PAKR No. 148 / 2013

THE APPELLATE COURT OF KOSOVO – Department of Serious Crimes, in a panel composed of the Presiding Judge Hajnalka Veronika Karpati, EULEX Judge and panel members Driton Muharremi and Vahid Halili, local judges, assisted by the EULEX legal officer Andres Parmas, as recording officer in the criminal matter against the accused S.T. from Zalldare village, Dibra municipality, Republic of Albania, for two criminal offences, namely that of Unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in co-perpetration pursuant to Article 229, par. 1, 2, 3 and 4 of the old Provisional Criminal Code of Kosovo (PCCK), and Organized crime, pursuant to Article 274, par. 1, 2, 3 of the PCCK, deciding on appeals filed by the Special Prosecutor of the Republic of Kosovo and Defense Counsel of the accused S.T., filed against Judgment of the Basic Court of Pristina, P. No. 690 / 2011, dated 15 February 2013, in a panel session held on 11 December 2013, rendered the following:

R U L I N G

1. The Appeals of the Special Prosecutor of the Republic of Kosovo and Defence Counsel of the Accused S.T. are partially granted.

2. The Judgment of the Basic Court of Pristina dated 15 February 2013 in the criminal case no. 690/11 is annulled.

3. The case is returned to the Basic Court of Pristina for a retrial.

4. The detention on remand against S.T. is extended pursuant to Art 424 (6) KCCP.

R E A S O N I N G

1. With its Judgment P. No. 690 / 11, dated 15 February 2013, Basic Court of Pristina found the accused S.T. (for more details see the judgment) guilty for the criminal offence of Organized Crime, pursuant to Article 274, par. 1, 2 and 3 of the PCCK, and sentenced him to three (3) years of imprisonment. In addition to this, detention on remand was extended against the accused until judgment becomes final but not beyond the punishment imposed with that judgment, in conformity with Article 187, par. 1, subpar. 1.1, 1.2.1 of the CPC. Time spent in detention as of 1 July 2011 shall be included in the sentence imposed. The accused shall be also obliged to pay the costs of the criminal proceedings in amount of 500 euros. With this judgment, the accused S.T., in conformity with Article 364, par. 1, subpar. 1.3 of the PCCK, has been acquitted for two criminal offences, namely that of Unauthorized

purchase, possession, distribution and sale of narcotic drugs and psychotropic substances, in co-perpetration pursuant to Article 229, par. 1, 2, 3 and 4, as read with Article 23 and 25 of the Criminal Code of Kosovo.

2. Appeals against this judgment within the legally prescribed time were filed by the following parties:

- the Special Prosecutor of the Republic of Kosovo due to violation of provisions of the criminal procedure, erroneous and incomplete determination of the factual situation, violation of the criminal code and decision on criminal sanction, moving the court to uphold the punishment against the convicted with reference to Count 3; to modify judgment of the first instance court and to convict the defendant with regard to Counts 1 and 2 and additional liability with regard to Count 1, or alternatively to order a complete or partial retrial.

- defense counsel of the accused, lawyer Rame Dreshaj due to essential violation of provisions of the criminal procedure, erroneous and incomplete determination of the factual situation, violation of the criminal code and decision on punishment proposing to amend the appealed judgment in conviction part by acquitting the accused S.T. of the charge of organized crime, pursuant to Article 274, par. 2 of the PCCK and to affirm the acquittal part of the judgment or to annul only the conviction part of the judgment and return the matter for retrial at the first instance court.

3. Kosovo Appellate Court has scheduled and held its panel session in conformity with Article 390, par. 1 of the CPC and notified parties accordingly. That session was attended by the EULEX Prosecutor Eva Judit Tatrai, the accused S.T. and his defense counsel Rame Dreshaj. The Appellate Prosecutor supported her written proposal PPA/I. no. 101/13 dated 10 July 2013, in which she had proposed to reject as unfounded the appeal of lawyer Rame Dreshaj and to grant the appeal of the Special Prosecutor and to amend Judgment of the Basic Court of Pristina, by finding S.T. guilty for the criminal offence of Unauthorized purchase, possession, distribution and sale of narcotic drugs and psychotropic substances, pursuant to Article 229, par. 2 and 4, subpar. 1, in conjunction with Article 23 of the PCCK (items 1 and 2) and of Organized crime, for modified criminal liability, stipulated by Article 274, par. 1 or 3 of the PCCK. The accused stood by his defense counsel.

4. Having reviewed the case files and impugned judgment, in line with provisions of Article 394 of the CPC, upon assessing appellate allegations, the Appellate Court found that:

- Appeals are partially well-founded and Judgment should be annulled and case sent back for retrial and reconsideration.

5. Special Prosecutor in his appeal claims, amongst others that there is violation of the provisions of the criminal procedure since there is a considerable lack of consequence between the enacting clause and findings and factual reasoning in the judgment, it is also considered that the court has failed to make a correct and complete determination of the factual situation and failed

to establish material evidence, presented before the trial panel, with regard to the nature and amount of drugs in September 2009. While it is true that no drug could be recovered by Kosovo Police in the September 2009 shipment, hence there was no forensics evidence, despite sufficient evidence with regard to the nature of drug alleged to be heroin as well as the amount of such shipment.

6. Evidence related to the contents and amount of alleged substance have been gathered from discussions between the defendants during their conversations which were monitored with legal surveillance when they talked about the price of the drugs and payments for couriers upon distribution of drugs. Apart from these, a testimony of the witness Kadri Gashi was obtained, who was in charge of investigations conducted over this case, whose conclusion was clear with regard to the type of this drug – which was heroin – based on analysis of discussions between defendants with respect to the price and payments for the couriers, supported by his long time experience in combatting drug related crimes.

7. Included is also the conversation in which Xh. and A. had agreed on engaging couriers, whereby the most important call was on 1 September 2009 between X.T. and his criminal collaborator in Albania, based on his experience the witness stated that costs incurred by these couriers match with fees charged for the transport of heroin. Evidence on the drug price emerge from the intercepted conversations between X.T. and H.T. on 13 September 2009, when Xh. was informed that the profit from the September shipment had been 86.000 €, which is line with allegations that this drug which was transported by that group in September 2009 was heroin. The prosecutor also alleges violation of the criminal law by applying an unimplemented law for the criminal offence, as per Article 229 of the PCCK. In other words, it was proven that the exact type and amount of the drug shipment of September 2009 was not known, hence there were sufficient evidence beyond reasonable doubt that the defendants have committed this criminal offence. If the court is convinced beyond reasonable doubt that the defendants have purchased, have possessed, have distributed or have sold such narcotics, based on all evidence; then it is not necessary pursuant to Article 229 of the PCCK to determine the exact type and amount of these narcotics beyond any reasonable doubt with forensic analysis or other similar evidence. Prosecution is in possession of evidence beyond reasonable doubt that there has taken place a shipment of illegal narcotics in the month of September, when such narcotics could not be confiscated as they were successfully concealed by the criminal group who send this shipment to Switzerland. With regard to charge 2, the Prosecutor has alleged essential violation of provisions of the criminal procedure, pursuant to Article 402, par. 1 of the CPC, in conjunction with Article 403, par. 12 and erroneous determination of the factual situation, as read with Article 402, par. 3 of the CPC. It is unclear from the judgment why S.T. has been acquitted of the Count 2, upon analysis of the factual findings with relation to his conviction for the Count 3. Naturally, the Prosecutor considers that factual findings of the first instance court are sufficient for the Appellate Court to duly modify the judgment and to include conviction of the defendant also for the Count 2. In the judgment, the trial panel submits that they have concluded

that there was an organized criminal group that carried this serious crime, namely transported an amount of 109 kg of Cannabis in November 2009. They also concluded that S.T. 'had participated' in this shipment by providing transport for activities of the group and that S.T. was aware about the criminal activities of this group and deliberately provided contribution to them (see page 21, proven facts).

8. Furthermore, it was decided that "interception of phone calls between G.G., S.T., X.T., A.T. and video documentation obtained from surveillance shows that on approximately 25 November 2009 S.T. was very well aware of activities of the group" and that "the defendant was very well aware that his activity had contributed to the organized crime group to commit (one) serious crime" (see page 25). 25 November 2009 is a crucial date, since it was on that date when couriers took the cannabis from Albania on its way into Kosovo when seized by authorities of Albanian police. It is a prosecution's case that S.T. together with G.G. have organized and helped transport provided by couriers. This is supported primarily by the aforementioned factual findings of the trial panel. The trial panel on page 25 of its judgment states that S.T. admitted that he provided services to G.G. and provided the court with paperwork on Barley transport. On page 26, the trial panel justified that "the only proven activity of transporting goods (shipment of drugs had not been proven) does not reach the level of the most serious activity of the organized criminal group. Findings of the trial panel concerning the November shipment are totally vague and inconsistent with remarks. Throughout this judgment, in its enacting clause, the trial panel found that S.T. did not transport the drugs, nevertheless, it decided that he provided some transport service during the period of the November shipment. The only item (apart from narcotics) mentioned in the judgment that was transported is barley. It seems from the judgment as if S.T-s involvement admitted by himself concerning the barley shipment is deemed as evidence on his involvement in "known contribution to the group to commit the serious crime" through involvement in "their other activities". In spite of this, the trial panel does not explain under any item of judgment the way in which the barley transport can correspond to involvement in commission of the serious crime, which consequently left as assumption. The prosecutor mentions that this might be an unintentional mistake (material mistake) of the trial panel when transcribing judgment from its verbal announcement into the written form. It seems that the trial panel has downplayed allegation of the defendant that the only goods he transported was barley, but such conclusion is vague in plain English. Judgment is unclear in respect of circumstances or largely consistent. Violation of the criminal law (Article 402 (2) of the PCPCK, as read with Article 404 (4) of the PCPCK on implementation of an inapplicable law for the criminal offence. The Prosecutor is of opinion that the defendant S.T. should have been convicted for Count 2, based on the aforementioned conclusions (see paragraphs 34 and 35), if the trial panel had not made an erroneous interpretation and application of the criminal law. The trial panel further states that "the direct participation" of S.T. in the shipment of cannabis sativa which took place in November 2009, could not be proven (page 21). Judgment further describes the trial panel's point of view with regard of the meaning of "direct participation", which in their view implies "establishing a causal link between intentional

actions of the defendant and consequences which resulted" (page 21). The notion "direct participation" cannot be found in the Criminal Code of Kosovo. The trial panel has, in turn, applied a test which cannot be found anywhere in the criminal law of Kosovo, when they made a legal assessment of S.T.'s actions. Notwithstanding this, according to enacting clause of judgment, the trial panel found S.T. guilty of "active participation" in organized crime, pursuant to Article 274 (2) of the Criminal Code of Kosovo. Trial panel states that "a person who participates in other activities of the criminal group, by for instance providing transport, shall be held responsible for that criminal offence as he has knowingly contributed to commission of the serious criminal offence by that organized criminal group" (page 21). Hence, there is a discrepancy between enacting clause of judgment and statement of grounds. In addition to this, there is a clear distinction between "active participation" and "direct participation". Furthermore, it is a legal error to consider organizing and providing transport for an organized criminal group in the capacity of a drug courier as an "indirect participant", if there is such legal distinction. Furthermore, the prosecutor emphasizes that the defendant was charged with Count 2 as an alternative, as Kosovo legislation fully allows for it. Even if the trial panel did not consider him being criminally liable for the purpose of Article 229, par. 2.2 and 3 as co-perpetrator, pursuant to Article 23 of the PCCK, their intention was to punish him on regular basis for intentional assistance for commission of criminal offences, pursuant to Article 25 of the PCCK. Indeed, according to factual conclusions of the trial panel, S.T. has intentionally assisted the criminal group in commission of the criminal offence stipulated with Article 229 of the PCCK. Thus, he should have been punished for Count 2 on these grounds; hence the Appellate Court can modify judgment.

9. Prosecutor in his appeal is of opinion that the trial panel has failed to properly determine punishment against the defendant when he convicted him for organized crime pursuant to article 274, par. 2 of the PCCK, in particular when this type of crime carries a mandatory punishment by imprisonment of "at least five years". Imposing a sentence by imprisonment of three years against the defendant for such a serious crime comprises a mistake of law.

10. Furthermore, the PCCK provides for the trial panel to consider mitigating circumstances with respect to punishment, thus the prosecutor evaluates that provisions for lowering the punishment were not properly applied in the judgment. In this regard, the prosecutor highlights importance of the trial panel conclusions that the defendant was an **"irreplaceable"** member of the organized criminal group (page 23). In a case like that, it can be concluded that the fact that the defendant when convicted as aged and ill person (grounds given on pages 25, 26 for lowering the sentence) cannot justify imposing a punishment lower than the statutory limit of five years. In fact, such lowering of sentence is sending not a very good signal to society when it comes to participating in an organized criminal group, contradicting thus the clear purpose of penal sanction. It was only afterwards that such factors were properly considered when the possibility of early release of the inmates serving their imprisonment terms – was evaluated.

11. Consequently, the Prosecutor requires the Court of Appeals to modify the sentence imposed on Count 3 and impose the minimum sentence of 5 years imprisonment against the defendant.

12. The Prosecutor opines that the trial panel incorrectly applied the law of criminal procedure, thus from enacting clause, namely page 22 it is clear that the new KCCP of 2012 is implemented in the main trial after 01.01.2013 and that this is a mistake of law. From the entry into force of the CPC in 2013, it is not clear which code the trial panel applied when announcing the Judgment. The Prosecutor was of the opinion that during the hearings the old KCCP from 2003 continued to apply as the Indictment is confirmed pursuant to the old code and the main trial commenced before entry into force of the new code. The latter occurs since the provision of Article 541 of the CPC has the status of Lex specialis limited in cases where the main hearing has not yet started. Therefore Article 545 is Lex generalis meaning that the date for submission of the Indictment is the main factor determining whether to implement the new or the old code thus he considers that the old code has continued to be implemented during the trial and for this appeal. This construction of the transitional provisions of the CPC is also supported by the Opinion 56/13 of the Supreme Court dated 23.01.2013.

13. An appeal against this Judgment has been filed also by the Defence Counsel of the accused, lawyer Ramë Dreshaj on the grounds of essential violation of provisions of the criminal proceedings, erroneous and incomplete determination of the factual situation, violation of the criminal code and decision on criminal sanction proposing to modify the appealed Judgment it its sentencing part by acquitting of the Indictment the accused S.T. for the criminal offence of Organised Crime in sense of Article 274 Par. 2 of the CCK and to affirm the Judgment in its acquitting part, or annul the Judgment merely in its acquitting part by returning the matter to the first instance Court for retrial.

14. The Defence Counsel raises the issue of Kosovo legal jurisdiction in this case on whether the Special Prosecution of Kosovo is competent to undertake a criminal prosecution against his client and also whether the District Court of Prishtina by its decisions supports such a criminal prosecution and deal with this non-existing criminal matter as already occurred when knowing that his client is citizen of the Republic of Albania and did not commit any criminal offence in or outside the territory of Kosovo in its disadvantage namely in the disadvantage of its citizens. Article 99 of the CCK clearly regulates who the criminal code effects on by quoting the same. For the Defence it is doubtful and ungrounded the demand for international arrest order based on which he was arrested and extradited from police authorities of Croatia by the fact the document emphasized that in this investigative proceedings several states amid them also Albania are included. The Special Prosecution of Kosovo also had cooperation with the Prosecution of Serious Crimes in Tirana especially related to the request for international legal assistance dated 18 and 23. 09. 2009, and the following matter raises: perhaps the Prosecution of Kosovo has "jurisdiction" to control public authorities of Albania when they found no incriminating facts of their citizen - of my client.

15. It is sentencing part the enacting clause of the Judgment is incomprehensible, inconsistent with its content or reasoning of the Judgment, and no grounds to material facts are presented whereas those already presented are entirely unclear and inconsistent. That relies on the fact that the reasoning in the sentencing part respectively page 12 nr. 3 has brought up the evidence presented by the Defence and under A), material facts enumerating up to number 28 while under B), the statement of witness S.H. and under 4, the statement of the defendant S.T., and the Court on page 22 of the sentencing part of the Judgment concludes that by findings of the Court (6) the entire evidence is admissible. On the same page erroneously and unlawfully concludes the proved facts "existence of an organised criminal group has been proved sufficiently. Commission of the serious crime by this criminal group means shipment of narcotics in November 2009 which is also proved; participation of my client by providing transport for activities of the group, his awareness about the criminal activities and his deliberately provided contribution to them, also is proved. This conclusion of the Court cannot stand since no criminal matter that would be designated as serious crime as per law respectively main requirement to be designated as organised crime is not determined.

16. On the same page, the Court justly finds the facts not proved i.e. his involvement in the shipment of heroin in September 2009 and his direct participation in the shipment of cannabis sativa in November 2009; this determines the best that also my client did not commit the criminal offence of Organised Crime.

17. Another violation of the provisions of criminal procedure occurs in the event of legal designation of the criminal offence since by the Criminal Code of Kosovo namely Article 274 par 2 of the CCK the criminal offence of organised crime does not stand; it is already determined that my client did not commit the criminal offence – the serious crime for which it is foreseen the sentence of at least 4 (four) years.

18. Article 7 provides that the court, the public prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision, and carefully and with maximum professional devotion to establish with equal attention the facts against the defendant as well as those in his favour. At the outset of the hearing the court prejudiced that my client is guilty and perpetrator of the criminal offence which the hearing was conducted for by lining on the side of Prosecution making thus erroneous conclusions in the minutes to which the Defence has repeatedly warned in this regard.

19. In conformity to Article 396 Par. 7 of the KCCP, the Court in a clear and complete manner should have presented what facts and for what reasons considers them as determined or undetermined as well as grounds to it which actually was not done in the sentencing part of the appealed Judgment.

20. The Defence contends that there occurred erroneous and incomplete determination of factual situation, since a variety of factual and substantive elements are not assessed justly and even if assessed they are evaluated based on a biased criteria. The latter is argued with the inconsistencies existing in the legal provisions namely Article 274 of the CCK, the testimony of witness Valentina Gara who about S.T. for the first time heard in the main trial as well as the Defence witness S.H. who decisively stated that the investigator Kadri Gashi, let alone exaggerated things but also those he reported while conducting the investigations in this criminal matter are not true, even the testimony of Kadri Gashi who during the criminal proceedings was never able to establish that S.T. had been ever caught with narcotic substances; many times he apologised that during phone call interceptions it was not his voice, that it is not about S.T. though in the interceptions and transcripts is mentioned “uncle “ or “uncle Sul”

21. Also the Defence considers there is violation of criminal law as consequence of the violations of provisions of criminal procedure, erroneous and incomplete determination of factual state namely erroneous evaluation of facts and evidence. Based on that, he should be acquitted due to the lack of evidence, same as occurred in the acquittal part of the Judgment.

22. Regarding the decision on punishment, the Judgment is unlawful because of the very fact of substantial violation of the provisions of criminal procedure, unjust and incomplete determination of the factual situation as well as violations of law thus willingly or not willingly the first instance Court is dictated also its violation of criminal law. The Court did not address at all the mitigating circumstances but decided with its unsustainable conviction. In front of the prosecutor and before the Court, the accused is presented in a sincere, fair and emancipated manner despite he is old age and even though he has denied the criminal offence, the facts contained in the case file.

23. By its submission PPA/I nr.101/13, dated 10 July 2013, the Appellate Prosecution proposed to reject as ungrounded the appeal of the Defence Counsel Ramë Dreshaj, approve the appeal of the Special Prosecution and amend the Judgment of the Basic Court of Prishtina: finding the accused S.T. guilty for Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues, in co-perpetration pursuant to Article 229, par. 2 and 4, as read with Article 23 of the Criminal Code of Kosovo (Items 1 and 2) or finding the accused S.T.n guilty, for Organised crime for modified criminal liability as provided for by Article 274 Paras. 1 or 3 of the CCK.

24. At the outset the Court of Appeals expresses its agreement with the assessment of the Prosecutor that Basic Court has erroneously applied wrong set of procedural norms when taking guidance from CPC. Since the Indictment in the present case is confirmed pursuant to the KCCP and the main trial commenced before entry into force of the CPC, the whole case has to be adjudicated according to respective rules of the KCCP. This construction is also supported by the Opinion 56/13 of the Supreme Court dated 23.01.2013.

25. The Court of Appeals estimates that the enacting clause of the Judgment is incomprehensible, contrary to its reasoning and crucial facts presented by the first instance Court. It is not clear what facts are announced as determined by the first instance Court and there is no factual description which will clarify what action of the accused is proved. The first instance Court described the conversations from interceptions made, but did not provide their assessment and justification and that by which actions of the accused deriving from these interceptions the same (defendant) is involved in the criminal offense which he was found guilty for.

26. The first instance Court evaluates that the accused is responsible since he knew he cooperated with people dealing with organised crime which is evident from the intercepted phone conversations dated 28.07.2009 between the accused and H.T., where the accused said that if he doesn't take the money they owe him, he will sell the car and that topic (about this vehicle) is discussed same evening between X.T. and A.T., to which the Court considers too high amount for a lawful transportation, without mentioning how much is it possible to be considered high as well as the findings that a driver would not use such a style of negotiation with the words, 'give me the money or I'll sell the car" and the fact that the defendant's truck is very important for members of the group and that the defendant is indispensable for the others, is only an assumption being insufficiently supported and justified.

27. The enacting clause regarding the criminal offenses under Items 1, 2 and 3 of this Judgment is merely summarizing the Code, by which provisions the criminal activities of the accused cannot be determined. This conviction of the Court of Appeals is strengthened also the by the fact that the first instance Court rendered the Judgment on acquittal for the base offence of Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues, pursuant to Article 229, par. 1, 2, 3 and 4, of the Criminal Code of Kosovo (CCK) whereas found the accused S.T. guilty for the criminal offence of Organized Crime, pursuant to Article 274, par. 1, 2 and 3 to the Criminal code of Kosovo (CCK). This Court estimates that the criminal offence of Organised Crime as provided for by Article 274 Paras.1, 2, 3 of the Criminal Code of Kosovo (CCK), cannot stand as a sole without the so-called, "base crime" as serious crime which is a requirement for a criminal offence to amount a criminal offence of organised crime as foreseen by Article 274 of the CCK. Therefore the responsibility for the criminal offence of organised crime cannot be concluded without initially concluding the criminal liability for a serious criminal offence. Likewise it remains unclear whether the first instance Court established that something had been transported, besides it remains unclear the quality of what can be called substance that is transported because from the case files it is obvious that the type of narcotic substances is only guessed; the latter is corroborated by the expert who brought the conclusion based on phone conversations making the division between the contracted quantity and price, without physically having the substance.

28. It is in the discretion of the first instance Court evaluating the evidence whereas the Court of Appeals makes the re-evaluation of evidence solely if finding mistakes on the Court assessment and only in exceptional cases it makes the administration of evidence by opening a second instance hearing. This Court has found that the factual description was not provided as much as needed in the Judgment and that the reasoning is insufficient. Since it is not clear what are the findings of the Basic Court of Pristina and the way this Court has come to such conclusions, the Court of Appeals decided as in enacting clause of this Ruling.

29. The Court of Appeals holds that Prosecutor's and Defence Counsel's Appeals both have to be partially granted. The Panel agrees with the Prosecutor that there exist inconsistencies between reasoning and enacting clause as explained in para 25 of this Judgment. These inconsistencies result from deficient reasoning and incomplete and incorrect determination of factual situation. Special attention has to be drawn to the fact that much of the interception evidence has not been evaluated at all by the Basic Court.

30. Also the arguments presented in the Defence Counsel's Appeal on alleged wrongful assessment of facts by are to the point in part that Basic Court's conclusions are inconsistent; the Court has truly failed to clearly reason which facts are considered confirmed and which not.

31. Since, based on above, the Court of Appeals holds that because of grave procedural violations and severe deficiencies in establishment of facts the case has to be returned for a retrial, the Appellate Panel shall not go into the arguments of the Prosecutor's Appeal concerning sentencing of S.T. or further elaborate on the Appellants' argumentation regarding alleged flawed establishment of facts and wrongful application of substantive law.

32. The Court of Appeals considers unmeritorious the arguments of the Defence Counsel in regard of alleged lack of competence of the Kosovo courts to adjudicate the facts at hand. The issue of competence of Kosovo Courts in that respect has already been dealt with in earlier stages of the case.

33. From the above mentioned reasons, the appealed Judgment is legally unsustainable and as such should have been annulled and the matter is returned to the first instance Court for retrial. During the retrial the first instance Court must comply with the aforementioned observations, eliminate all mentioned violations, administer all the same evidence and assess them in accordance with provision of Article 370 Paras. 6 and 7 of the CPC and depending on the outcome of the evidence assessment to render just and legitimate conclusions based on the administered evidence and then issue an appropriate decision.

34. Additionally since the Judgment of the District Court of Prishtina P.nr.504/2010 dated 4 July 2011, against the accused X.T., A.K. and G.I., and related to the accused S.T., is annulled and returned to the first instance Court for retrial and reconsideration by the Ruling of the Supreme Court of Kosovo, Ap.nr.448/2001, this panel proposes that the Basic Court in conformity to

Article 35 of the CPC conducts joint proceedings for the accused X.T., A.K. and G.I. with the accused S.T. and against them to run a sole procedure.

35. With respect to detention on remand, the criminal panel of this Court pursuant to Article 402 Par.4 of the CCK, decided to extend the detention on remand against the accused since it considers that there do still exist the conditions and circumstances which the same (detention on remand) is ordered for.

36. From the reasons above and pursuant to provisions of Article 402 of the CCK it is decided as in enacting clause of this Judgment.

Prepared in Albanian, an authorized language. Reasoned Judgment completed and signed on 13 January 2014.

APPELLATE COURT OF KOSOVO
PAKR.no.148/2013, dated this 11.12.2013

Recording Officer
Andres Parmas

Presiding judge –
1. Hajnalka Veronika Karpati

Members of the panel:

2. Driton Muharremi_____

3. Vahid Halili_____