused the aggregate punishment of 14 (fourteen) years of imprisonment and 500 EUR fine. The Court also credited to the accused's sentence the time he spent in detention on remand, specifically from 07.04.2011.

5. The Defence filed appeals against the Impugned Judgment in relation to findings of guilty for the criminal offences of *War Crime against Civilian Population* (Items 1 and 2 of the enacting clause of Impugned Judgment) and the imposed sentence for those offences.

6. The Defence does not appeal the conviction and sentencing regarding the finding of guilty and sentencing under Item 3 of the enacting clause regarding the criminal offence of *Unauthorized Ownership, Control, Possession or Use of Weapons.*

<u>3. Submissions of the Parties</u>

7. The accused himself and all three of his Defence Counsel filed separate appeals against the Impugned Judgment. The Appeals challenge the Impugned Judgment on all grounds envisioned by Article 402(1) KCCP, namely on the ground of substantial violation of criminal procedure, violation of criminal law, erroneous or incomplete determination of the factual situation and they challenge the imposed criminal sanction.

8. The Special Prosecutor on 14.08.2012 filed a Response to the Defence Appeals, proposing that the Appeals be rejected and the Impugned Judgment affirmed in its entirety.

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9. The Appellate State Prosecutor in his Motion filed on 01.11.2012 pursuant to Article 409(2) KCCP also moves the Court to reject the Appeals as unfounded and to affirm the Impugned Judgment.

4. Competence of the Court of Appeals

10. The Court of Appeals is the competent court to decide upon the Appeals pursuant to Articles 17 and 18 of the Law on Courts.

11. The Panel of the Court of Appeals is constituted in accordance with Article 19(1) of the Law on Courts and Article 3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no 03/L-053).

5. Applicable Procedural Law – the KCCP

12. The Court of Appeals finds it appropriate to restate that the procedural law applicable in the respective criminal case is the (old) Kosovo Code of Criminal Procedure that remained in force until 31.12.2012.[2] In criminal proceedings initiated prior to the entry into force of the new Criminal Procedure Code for which the trial already commenced but was not completed with a final decision, provisions of the KCCP apply until the decision becomes final. Reference is made to the transitional provisions of the current Criminal Procedure Code and the Legal Opinion no. 56/2013 of the Supreme Court of Kosovo, adopted in its general session on 23.01.2013.

6. Applicable Substantive Criminal Law

13. The conviction and sentencing of the accused for the criminal offences under Items 1 and 2 of the enacting clause (the war crimes charges) is based on the provisions of the Criminal Code of SFRY as the law applicable at the time when the criminal offence was committed.[3]

14. The Panel notes that since the alleged criminal offence was committed, the criminal law in Kosovo has been amended twice. On 06.04.2004 the Provisional Criminal Code of Kosovo entered into force and remained in force until 31.12.2012. On 01.01.2013 the new Criminal Code of Kosovo, Code no. 04/L-082 (hereinafter: CCRK) entered into force and is the currently applicable criminal law.

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[2] Kosovo Code of Criminal Procedure, in force since 06.04.2004 until 31.12.2012.

[3] Pursuant to UNMIK Regulation 1999/24, as amended by UNMIK Regulation 2000/59, the substantive criminal law provisions applicable were the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia, with the amendments as promulgated by the aforementioned UNMIK Regulations. Capital punishment was abolished pursuant to Article 1.5. Pursuant to Article 1.6 of UNMIK Regulation 2000/59 for each offence punishable by the death penalty under the law in force in Kosovo on 22 March 1989, the death penalty was converted into a term of imprisonment between the minimum as provided for by the law for that offence and a maximum of forty (40) years.

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15. Pursuant to the general principle of applying the law most favorable to the accused, enshrined in Article 2(2) CCK and Article 3(2) CCRK, in the event of a change in the law applicable to a given case prior to a final decision, the law most favorable to the perpetrator applies.

16. The Court of Appeals *ex officio* analyzed the applicable provisions of all three criminal laws to establish whether either of the two subsequently passed laws is more favorable to the accused than the one relied on by the Trial Panel. The Court finds that none of the subsequent laws is more favorable, thus the provisions in force at the time of the commission of the criminal offence apply.

7. Admissibility of the Appeals

17. The Impugned Judgment was announced on 11.05.2012. The written reasoned Judgment was served on the accused on 02.07.2012. It was served on his Defence Counsel as follows: on Defence Counsel Brkljac on 02.07.2012, on Defence Counsel Jokanovic on 29.06.2012 and on Defence Counsel Syla on 29.06.2012.

18. The accused filed his appeal on 13.07.2012, Defence Counsel Brkljac on 16.07.2012 and Defence Counsel Syla and Jokanovic on 17.07.2012.

19. The Appeals were all timely filed and are admissible pursuant to Articles 399 and 401 KCCP.

8. Findings on the Merits of the Appeals

8.1. Alleged substantial violations of criminal procedure

(a) Alleged substantial violation of procedural law pursuant to Article 403(1)12) KCCP, because of incomprehensible enacting clause, inconsistency with the grounds for the judgment and/or lack of grounds

20. The Defence argues the enacting clause is unclear and incomprehensible, that the reasoning does not provide complete reasons regarding the decisive facts in the case and contradictory reasons are given which cannot constitute grounds for a judgment of conviction.

21. The Panel finds no violation of procedural law as stipulated by the Defence.

22. An enacting clause is incomprehensible when, for example, one cannot establish what the decision of the court is, to whom it relates to, what criminal offences it relates to, what the criminal act is, and similar grave inconsistencies or omissions. The enacting clause of the Impugned Judgment, on the contrary, is concise, clear and includes all the necessary elements, including references to legal provisions upon which it is based. The enacting clause does not raise any doubts as to what is the decision reached by the Basic Court and to what criminal

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offences and person it extends too. There is also no ambiguity regarding the sentencing and other pronouncements included in the Judgment.

23. The enacting clause is also not inconsistent with the reasoning part of the Impugned Judgment. The reasoning part presents arguments of the Trial Panel which support the conclusion reached in the enacting clause – the finding of guilty.

24. The Judgment also includes a statement of grounds relating to decisive facts. The Panel acknowledges that ideally the reasoning of the Basic Court could have been more elaborate, but the imperfections in this regard do not amount to a substantial violation of procedural law. As stipulated in Article 403(1)12) KCCP, there will be a violation under this provision only when a judgment lacks *any* grounds or lacks a statement of grounds relating to *material facts*. This is not the case here, the Impugned Judgment discusses all the material facts and discusses grounds for the decision of the Court.

25. The Panel notes that the Basic Court need not take issue with every single factual circumstance or evidence raised in main trial, but must focus on key facts (which are the key facts will depend on the alleged criminal offence and circumstances of the case) and why it considers them proven or not.

26. Insofar the Defence under this ground of Appeal attempts to challenge the reasoning of the Basic Court related to the assessment of evidence in connection with the factual findings, this will be addressed under the heading of alleged erroneous or incomplete determination of factual situation.

(b) Alleged substantial violation of procedural law pursuant to Article 403(1)10) KCCP, because the Judgment exceeded the scope of the charge

27. The Defence asserts that the Impugned Judgment exceeded the scope of the charge. In the original indictment filed on 01.08.2011 the accused was alleged to have deprived G.M. of his life. This set of facts was not confirmed by the Confirmation Judge in the Confirmation Ruling.

28. The Panel reiterates that pursuant to Article 386(1) KCCP the judgment may relate only to the accused and only to an act which is the subject of a charge contained in the Indictment.

29. The Indictment filed on 01.08.2011 with respect to G.M. (Count 1) alleged that *"the accused "[...] has deprived G.M. of his life, by using violence against him. In the manner that on 24.05.1999, he has beaten and hit him with a rubber stick, has kicked and punched him in different parts of his body, until the victim was left unconscious and subsequently, on 25.05.1999, died."*

30. The Confirmation Judge in his Ruling no. KA 538/11 dated 26.08.2011 restricted the modality of Count 1 to inhuman treatment of G.M., therefore excluding the allegation that the accused is responsible for the killing of G.M. The Confirmation Judge reasoned that *"[...] there*

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is no doubt the perpetrator did not act alone. It only has to be considered that contributions of others may not be attributed to the known concrete defendant. That is the reason why the charge 1 is modified omitting the aggravating fact of the death of M.G. though obviously the death has been a consequence of inhuman treatment of all alleged perpetrators".[4]

31. The Indictment was thereafter modified in main trial during the first session on 01.11.2011 and the scope of the modification was discussed during the session at some length.[5] It is clear from the record of that session that the Prosecution amended the Indictment so as to add that G.M. died on 25.05.1999 as a consequence of the beatings, and it did not re-introduce the original qualification of murder as the modality alleged in the commission of the war crime.[6]

32. The Basic Court did not exceed the scope of the Indictment. The accused was not found guilty of killing G.M.. The accused was pronounced guilty of, together with other unidentified persons, beating G.M. and therefore treating him inhumanely. It was a consequence of this treatment by all the perpetrators that G.M. died. His death is not, as the Defence mistakenly claims, attributed to the accused. This is clear from the enacting clause of the Impugned Judgment as well as its reasoning part. The Basic Court discussed the issue in para. 1.4. of the Impugned Judgment. The Basic Court did not find that the actions of the accused were the sole cause of G.M's death, which would qualify the act as murder. The Basic Court merely found that the conduct of the accused was a contributing factor.

33. This appellate ground is accordingly ungrounded. The Panel finds that the Basic Court remained fully within the scope of the charge included in the Indictment.

(c) Alleged substantial violation of procedural law pursuant to Article 403(1)8) KCCP, because the Judgment was based on inadmissible evidence

34. The Defence in general terms states that the Impugned Judgment is based on inadmissible evidence. The Defence does not specify what evidence it refers to. Nevertheless since this violation is one that the Court of Appeals must examine *ex officio* pursuant to Article 415(1)1) KCCP, the Court has carefully analyzed the evidence referenced in the Impugned Judgment. The Court of Appeals does not find any of that evidence inadmissible. This ground of Appeal is rejected.

(d) Alleged substantial violation of procedural law pursuant to Article 403(2) KCCP, because the Trial Panel omitted to apply or incorrectly applied a procedural norm or rights of the Defence were violated and that influenced or may have influenced the rendering of a lawful and proper judgment

[4] Confirmation Ruling KA 538/11, DC Pristina, dated 26.11.2011. p. 5.
[5] P 408/11, Record of Main Trial, Session 01.11.2011, p. 4 et seq (Eng version)
[6] Ibid.

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35. The Appeal of Defence Counsel Miodrag Brkljac alleges the violation of Articles 7(1) KCCP, 387(2) KCCP and 396(7) KCCP resulting in a substantial violation of procedural law pursuant to Article 403(2) KCCP. The Defence essentially claims that the Basic Court did not assess conscientiously each item of evidence separately and in relation to other items of evidence and has failed to establish the facts of the case truthfully and completely.

36. The Panel repeats that ideally the reasoning of the Basic Court would have been more elaborate, but the imperfections in this regard do not amount to a violation that would have rendered the Judgment unlawful.

37. The Panel finds no merit in Defence's claim that the Basic Court failed to conscientiously assess the evidence. The Basic Court in the Impugned Judgment addressed the evidence, predominantly the witness evidence heard in main trial. The Basic Court also addressed the contradictions in the evidence and explained why it found some evidence more trustworthy than other. The Basic Court elaborated why it did not rely on the testimonies of Defence witnesses.

38. The Basic Court also addressed in clear and reasonable terms several other contentious issues in the proceeding that the Defence now raises in the Appeals – namely the issue of identification of the accused (para. 3.10. of the Impugned Judgment), the weight of other Prosecution witnesses considering J.R.'s contact with them prior to them being examined in main trial (paras. 3.11.-3.13 of Impugned Judgment), the relevance of J. R. reporting the case only in 2009 (para. 3.9. of Impugned Judgment).

39. It therefore follows that the Basic Court *did* evaluate the items of evidence individually and in correlation with each other, thus the Panel finds no violation in this regard.

40. Insofar the Defence emphasizes the relevance of J.R .contacting other witnesses, the Panel concurs with the reasoning of the Basic Court regarding the relevance and possible influence of J.R discussing about the events and the person of the accused with other witnesses. The Basic Court logically and reasonably assessed that there may have been a shared recollection rather than separate and independent recollection. This according to the Basic Court weakened the independence of some evidence and less weight was placed on identification evidence of these witnesses. The Basic Court therefore acknowledged the shortcomings of this evidence and correctly drew conclusions as to its weight. The Defence argument on appeal that this was disregarded is therefore entirely misplaced.

41. The Appeal of Defence Counsel Zivojin Jokanovic under the heading of violation of Article 403(2) KCCP appears to raise the issue of the manner of interview of key witness J.R, but does not specify further. Insofar the Defence alleges *this* gave rise to a violation under Article 403(2) KCCP, such argument is rejected.

42. The Panel notes that the main trial in the case was scheduled to commence on 17.10.2011 and witness J.R, who resides in Germany, was summoned to appear on that date to give

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testimony. However, on the date the main trial was scheduled to start, an appeal against the Confirmation Ruling was still pending, thus the conditions for the start of main trial were not met.[7] The Presiding Trial Judge on 17.10.2011 held a session where all parties were present, including the accused and his Defence Counsel. The session was treated as an extraordinary investigative opportunity pursuant to Article 238 KCCP, and witness J.R gave his testimony. The Panel notes that the Defence did not object to proceeding in this manner[8]. The witness testified in the presence of the Prosecutor, the accused and his Defence Counsel. The Defence had full opportunity to pose questions to the witness and both the Defence Counsel and the accused asked questions. The statement of the witness was read into the record at main trial.

43. The Defence at the end of Prosecution case indeed petitioned the Panel to hear the witness J.R again in order to clarify his evidence in light of testimonies of other witnesses. The motion was rejected by the Trial Panel.

44. The Court of Appeals does not find any violation of Defence rights in this regard. It is noted that the Defence does not claim it did not have the possibility to question J.R, its assertion is of a different kind – namely that because of Trial Panel's rejection to re-call J.R.as a witness, the Defence was deprived of clarifying his statement in light of evidence of other witnesses. The Court of Appeals notes that whenever there are alleged contradictions in the account of events given by different witnesses, this does not require re-hearing witnesses. A witness will primarily be heard again when he or she needs to be questioned about issues he/she did not testify about in his or her original testimony. However, when there is a discrepancy between the statements of witnesses, it is for the Court to assess what is the relevance of those discrepancies and which evidence, if any, it finds more credible.

45. The Trial Panel therefore did not have an obligation to hear the witness again. The Trial Panel assessed that further examination of the witness is unnecessary. This decision was fully within the Trial Panel's authority and the Court of Appeals finds no violation that would undermine the rights of the Defence in this regard.

8.2. Alleged erroneous or incomplete determination of factual situation

46. The Defence alleges that the Basic Court had erroneously and/or incompletely established the factual situation in the case against the accused. The Defence refers to excerpts of witness testimonies which in their view were disregarded and have led the Basic Court to make a wrongful assessment regarding the credibility of witnesses and consequently resulted in wrongful factual conclusions.

47. Before addressing the individual arguments of Defence Appeals regarding wrongful or incomplete determination of facts, the Panel reiterates the standard of review of factual findings

[7] The appeal was dismissed as belated.
[8] See Record of the extraordinary Investigative Opportunity, 17.10.2011, p. 2 (English version).

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by the Trial Panel. Article 405 of the KCCP defines the terms "erroneous determination of the factual situation" and "incomplete determination of the factual situation". It is clear from these definitions that the appellant must not only demonstrate an alleged error of fact or incomplete determination of fact but that erroneous or incomplete determination of the factual situation must relate to a "material fact". In other words, the appellant must establish that the erroneous or incomplete determination of the factual situation is critical to the verdict reached.[9] Consequently, only in such instances will the Court of Appeals overturn a decision of the Trial Panel.[10]

48. It is a general principle of appellate proceedings that the Court of Appeals must give a margin of deference to the finding of fact reached by the Trial Panel because it is the latter which was best placed to assess the evidence. The Supreme Court of Kosovo has held that it must "*defer to the assessment by the trial panel of the credibility of the trial witnesses who appeared in person before them and who testified in person before them. It is not appropriate for the Supreme Court of Kosovo to override the trial panel assessment of credibility of those witnesses unless there is a sound basis for doing so.*" The standard which the Supreme Court applied was "*to not disturb the trial court's findings unless the evidence relied upon by the trial court could have not been accepted by any reasonable tribunal of fact, or where its evaluation has been wholly erroneous*".[11] The approach taken by the Supreme Court reflects a principle of the appellate proceeding which is applied – although with some variance – both in common law and in civil law jurisdictions as well as in international criminal law proceedings (*see e.g. Supreme Court of Ireland, Hay v. O'Grady, [1992] IR 210; Federal Court of Justice Germany, BGHSt10, 208 (210); International Criminal Tribunal for the Former Yugoslavia, Prosecutor v. Kupreskic et al., IT-95-16-A, Appeals Judgment, para. 28 et seq.).*[12]

49. The Defence makes a general and broad argument that the testimonies of some witnesses given during main trial differed from their statements in the investigation, and for this reason the witnesses should not be treated as credible witnesses.

50. At the outset, having carefully reviewed the Record of the Main Trial, the Panel notes that whenever the testimony during main trial in any way differed from a prior statement of that same witness, the witness was confronted with the discrepancy and an explanation was sought. This was employed by the Prosecutor, the Defence and the Trial Panel alike and, indeed, the majority of witnesses were at some stage asked to comment on their statements given during the investigation and asked to clarify discrepancies in their answers.

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[9] See also B. Petric, in: Commentaries of the Articles of the Yugoslav Law on Criminal Procedure, 2nd Edition 1986, Article 366, para. 3.
[10] This approach has been emphasized by the Court of Appeals already in case PaKr 1122/12, Judgment dated 25.04.2013 (see paras. 39-40).
[11] Supreme Court of Kosovo, AP-KZi 84/2009, 3 December 2009, para. 35; Supreme Court of Kosovo, AP-KZi 2/2012, 24 September 2012, para. 30
[12] Court of Appeals, PaKr 1122/12, Judgment dated 25.04.2013, para. 40.

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51. The Appeal of Defence Counsel Jokanovic takes issue with discrepancies in the testimonies of witnesses J.R, R.G, F.M. and Xh.M. The Panel notes that the discrepancies referred to by the Defence were elaborated and clarified during the testimonies in main trial, therefore this did not affect the credibility of the evidence. The Trial Panel actively pursued any relevant discrepancies and sought explanations on why they may have occurred, thus the claim that discrepancies were ignored is unfounded. The Panel makes reference to the Record of Main Trial in sessions where these witnesses were examined, namely sessions on 01.11.2011 (F.M. and Xh.M) and 11.01.2012 (R.G.) and to the record of the extraordinary investigative opportunity of 17.10.2011 (J.R.).

52. The Defence Appeals appear to accept that the beatings of G.M. and J.R. did occur on 24.05.1999 in Lipjan prison.[13] The emphasis of the appellate challenge is on the finding that the accused participated in the beatings. The Defence submits that the testimonies of J.R. and other Prosecution witnesses are not credible and the identification of the accused as the participant in the beatings was erroneous.

53. The Panel notes that it is uncontested that G.M. and J.R. were transferred from Dubrava prison to Lipjan prison on 24.05.1999. It is also undisputed that the accused was on duty in Lipjan prison on 24.05.1999.

54. A number of witnesses who were transferred from Dubrava prison to Lipjan prison alongside G.M. and J.R. were examined in main trial. Their evidence corroborated the testimony of J.R. all relevant material facts. The Defence assertion that the evidence of J.R. remains uncorroborated is thus incorrect.

55. For example, witnesses Xh.M, A.M, S.B, I.P, M.Th all testified about how they were transported to Lipjan prison and the treatment by prison guards, police and paramilitary when they arrived to Lipjan. The witnesses all consistently described that the guards formed two lines from the gate to the entrance of the prison and that the prisoners from Dubrava had to walk pass them in the middle. The witnesses testified that during this time they were beaten walking past them. Witnesses testified the guards, police and paramilitaries used different objects to hit the prisoners – metal bars, wooden objects, weapons.

56. Witnesses Xh.M, H.M., R.G. directly witnessed G.M. being beaten. Xh.M testified that a prison guard hit G.M. on the back and on the neck that G.M. fell to the ground after which the guard kicked him and stamped on him. He affirmed there was more than one person involved in the beating.[14] Witness H.M testified that he saw approximately 2-3 people beat G.M. with metal

[13] See e.g. Appeal of Defence Counsel Brkljac, p. 5.
[14] P 408/11, Record of Main Trial, Session 01.11.2011, p. 27-28.

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bars, wooden sticks, wooden bars, AK-47 rifle butts.[15] He also identified the accused as one of the persons beating G.M. (see below). The witness further testified he saw G.M. falling down and lying down. Witness R.G. testified about G.M and J.R. being beaten. He saw G.M. being hit on his head, shoulders, and that he was left unconscious.[16] Witness M.Th. saw G. M. in the cell in Lipjan and testified G.M. was bleeding from the mouth and he passed away in the morning.[17] This is consistent with testimony of other witnesses such as A. M.[18] and M. Th.[19], who were in the cell together with G.M. prior to his death.

57. This evidence is consistent and complements each other in all material aspects. Insofar there is minor inconsistency between the testimonies regarding the length of the lines formed by the guards, the police and paramilitaries, their numbers, the position of G.M. and J.R. when walking through these lines, these are not material elements. These minor differences which can easily be explained do not render the evidence of these witnesses less credible. These were traumatic events and it is only logical that the witnesses have somewhat different recollections with regard to details. As several witnesses themselves stated, they were focusing on not getting hurt, they were scared and therefore their recollection may not be complete. But as emphasized, the evidence is consistent in all material aspects, namely how there were guards, police and paramilitary present, how they formed two lines through which the prisoners had to pass and how the prisoners, including G.M. and J. R., were being beaten.

58. Insofar the Defence attempts to challenge the credibility of Prosecution witnesses by stating how it is possible that some prisoners were not beaten, the Panel remarks that out of the relatively large numbers of prisoners arriving (the witnesses spoke of several buses of uninjured prisoners from Dubrava), it is entirely possible that some persons were not beaten. There was obviously a different level of violence used against different persons for whatever reason. This in itself again does not render the evidence untrustworthy.

59. The Panel remarks that minor inconsistencies between witnesses' testimonies to which the Defence points are not unusual. In fact, these minor inconsistencies in the view of the Panel reinforce credibility of witnesses. They are recollections of different persons. An exactly the same account as to all details would be more unusual and more likely a sign of collusion than discrepancies in details.

60. The Panel now turns to the issue of identification of the accused as the person who beat G.M. and J.R.on 24.05.1999.

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[15] P 408/11, Record of Main Trial Session 02.12.2011, p. 6.
[16] P 408/11, Record of Main Trial Session 11.01.2012, p.
[17] P 408/11, Record of Main Trial Session 02.12.2011, p. 25
[18] P 408/11, Record of Main Trial Session 03.11.2011, p. 13.
[19] P 408/11, Record of Main Trial Session 02.12.2011, p. 25.

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61. The Defence mistakenly claims that J.R. was the only one who identified the accused and that the Impugned Judgment rests solely on the testimony of this one witness. The record of main trial shows that J.R. evidence is in fact corroborated by several other witnesses.

62. Witness S. B. stated he saw Z.k. participate in the beating of prisoners. He explains he saw him from a distance as he was not concentrating on him, but was sure to have seen him in the group beating the arriving prisoners.[20]

63. Witness I. P., on whose testimony the Basic Court placed considerable weight, was unable to recognize Z.., but did testify he heard guards saying "Z., hit him".[21] Z. is the nickname of Z.. The Panel concurs with the Basic Court that this statement is corroboration for the accuracy of J.R .identification of the accused. The Defence challenges P. statement by noting that no other witnesses heard the words "Z, hit him" and that for this reason the Basic Court should have rejected the credibility of P. statement. The Panel disagrees. It is entirely possible and reasonable that the witnesses remembered different things from that day. Witnesses may not have heard this or just forgot hearing it. In any event, only I. P. hearing these words does not mean that the witness fabricated them, as the Defence appears to suggest. The Panel finds no reason to doubt the credibility of witness P..

64. Further, witness H. M. recognized ZK. as the person who beat G.M .[22] He recognized the accused in court and noted he knows him well from when he had been previously detained at Lipjan prison. The same goes for witness Ramadan Gashi who also recognized the accused as the person who was hitting G.M. and J. R..[23]

65. The Defence also alleges the Basic Court did not take into account the testimony of F. M., stating that G.M. was in poor health in prison. The Defence through this argument appears to challenge the finding that G.M. died as a result of the beating. The Panel finds the Defence claim about F. M. testimony contradictory to the Record of the Main Trial. F. M. did not state his father was in poor health, he in fact testified that G.M. did not have any substantial health problems, but that his only problem was high blood pressure.[24] Further, other witnesses who were imprisoned together with G.M. in Dubrava testified that he was in good health. Witness Xh. M., for example, who had spent the last week before transfer to Lipjan with G.M. , testified that G.M. was in good condition, fit, he did not suffer any injuries and did not complain about his health.[25] That G.M. was not injured in any way during Dubrava attacks is attested by the fact that he was transferred to Lipjan on the bus as opposed to on the trucks (with which injured

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[20] Session 03.11., p. 27-28
[21] Session 17.11.2011, p. 6.
[22] P 408/11, Record of Main Trial Session 02.12.2011. p. 6 (English version).
[23] P 408/11, Record of Main Trial Session 11.01.2012, p. 4 (English version).
[24] P 408/11, Record of Main Trial, Session 01.11.2011, p. 17 (English version).
[25] P 408/11, Record of Main Trial, Session 01.11.2011, p. 23 (English version).

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prisoners were transported). This argument of the Defence is therefore rejected. The Panel affirms the conclusions of the Basic Court supported by witness testimonies that G.M. had no major health problems when he arrived in Lipjan and that he died on 25.05.1999 as a result of the beatings he suffered upon arrival.

66. The Defence also attempts to portray J. R. as the person who orchestrated the investigation against the accused. The Panel does not find any support for such stipulation. J.R. explained why he only reported the criminal offence in 2009 and the Basic Court accepted his explanation as logical and reasonable. The Panel has no ground to find otherwise. It is unclear why J.R. would suddenly fabricate the involvement of the accused. The Panel sees no logical explanation why he would do so; there is no reported feud between the two men that would prompt Rexhepi to such actions. The Panel therefore rejects this stipulation of Defence as entirely ungrounded.

67. The Defence also takes issue with J.R. statement to Eulex WCIU on 24.09.2010.[26] The Defence refers to the witness describing guards in Lipjan prison (and not Pristina prison as alleged in Defence Appeal) the first time he was detained there and making reference to Z. *and* K.. The Defence submits that those were therefore two different persons and alleges the Basic Court should have assessed this. The Panel fails to see the relevance of this argument for the findings of the Basic Court. J.R.did in fact refer to prison guards "K., Z. and others" and he is, it would appear, referring to two different persons. However, what is important is that the witness thereafter describes the person named K. and essentially gives a description of the accused. Thereafter the witness explains that when in Lipjan on 24.05.1999, and when hearing the name K. he remembered this was the same person he knew from Lipjan prison, i.e. the accused. It is therefore clear from J.R. statement that his description and testimony referred to the accused.

68. Insofar the Defence challenges the weight placed on witness identifications of the accused and asserts that the witnesses would inevitably point to the accused in the courtroom when asked about the perpetrator they saw on 24.05.1999, such argumentation is misguided and without basis. The Panel remarks that the witnesses were asked to describe the perpetrator and thereafter they were asked whether the person in the Courtroom was that person. Several witnesses confirmed that the accused was the person they witnessed beating G.M. and J.R. on 24.05.1999. It is unreasonable to claim that the witnesses would point to the accused in any event, simply because he was the accused in the case.

69. Finally, the Defence also alleges that the Basic Court unreasonably dismissed the testimonies of Defence witnesses without properly assessing them. This allegation is incorrect. The Basic Court addressed the testimony of Defence witnesses and explained why it did not find their testimony credible. In paras. 3.15 and 3.16 of the Impugned Judgment the Basic Court discussed the testimonies of M. D., S.M., M. M. and S. R.. The Panel does not find any flaws in the assessment of the Basic Court in relation to these witnesses.

[26] Appeal of defence Counsel Brkljac.

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70. In conclusion, the Panel finds that the Basic Court has determined the facts in the case relating to the beatings of G.M. and J.R. and the involvement of the accused in full and correctly. The factual findings are supported by a plethora of evidence, as also outlined above.

8.3. Alleged violation of criminal law pursuant to Article 404 KCCP

71. The Defence challenges the qualification of the alleged criminal offence on two points. Firstly, it submits that even if the accused was involved in the beating of the two Albanian men, he could only be prosecuted for exceeding the scope of his authority, and not for war crime against civilian population. The Defence asserts that the elements triggering the application of Article 142 CC SFRY were not fulfilled. As a subsidiary and alternative submission, the Defence argues that actions of the accused should not have been qualified as two separate counts of *War Crime against Civilian Population* but only as one criminal offence and a single sentence should have been imposed.

72. Insofar the first argument is concerned; the Panel concedes that the reasoning of the Basic Court with regard to the legal analysis of the elements of the criminal offence under Article 142 CC SFRY is unsatisfactory. However, the Panel finds that the conclusion of the Basic Court, although insufficiently reasoned, is correct and the actions of the accused were correctly qualified as *War Crime against Civilian Population*.

73. The disposition of Article 142 CC SFRY in relevant part reads as follows: *Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to […] inhuman treatment, […] or who commits one of the foregoing acts […]* .

74. In order to determine whether the actions of the accused constitute a war crime, the following elements must be addressed:

- was there an on-going armed conflict in Kosovo on or about 24.05.1999 and if yes, what was the applicable set of norms governing the then ongoing armed conflict (was the armed conflict of an international or non-international nature),
- were G.M. and J.R. protected persons under international law,
- was there a nexus between the armed conflict and the criminal offence.

75. Insofar the existence of the armed conflict in Kosovo at the time is concerned; this is well established and has been unequivocally affirmed through national and international jurisprudence. The ICTY and the Supreme Court of Kosovo have on multiple occasions affirmed an ongoing non-international armed conflict in Kosovo at least since early spring 1998 onwards between the (governmental) Serbian armed forces and the KLA, continuing into 1999.[27] The ICTY Trial Chamber in *Milutinović* and *Đorđević* explicitly held that the armed conflict

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[27] See e.g. *Prosecutor* v. *Milan Milutinović*, ICTY, Trial Judgment, 26 February.2009, Volume 1 of Judgment, paragraphs 840-841; *Prosecutor* v. *Vlastimir Đorđević*, ICTY, Trial Judgment, 23 February 2011 para. 1579.

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continued until June 1999.[28] With regard to the time when the alleged criminal offence occurred, the existence of an internal armed conflict between the KLA and the Serbian forces has been established also by the Supreme Court of Kosovo in the *Kolasinac* Decision of 5 August 2004 and in the *Latif Gashi* Decision of 21 July 2005.[29]

76. It is noteworthy that the Defence does not challenge the existence of the armed conflict as such, although it does challenge the existence of the nexus between the respective criminal offence and that conflict.

77. Inhuman treatment has been defined in jurisprudence of the ICTY as "an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental harm or physical suffering or injury or constitutes a serious attack on human dignity and is committed against a protected person."[30]. The inhuman treatment is defined in the ICC Elements of Crimes as the infliction of "severe physical or mental pain or suffering upon one or more persons."[31]

78. The beatings of G.M. and J.R.in the view of the Panel amount to such inhuman treatment. It is noted the beatings caused substantive physical suffering and injuries.

79. As for the element of protected persons, both G.M. and J.R. fell in the category of civilians within the meaning of Article 142 CC SFRY and as protected persons within Common Article 3 of the Geneva Conventions and Additional Protocol II. The men were prisoners at the time and were not taking active part in hostilities, thus their status as protected persons is undisputed. It is noted that all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person and must in all circumstances be treated humanely.

80. The Panel notes that in light of appeal arguments, special attention must now be given to the discussion of nexus between the established beatings of G.M. and J.R. and the ongoing armed conflict. The Defence namely submits that there was no such nexus and the beatings could only have constituted an excess of authority on the side of the accused.

81. The Panel acknowledges that not all serious crimes committed during an armed conflict constitute war crimes. There must be a link between the criminal conduct and the armed conflict.

[28] *Ibid*.
[29] Decision of Supreme Court of Kosovo (Kolasinac), AP-KZ 139/2003, 05.08.2004, p. 14 et seq; Decision of Supreme Court of Kosovo (Gashi), AP-KZ 139/2004, 21.07.2005, p. 9 et seq.
[30] See e.g. Prosecutor v. Delalic et al (Celebici case), ICTY, Appeals Judgment, 20.02.2001, para. 426.
[31] ICC Elements of Crimes, reproduced from the Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B

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The nexus requirement serves to distinguish war crimes from general criminal offences and also prevents random or isolated criminal occurrences being characterized as war crimes.

82. In determining what constitutes such nexus, the Panel follows the approach adopted by the ICTY Appeals Chamber in its case law. The holding of the Appeals Chamber in *Kunarac* is instructive:

> *58. What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy.* ***The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. Hence, if it can be established, as in the present case, that the perpetrator acted in furtherance of or under the guise of the armed conflict, it would be sufficient to conclude that his acts were closely related to the armed conflict.*** *The Trial Chamber's finding on that point is unimpeachable.*
>
> *59. In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, inter alia, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties.*[32]

83. A war crime may occur at a time when and in a place where no fighting is actually taking place. In the case at hand, the criminal offence was committed by a prison guard in a detention facility run by Serbian government. According to the testimony of several witnesses, not only guards but also members of Serbian police and paramilitary participated in the beatings. Also according to witness testimony, the violence was directed exclusively at the Albanian prisoners. The prisoners were transferred to Lipjan following the massacre at Dubrava prison. The accused took advantage of his position as a guard and his actions were directed against civilians of Albanian nationality. These actions in the circumstances described in the view of the Panel fall within the category of crimes committed in the context of the armed conflict.

84. In conclusion, the Panel finds that the actions of the accused as established by the Basic Court have been correctly qualified pursuant to Article 142 CC SFRY as a *War Crime against Civilian Population.*

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[32] ICTY, Prosecutor v Kunarac, Case no, IT-96-23&IT-96-23/1-A, Judgment of Appeals Chamber, 12.06.2002, paras 58-59. http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf

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85. With regard to qualifying the beatings of G.M. and J.R.as two separate criminal offences, the Panel however accepts the Defence Appeal. The Panel finds that the actions of the accused as established by the Basic Court constitute one criminal offence and not two separate criminal offences.

86. The incriminated actions of the accused on 24.05.1999 represent from a common sense standpoint and logical reasoning one activity, a single whole.

87. The Panel notes that albeit criminal offences directed against personal integrity will as a rule constitute individual criminal offences, the criminal offence of *War Crime against Civilian Population* and other criminal offences against humanity and international law are distinct in this regard. Due to the nature of these criminal offences, they will generally be directed against multiple victims. This is amongst other clear from the wording of the criminal norm itself (Article 142 CC SFRY, Article 153 CCRK). The criminal offence is titled *War Crime against Civilian Population* and throughout the norm the plural is used, e.g. "civilian population subject to killings, torture, inhuman treatment…taking hostages, illegal arrests …".

88. In the view of the Panel, whenever acts giving rise to the charge can be considered as one contained event, one set of circumstances, the accused will have committed one criminal offence of war crime irrespective of the number of victims. In determining whether the criminal offence is to be considered as one criminal offence, criteria such as location, time, object of the criminal offence, intent of the perpetrator, correlations between actions should be considered.

89. The Panel finds support for this approach in the jurisprudence of the region, including the Supreme Court of Kosovo[33] and in the jurisprudence of the international criminal tribunals. In the jurisprudence of the ICTY, the actions against more than one victim have been, when established within the same set of circumstances, prosecuted as a single count of war crimes.[34]

90. The Panel finds that beatings of both G.M. and J.R. occurred as part of one set of circumstances, on the same day at the exact same location, when they were forced to pass with a

[33] See Decision of Supreme Court of Kosovo (Kolasinac), AP-KZ 139/2003, 05.08.2004, p. 6 et seq; Commentary to Article 173 of the Criminal Code of BiH and the case-law quoted therein, Commentary p. 569 et seq (Serbian language version).

[34] See by way of example e.g. Prosecutor v. Jelisic, ICTY Trial Judgment,14.12.1999, disposition – murders of Huso and Smajil Zahirovic prosecuted and convicted as one count, causing bodily harm of two brothers Zejir and Reshad prosecuted as one count; Prosecutor v. Bosksoski and Tarculovski, ICTY, Trial Chamber Judgment 10.07.2008, disposition – Murder, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the murder of Rami Jusufi, Sulejman Bajrami and Muharem Ramadani prosecuted and found guilty as one count, Cruel treatment, a violation of the laws or customs of war, under Article 3 of the Statute, for having ordered, planned and instigated the cruel treatment at Adem Ametovski's house of M012, Hamdi Ametovski, Adem Ametovski, Aziz Bajrami, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, Muharem Ramadani, Osman Ramadani, and Sulejman Bajrami; and the cruel treatment at Braca's house of M012, Hamdi Ametovski, Adem Ametovski, M017, Nevaip Bajrami, Vehbi Bajrami, Atulla Qaili, Beqir Ramadani, Ismail Ramadani, and Osman Ramadani…prosecuted and found guilty as one count;, etc. For acomplete overview see case law of ICTY accessible at www.icty.org.

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number of other unidentified Albanian prisoners through two lines of Serbian prison guards, police and paramilitaries and when doing so were beaten with weapons, punches and kicks by the accused and other unidentified perpetrators. The accused acted in the same manner against both men, the objective of the actions were the same as well as the intent of the accused. In light of the above, the actions of the accused must thus be qualified as a single criminal offence pursuant to Articles 22 and 142 CC SFRY.

91. The Panel is mindful of a different approach that the Supreme Court of Kosovo (acting as appellate court) adopted in *Gashi* (26.01.2011). The Supreme Court amongst other reasoned against treating a number of acts of *War Crimes Against the Civilian Population* as only one "extended criminal act" pursuant to Article 142 of the CC SFRY "because it would privilege the perpetrators and thus give a wrong signal".[35]

92. This Panel disagrees and notes that although the actions of the accused are qualified as one criminal offence, this does not mean that the level of criminal responsibility will be the same for all perpetrators. Criminal responsibility of a perpetrator who has committed multiple acts will be greater than that of a perpetrator who has committed only one act. The number of acts and their modality will certainly have an impact on determining criminal responsibility and consequently also the imposed punishment. The perpetrator will therefore not be privileged in any way, because the sentence passed will always rest on the view taken by the Court of the totality of the criminal conduct of the accused. Further, the different acts giving rise to the qualification will always have to be specified as underlying acts in the enacting clause.

93. In accordance with the reasoning above, the Panel amends the legal qualification in the Impugned Judgment so as to find the accused guilty of one count of *War Crime against Civilian Population* pursuant to Articles 142 CC SFRY and 22 CC SFRY. The enacting clause of the Impugned Judgment is amended accordingly.

9. Allegations regarding punishment

94. Having established the violation of criminal law pursuant to Article 404 KCCP in that the Basic Court wrongfully qualified the criminal offence as two separate offences of *War Crime against Civilian Population* instead of one, the rendered punishment must be revisited by the Court of Appeals. The accused is namely to be sentenced for this criminal offence with one sentence within the margins prescribed by the CC SFRY.

95. The Panel finds that the appropriate punishment for this criminal offence is 14 (fourteen) years of imprisonment. This punishment corresponds to the aggregate punishment imposed by the Basic Court. The Panel notes that this punishment reflects the level of criminal responsibility

[35] Judgment of Supreme Court of Kosovo, Ap-Kz 89/2010, 26.01.2011, p. 28.

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of the accused and takes into account the number of acts giving rise to the conviction and the manner in which the criminal offence was committed.

96. The Panel finds that the Basic Court duly considered all mitigating and aggravating circumstances, which were also considered by the Court of Appeals. The latter notes that albeit the actions of the accused are properly qualified as one and not two criminal offences, the underlying criminal conduct and criminal responsibility giving rise to the punishment remains the same and was not overturned by the Appellate Panel. For this reason, the Panel finds it appropriate to impose the sentence in the same length of time.

97. It is therefore decided as in the enacting clause.

Prepared in English, an authorized language.

Reasoned Judgment completed on 21.01.2014.

Presiding Judge

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Annemarie Meister

EULEX Judge

Panel member	Panel member
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Tore Thomassen	Vahid Halili
EULEX Judge	Judge

Recording Officer

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Beti Hohler

Eulex Legal Officer

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