

**BASIC COURT OF MITROVICA/MITROVICË**

**P.nr. 933/2013**

**10 July 2014**

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICA/MITROVICË**, in the Trial Panel composed of EULEX Judge Nuno Manuel Ferreira de Madureira as Presiding Judge and EULEX Judges Roxana Marilena Comsa and Iva Niksic as Panel Members, with the participation of EULEX International Legal Officer Vera Manuello as the Recording Officer, in the criminal case P.nr. 933/2013

*Against*

**Ž. V.**, son of J. (father) and M. (nee J.), born on \_\_\_\_\_ in M\_\_\_\_\_ (hereinafter M\_\_\_\_\_) where he resides at \_\_\_\_\_, married, \_\_\_\_\_, unemployed \_\_\_\_\_. He was arrested on 29 July 2013 and under the measure of detention on remand until 28 February 2014, following by the measure of house detention from 28 February 2014 until 20 June 2014; currently under the measure of attendance at Police stations;

*Accused* through the Indictment of the State Prosecutor in Mitrovica dated 24 October 2013 with the criminal offence of:

“Attempted Aggravated Murder” contrary to Article 147 Paragraph (1.10) in conjunction with Article 20 of the Criminal Code of Kosovo, UNMIK/REG/2003/25 (CCK);

*After having* held the Main Trial hearings, all open to the public, on 06 May, 03, 04, 09, 10, 11, 18, 19 June and 09 July 2014, in the presence of the Accused **Ž. V.** and his Defence Counsel Nebojša Vlajic, the Injured Parties Officer A. T. and Officer F. S. (on 03 June 2014) and the State Prosecutor,

*Having informed* the parties on 09 July 2014 that the Court is not bound by the legal qualification of the criminal offence as set out in the Prosecution's Indictment according to Article 360 Paragraph (2) of the new Criminal Procedure Code (CPC) and that the Court may *ex officio* re-classify the original criminal offence into a different one based on facts not entirely coincident with those described in the Indictment but which do not configure a substantial change in the circumstances,

*Having informed* the Defence on 09 July 2014 of the possibility of such re-classification in a timely manner and of his right to file any observations and present any additional evidence related to this matter,

*Having been informed* by the Defence that he did not wish to present any additional evidence but that he will present observations on the legal qualification of the criminal offence during his closing statement,

*Having heard* the parties' closing statements on 09 July 2014,

*Following* the Trial Panel's deliberation and voting held on 09 July 2014,

*Pursuant to* Article 366 Paragraph (1) of the CPC on 10 July 2014 in a public hearing and in the presence of the Accused, his Defence Counsel and the State Prosecutor;

*Renders the following:*

## **JUDGMENT**

### **I. The Accused Ž. V. is**

#### **FOUND GUILTY**

**Because** on 14<sup>th</sup> August 2010 Mitrovica Regional Operations Support Unit (ROSU) was implementing an operation plan named '\_\_\_\_\_' aimed at tackling illegal smuggling of goods in the north of Kosovo.

At a certain time during late afternoon before 19h00, on the road of Rudare between Zvečan/Zveçan and Mitrovica, near Sokolica Monastery junction, two Police officers in plain clothes managed to stop a cistern truck driving in the direction of South

Mitrovica with license plate \_\_\_\_\_. The truck driver admitted the cistern was loaded with oil.

The truckload's destination was \_\_\_\_\_ Petrol station, property of the family of the Accused and run by his brother Z. V. and for which the Accused worked on a regular basis.

The truck driver was unable to produce any documents with regard to the goods he was transporting. The truck driver was then ordered by the Police officers to follow them to the customs terminal in South Mitrovicë/a. The truck driver went into his truck, entered the cabin, but instead of starting the engine, jumped out of the truck through the passenger door and ran off.

In the meantime, a crowd started gathering on the road towards the direction of Zvečan/Zveçan in the proximity of the area and Kosovo Serbs started protesting against the actions of the Kosovo Albanian Police officers. In the meantime, at around 19h00, following a request for assistance, two separate teams of uniformed ROSU Police officers arrived at the scene to assist their colleagues.

The Injured Parties \_\_\_\_\_ A. T. and F. S., wearing \_\_\_\_\_, placed themselves near the rear of the truck in order to regulate the on-going traffic, specifically by stopping the traffic coming from Zvečan/Zveçan.

Several minutes after the truck driver ran off, and while \_\_\_\_\_ A. T. and F. S. were standing in the middle of the road, a four wheel motorbike (quad bike) coming from the direction of Zvečan/Zveçan approached with two persons on it. The Accused Ž. V. was the driver. The identity of the passenger remained unknown.

The Accused was ordered by \_\_\_\_\_ A. T. to stop by raising his hand over his head with his palm facing forward. Realizing that the driver of the quad was not stopping, the \_\_\_\_\_ made a sign to the driver of the quad to slow down.

The Accused, who clearly saw the signals and who was fully aware that he had to follow the \_\_\_\_\_ order, instead kept driving at the same speed in the direction of \_\_\_\_\_ officers A. T. and F. S..

\_\_\_\_\_ officers A. T. and F. S. could only avoid a collision with the oncoming vehicle by swiftly moving aside. Thus, the quad bike managed to pass through.

After continuing his drive for several metres towards Mitrovica, the Accused executed a U - turn and drove back approaching the truck and inquired about the Police actions in relation to the truck.

Moments later, the Accused was arrested next to the truck cabin, thus being prevented from undertaking any further actions, while the passenger of the quad managed to escape.

The Accused acted intentionally with the purpose of preventing the truck together with its load to be driven to customs terminal in South Mitrovica and undergo customs procedure. The Accused was aware that the truck was under Police custody and that the persons towards whom he drove the quad bike were \_\_\_\_\_ officers acting in such capacity. The Accused was also aware that the truck load was destined for \_\_\_\_\_ Petrol Station and that the truck has been stopped by Kosovo Albanian Police officers.

The Accused was fully mentally competent.

**Therefore,**

**The Court requalifies the criminal offence of “Attempted Aggravated Murder” and**

**The Accused Ž. V. is CONVICTED of committing the criminal offence of attempt of “Obstructing Official Persons in Performing Official Duties” contrary to Article 316 Paragraphs (1), (3) and (4) of the Criminal Code of Kosovo (CCK), in accordance with Article 3 Paragraph (1) of the Criminal Code of the Republic of Kosovo – Law 04/L-082 (CCRK);**

**II. The Accused Ž. V. is**

### **FOUND NOT GUILTY**

Because under the circumstances described above, the Accused on 14.8.2010 around 19.00 hrs on the road between Zvečan/Zveçan and Mitrovica, near Sokolica monastery junction, was driving a quad bike towards the Injured Parties who tried to stop him. It was however neither proven beyond reasonable doubt that he used his vehicle deliberately as a lethal weapon with the intent to kill the Injured Parties or that he saw the possibility that he might hit them and they might be killed by this action and he agreed with it.

**Therefore, the Accused Ž. V. is ACQUITTED** of committing the criminal offence of “**Attempted Aggravated Murder**” contrary to **Article 147 Paragraph (1.10) in conjunction with Article 20 of the Criminal Code of Kosovo (CCK)**, pursuant to Article 364 Paragraph (1) subparagraph (1.3) of the CPC.

**III. The Accused Ž. V. is hereby**

**SENTENCED**

to **12 (twelve) months of imprisonment** in accordance with Article 38 Paragraph (1) and Article 65 Paragraph (2) of the CCK.

The time served in detention on remand from 29 July 2013 until 28 February 2014 and in house detention from 28 February 2014 until 20 June 2014 is to be included in the punishment of imprisonment pursuant to Article 73 Paragraphs (1) and (4) of the CCK.

**IV.** The Accused shall pay 300 (three hundred) Euros as part of the costs of criminal proceedings, but is relieved of the duty to reimburse the remaining costs in accordance with Article 453 Paragraphs (1) and (4) of the CPC. The Accused must reimburse the ordered sum no later than 30 (thirty) days from the day this Judgment is final.

## REASONING

### I. PROCEDURE, COMPETENCE OF THE COURT, EVIDENCE

#### 1.1. Procedural background

1. On 25 October 2013, the State Prosecutor of the Basic Prosecution Office of Mitrovicë/a filed the Indictment PP no. 157/2013 dated 24 October 2013 against the Accused **Ž. V.**, thereby charging the Accused with the criminal offence of “Unauthorised Ownership, Control or Possession of Weapons”, in violation of Article 374 Paragraph (1) of the new Criminal Code of Kosovo (CCRK) and “Attempted Aggravated Murder”, in violation of Article 147 Paragraph (1.10) as read in conjunction with Article 20 of the CCK.
2. On 13 November 2013, the Initial Hearing on Indictment was held as per Article 245 of the CPC, at which the Accused pleaded guilty to the offence of “Unauthorised Ownership, Control or Possession of Weapons”. This was severed from the current proceedings by an oral Ruling of the Basic Court of Mitrovicë/a on 13 November 2013 at the initial Indictment hearing. The Accused pleaded not guilty to the offence of “Attempted Aggravated Murder” during that same initial Indictment hearing.
3. A deadline of 30 days in accordance with Article 245 Paragraph (5) of the CPC was set for written submissions on any objections to evidence or applications to dismiss the indictment. At the initial indictment hearing, the Defence filed their submissions. On 19 November 2013 the Prosecutor filed his response to the Defence submission dated 18 October 2013. On 16 December 2013, the Presiding Trial Judge issued a Ruling, thereby rejecting the Defence application to dismiss the Indictment and sending the case for Main Trial.
4. By a Scheduling Order dated 20 January 2014, the Trial Presiding Judge ordered that the Main Trial in this case be held on 04 to 05, 25 to 28 and 31 March and 01 to 04 April 2014, and later changed by the issuance of a Scheduling Order dated 04 February 2014 to 25 to 28 March, 31 March and 01 to 04 April and 14 to 17 April 2014. A new Scheduling Order was issued on 13 March 2014 in which the Trial Presiding Judge ordered that the Main Trial be conducted on 17, 23 and 24 April 2014 instead of 14 to 17 April 2014.
5. On the morning of 25 March 2014, the day the Main Trial was scheduled to start, the two Defence counsel representing the Accused **Ž. V.**, namely F. K. and D. V., were arrested in connection with investigation in case Ppr. 70/13 for the criminal offence of ‘Obstruction of Evidence or Official Proceedings’ in case P.nr. 933/13 pursuant to Article 394 Paragraph (1) subparagraph (1.7) read in

conjunction with Article 31 of the CCRK. On the same day, the Prosecution filed an application before the Pre-Trial Judge in case Ppr. 70/13 requesting detention on remand of the two Defence counsel.

6. On the same day, the Trial Presiding Judge held a hearing informing the Accused **Ž. V.** on the arrests of his two Defence counsel. The Trial Presiding Judge adjourned the start of the Main Trial since the Accused expressed his will to be still represented by the two Defence counsel arrested earlier on that day.
7. On 28 March 2014, the Trial Presiding Judge held a hearing informing the Accused **Ž. V.** that the Pre-Trial Judge in case Ppr. 70/13 issued a Ruling prohibiting his two Defence counsel from contacting the Accused, along with Witnesses in case P.nr. 933/13. The Trial Presiding Judge also informed the Accused that the Ruling was appealed by the two Defence counsel. Because the Accused expressed his will to keep them as his Defence counsel, the Trial Presiding Judge adjourned the start of the Main Trial until a decision was to be rendered by the Court of Appeals in case Ppr. 70/13.
8. On 31 March 2014, the Basic Court of Mitrovicë/a issued a Ruling in where the Trial Presiding Judge appointed *ex officio* a Defence counsel at public expenses pursuant to Article 57 Paragraph (3) of the CPC since the case brought against the Accused **Ž. V.** constitutes a case of mandatory defence as foreseen in Article 57 Paragraph (1) subparagraph (1.3) of the CPC. The duration of the appointment *ex officio* of a Defence counsel was to be reviewed by the Trial Presiding Judge at a later stage once a Decision was to be rendered by the Court of Appeals in case Ppr, 70/13.
9. On 03 April 2014, the Court of Appeals issued a Ruling on appeal in case Ppr. 70/13 ordering that the two Defence counsel of the Accused be put under house detention and confirmed the prohibitive measures imposed on them as ordered in the Ruling of the Pre-Trial Judge in case Ppr. 70/13 dated 27 March 2014. As a result of this, on 08 April 2014, the Trial Presiding Judge in the case at hand issued a Ruling appointing *ex officio* Nebojša Vlajić as Defence counsel for the Accused **Ž. V.** pursuant to Article 57 Paragraph (3) of the CPC since the Court of Appeals partially confirmed the Ruling of the Pre-Trial Judge in case Ppr. 70/13, which made the two Defence counsels, F. K. and D. V., unable to represent the Accused in this case. On 08 April 2014, the Trial Presiding Judge issued an Instruction whereby the Court instructed the Defendant to engage a Defence counsel of his own choice by the end of that week pursuant to Article 11 Paragraphs (2) and (3), Article 13 Paragraph (1) subparagraph (1.2) and Article 57 Paragraph (1) subparagraph (1.3) of the CPC, if he so wished, or that the already *ex officio* appointed Defence counsel, namely Nebojša Vlajić, would remain as his counsel if he did not engage one.

10. By a letter received at the Basic Court of Mitrovicë/a on 10 April 2014, the Accused **Ž. V.** expressed his will to keep Nebojša Vlajić as his Defence counsel for the Main Trial in this case.
11. By a Scheduling Order dated 17 April 2014, the Trial Presiding Judge ordered that the Main Trial would be held on 02 to 04 June, 09 to 11 June and 18 to 20 June 2014. A new Scheduling Order was issued on 29 April 2014 ordering that the Main trial in this case would start on 06 May 2014.
12. The Main Trial sessions were held in public on 06 May 2014, 03, 04, 09, 10, 11, 18, 19 June 2014 and 09 July 2014.
13. During the Main Trial session of 06 May 2014, the Accused pleaded not guilty to the charge of “Attempted Aggravated Murder”.
14. All Main Trial sessions were held in the presence of the Accused **Ž. V.**, represented by Defence counsel Nebojša Vlajić, and State Prosecutor Pascal Persoons. The Injured Parties \_\_\_\_\_ A. T. and \_\_\_\_\_ F. S. attended the session of 03 June 2014.
15. On 18 June 2014, a site visit was conducted on the scene where the criminal offence allegedly took place.
16. On 09 July 2014, after having heard the evidence in this case, the Trial Panel informed the parties that the Court was not bound by the legal qualification of the criminal offence as set out in the Prosecution’s Indictment according to Article 360 paragraph (2) of the CPC and that the Court may *ex officio* re-classify the original criminal offence into a different one based on facts not entirely coincident with those described in the Indictment but which do not configure a substantial change in the circumstances.
17. On 09 July 2014, the Defence was informed of the possibility of such re-classification in a timely manner. Following this, the Trial Panel informed the Defence of his right to file any observation and to present any additional evidence related to this matter in accordance with the requirement as set out in the Court of Appeals’ Judgment dated 25 April 2013.
18. On the same day, the Defence informed the Trial Panel that he did not wish to present any additional evidence but that he will present observations on the legal qualification of the criminal offence during his closing statement.
19. On 09 July 2014, the Trial Panel heard the closing statements of the Prosecution and the Defence.
20. The enacting clause of the Judgment was announced on 10 July 2014.



21. In accordance with Article 215 Paragraph (1.1) of the CPC, international interpreters provided simultaneous interpretation throughout all Court proceedings and all Court documents relevant to the Trial were translated in Serbian and English.
22. Pursuant to Article 541 of the CPC which entered into force on 01 January 2013<sup>1</sup>, the Trial was carried out according to provisions of the new CPC.

## **1.2. Competence of the Court**

23. The Law of Courts, Law no. 03/L-199 (LC) also entered fully into force on 01 January 2013 (Article 43). This regulates the territorial and substantive jurisdiction of the Court.
24. Under Article 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
25. Article 9 Paragraph (2) subparagraph (2.7) of the same Law states that the Basic Court of Mitrovicë/a is established for the territory of the Municipalities of Mitrovicë/a South and Mitrovicë/a North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zvečan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offence took place in Rudare, on the highway of Mitrovicë/a-Leposavic, therefore within the territorial jurisdiction of the Basic Court of Mitrovicë/a as per Article 29 Paragraph (1) of the CPC. Furthermore, considering that the petition for initiation of proceedings was firstly filed with, at that time, the District Court of Mitrovicë/a<sup>2</sup>, pursuant to Article 29 Paragraph (2) of the CPC, the Basic Court of Mitrovicë/a has jurisdiction over the case.
26. EULEX acquired competence over the case by the Decision of the President of the Assembly of EULEX Judges dated 30 July 2013 and in accordance with the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law nr. 03/L-053)<sup>3</sup>.
27. Under Article 3 of the new Law on amending and supplementing the Laws related to the mandate of the European Union Rule of Law Mission in the

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<sup>1</sup> CRIMINAL No. 04/L-123 PROCEDURE CODE;

<sup>2</sup> Ruling on Initiation of Investigation dated 20 November 2012 filed with the Registry of the District Court of Mitrovicë/a on 21 November 2012, see Tab 1, Court Binder PRE-TRIAL, VOLUME I;

<sup>3</sup> Decision of the President of the Assembly of EULEX Judges dated 30 July 2013, no. 2013.OPEJ.0353-0001, see Tab 7, Court binder PRE-TRIAL, VOLUME I;

Republic of Kosovo, Law no. 04/L-273, which entered into force on 30 May 2014 (Article 10), EULEX Judges assigned to criminal proceedings have jurisdiction and competence over ongoing cases as stipulated in Article 1.A of this new Law. The case at hand was assigned to EULEX Judges before 15 April 2014 as defined in Article 1.A Paragraph (2) of the Law and therefore the Trial Panel composed of EULEX Judges have jurisdiction over the case.

28. The case was heard by a Trial Panel composed of EULEX Judge Nuno Manuel Ferreira de Madureira, acting as Presiding Judge, EULEX Judge Roxana Comsa and EULEX Judge Iva Niksic, as panel members. None of the parties objected to the competence of the Court or to the composition of the Trial Panel.

### **1.3. List of evidence presented**

#### **1. Evidence presented during the course of the Main Trial**

29. During the course of the Main Trial the following Witnesses were heard:
- \_\_\_\_ A. T. (called as Injured Party and as Witness by the Prosecution) was heard on 03 June 2014;
  - \_\_\_\_ F. S. (called as Injured Party and as Witness by the Prosecution) was heard on 03 June 2014;
  - \_\_\_\_ B. S. (Witness called by the Prosecutor) was heard on 04 June 2014;
  - \_\_\_\_ B. D. (Witness called by the Prosecutor) was heard on 04 June 2014;
  - \_\_\_\_ A. B. (Witness called by the Prosecutor) was heard on 09 June 2014;
  - \_\_\_\_ S. G. (Witness called by the Prosecutor) was heard on 09 June 2014;
  - \_\_\_\_ A. J. (Witness called by Prosecutor) was heard on 09 June 2014;
  - \_\_\_\_ D. V.2. (Witness called by Prosecutor) was heard on 10 June 2014;
  - \_\_\_\_ S. V. (Witness called by Prosecutor and Defence) was heard on 10 June 2014;
  - \_\_\_\_ E. M. (Witness called by Defence) was heard on 10 June 2014;
  - Č. S. (Witness called by Defence) was heard on 11 June 2014;
  - D. S. (Witness called by Defence) was heard on 11 June 2014.
30. V. V. (Witness called by Defence) was scheduled to be heard on 11 June 2014. The Defence counsel of the Accused Ž. V. informed the Trial Panel on 11 June 2014 that the Witness was to be heard as an Expert Witness. The Prosecutor objected to hear the Witness as an Expert Witness contending that, if so, Article 341 Paragraph (1) of the CPC would be violated since his Expert Report was not admissible as not fulfilling the requirements set out in Article 138

Paragraph (1) subparagraphs (1.2) to (1.7) of the CPC. On 11 June 2014, the Trial Panel issued an oral Ruling agreeing with the assessment made by the Court of Appeals in its Ruling on appeal dated 29 November 2013 in which the Court of Appeals agreed with the Prosecutor that this document cannot be used in the criminal proceedings because of its irreconcilability with the requirements of the CPC<sup>4</sup>. Pursuant to Article 138 Paragraph (3) of the CPC, the Trial Panel ruled that the Expert Report was not admissible, which made it impossible for V. V. to be examined as an Expert Witness as a consequence of Article 341 of the CPC. Having considered the Expert Report of V. V. inadmissible, the Court to seal the report and exclude it from the case file ordered during the Trial Session of 11 June 2014<sup>5</sup>.

31. During the Trial Session of 19 June 2014, a list of documents from the Prosecution Binders<sup>6</sup> was adduced as evidence and considered admissible:
- KP Officer's Report of J. B. dated 20 August 2010;
  - KP Officer's Report of S. V. dated 14 August 2010;
  - KP Officer's Report of A. J. dated 14 August 2010;
  - Initial Incident Report dated 14 August 2010;
  - TFM Record of the interview of Defendant **Ž. V.** dated 29 July 2013;
  - Record of the interview of Defendant **Ž. V.** dated 23 September 2013;
  - Record of the interview of Witness S. G. dated 04 September 2013;
  - Record of the interview of Witness A. T. dated 04 September 2013;
  - Record of the interview of Witness B. S. dated 04 September 2013;
  - Record of the interview of Witness B. D. dated 04 September 2013;
  - Record of the interview of Witness A. B. dated 04 September 2013;
  - Record of the interview of Witness F. S. dated 04 September 2013;
  - Record of the interview of Witness N. D. dated 05 September 2013 with annex 1 (Customs documents) and annex 2 (Police documents);
  - Record of the interview of Witness S. M. dated 05 September 2013;
  - Record of the interview of Witness A. J. dated 09 September 2013;
  - Record of the interview of Witness D. V.3. dated 09 September 2013;
  - Record of the interview of Witness D. V.2. dated 11 September 2013;
  - Statement of Witness S. V. dated 05 September 2013;
  - Statement of Witness S. V. dated 22 May 2014;
  - Criminal Report no. 2010-BI-334 dated 14 August 2010;
  - Daily duty Police Report from TEAM 2 dated 14 October 2010;
  - Records from BRAVO CONTROL dated 14 October 2010;

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<sup>4</sup> Court of Appeals, Ruling on appeal dated 29 November 2013, para. 12, see Tab 3, Court Binder TRIAL, VOLUME I;

<sup>5</sup> See Expert Report entitled "Traffic - Technical Findings – Expertise", sealed in an envelope, see Tab 9, Court Binder TRIAL, VOLUME V;

<sup>6</sup> See Prosecution File and Police File;

- Statement of Police Officer S. G. dated 19 August 2010;
- Statement of Police Officer B. S. dated 23 August 2010;
- Statement of Police Officer F. S. dated 23 August 2010;
- Statement of Police Officer B. D. dated 24 August 2010;
- Statement of Police Officer A. B. dated 24 August 2010.

32. The Accused **Ž. V.** gave a statement during the Trial session of 19 June 2014.

## **2. Motions**

33. During the Trial, the Panel received several evidentiary related motions and issued the following Rulings.

- *Request for new (expert) witnesses to be summoned – new evidence to be collected dated 24 March 2014.*

34. The Prosecution requested that C. B., a EULEX forensic doctor, as well as Experts from the Faculty on Mechanic Engineering – Department of traffic, Pristina, be summoned to appear as (expert) witnesses during the Main Trial<sup>7</sup>.

35. The motion was rejected under Article 258 Paragraph (2) subparagraph (2.1) and Article 288 Paragraph (2) of the CPC on the basis that the new evidence requested was considered unnecessary or superfluous because the matter at hand is common knowledge<sup>8</sup>.

- *Request to summon new witnesses dated 24 March 2014.*

36. The Defence requested that two new Witnesses be summoned for the Main Trial, namely B. J. and K. S.<sup>9</sup>.

37. The motion was rejected under Article 288 Paragraph (2) of the CPC on the basis that, firstly, the Defence did not indicate which facts were to be proven by the two Witnesses who were not eye-witnesses to the events that took

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<sup>7</sup> Request for new (expert) witnesses to be summoned – new evidence to be collected dated 24 March 2014, filed with the Registry on 24 March 2014, see Tab 10, Court Binder TRIAL, VOLUME II;

<sup>8</sup> See Ruling on Prosecution application dated 08 May 2014, see Tab 7, Court Binder TRIAL, VOLUME III;

<sup>9</sup> See Defence's request dated 24 March 2014, filed with the Registry on 24 March 2014, see Tab 12, Court Binder TRIAL, VOLUME II;

place on 14 August 2010 and, secondly, the two Witnesses were not new Witnesses as defined in Article 288 of the CPC<sup>10</sup>.

- *Motion for collecting new evidence or summoning new witnesses dated 12 June 2014.*
38. The Defence requested to admit as evidence two documents belonging to case no. 2009/BG/168 and to obtain additional documentation with regard to the legal qualification of the incident that took place in that case involving a traffic incident in order to verify whether the Public Prosecutor initiated criminal proceedings in that case and on which charges. The Defence motion also requested the examination of an additional witness, B. J., in order to demonstrate that the cistern truck involved in the facts of the present case entered Kosovo legally<sup>11</sup>.
39. On 18 June 2014, the Defence motion was rejected by an oral Ruling on the basis that the evidence requested in case no. 2009/BG/168 was manifestly irrelevant and therefore inadmissible pursuant to Article 259 of the CPC. It was ruled by the Court that the requested evidence had no connection to the facts under scrutiny in this case and was merely touching upon the legal issue about which law applies to this case. The Trial Panel further ruled in its oral Ruling that the Defence motion to call B. J. as a Witness in this case was rejected on the basis that the evidence pursued by his testimony was irrelevant and therefore rejected pursuant to Article 258 Paragraph (2) subparagraph (2.2) of the CPC since the question as to whether the cistern truck entered Kosovo legally or not is not disputed and such facts are irrelevant to the decision.
- *Oral request for new evidence of statements given by Witness S. V. dated 18 June 2014.*
40. On 18 June 2014, the Prosecution requested the Trial Panel to admit as evidence two statements given by former protected Witness S. V. on 05 September 2013 and on 22 May 2014. The Defence objected to the request contending that such evidence is inadmissible pursuant to Article 123 Paragraphs (2) and (3) of the CPC and arguing that these two statements were taken in violation of Article 131 Paragraph (2) and Article 132 Paragraph (5) of the CPC.

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<sup>10</sup> See Ruling on Defence application dated 08 May 2014, see Tab 8, Court Binder TRIAL, VOLUME III;

<sup>11</sup> See Motion for collecting of new evidence or summoning of new witnesses dated 12 June 2014 and filed with the Registry on 12 June 2014, see Tab 9, Court Binder TRIAL, Volume IV;

41. On 19 June 2014, the Trial Panel issued an oral Ruling admitting as evidence the two previous statements given by Witness S. V. on the basis that introducing previous witness statements into evidence is regulated under Articles 337 and 338 of the CPC, which allows the parties and the Court to confront a Witness under examination with previous given statements, which has happened in this case with regard to this particular Witness. The Trial Panel also found that the two previous statements were admissible pursuant to Article 257 Paragraph (2) even though the Witness was heard in the absence of the Defence counsel. The Trial Panel stressed that the Witness was heard for the purpose of requesting a protective measure, which was later granted and, as a result, it would have been illogical to inform the Defence at the time. In addition, the Trial Panel stressed that the Witness subsequently testified before the Court during which the Defence was given the opportunity to confront the Witness with his previous statements.

## **II. FACTUAL FINDINGS**

### **2.1. Summary of the proven facts**

42. The Court had to establish what the proven facts are on the basis of the administered evidence submitted against the Accused.
43. Upon the admissible evidence presented and administered during the course of the Main Trial, the Court considered the following relevant facts as proven beyond reasonable doubt:
  - I. On 14<sup>th</sup> August 2010 Mitrovica Regional Operations Support Unit (ROSU) was implementing an operation plan named “ \_\_\_\_\_ ” aimed at tackling illegal smuggling of goods in the north of Kosovo.
  - II. At a certain time during late afternoon before 19h00, on the road of Rudare between Zvečan/Zveçan and Mitrovica, near Sokolica Monastery junction, two Police officers in plain clothes managed to stop a cistern truck driving in the direction of South Mitrovica with license plate \_\_\_\_\_.
  - III. The truck driver admitted the cistern was loaded with oil.
  - IV. The truckload’s destination was \_\_\_\_\_ Petrol station, property of the family of the Accused and run by his brother Z. V. and for which the Accused worked on a regular basis.

- V.** The truck driver was unable to produce any documents with regard to the goods he was transporting.
- VI.** The truck driver was then ordered by the Police officers to follow them to the customs terminal in South Mitrovica.
- VII.** The truck driver went into his truck, entered the cabin, but instead of starting the engine, jumped out of the truck through the passenger door and ran off.
- VIII.** In the meantime, a crowd started gathering on the road towards the direction of Zvečan/Zvečan in the proximity of the area and Kosovo Serbs started protesting against the actions of the Kosovo Albanian Police officers.
- IX.** In the meantime, at around 19h00, following a request for assistance, two separate teams of uniformed ROSU Police officers arrived at the scene to assist their colleagues.
- X.** The Injured Parties \_\_\_\_\_ officers A. T. and F. S., wearing \_\_\_\_\_ uniforms and automatic rifles, placed themselves near the rear of the truck in order to regulate the on-going traffic, specifically by stopping the traffic coming from Zvečan/Zvečan.
- XI.** Several minutes after the truck driver ran off, and while \_\_\_\_\_ officers A. T. and F. S. were standing in the middle of the road, a four wheel motorbike (quad bike) coming from the direction of Zvečan/Zvečan approached with two persons on it.
- XII.** The Accused **Ž. V.** was the driver.
- XIII.** The identity of the passenger remained unknown.
- XIV.** The Accused was ordered by \_\_\_\_\_ officer A. T. to stop by raising his hand over his head with his palm facing forward.
- XV.** Realizing that the driver of the quad was not stopping, the \_\_\_\_\_ officer made a sign to the driver of the quad to slow down.
- XVI.** The Accused, who clearly saw the signals and who was fully aware that he had to follow the \_\_\_\_\_ order, instead kept driving at the same speed in the direction of \_\_\_\_\_ officers A. T. and F. S..
- XVII.** \_\_\_\_\_ officers A. T. and F. S. could only avoid a collision with the oncoming vehicle by swiftly moving aside. Thus, the quad bike managed to pass through.

- XVIII.** After continuing his drive for several metres towards Mitrovica, the Accused executed a U – turn and drove back approaching the truck and inquired about the Police actions in relation to the truck.
- XIX.** Moments later, the Accused was arrested next to the truck cabin, thus being prevented from undertaking any further actions, while the passenger of the quad managed to escape.
- XX.** The Accused acted intentionally with the purpose of preventing the truck together with its load to be driven to customs terminal in South Mitrovica and undergo customs procedure. The Accused was aware that the truck was under Police custody and that the persons towards whom he drove the quad bike were \_\_\_\_\_ officers acting in such capacity. The Accused was also aware that the truck load was destined for \_\_\_\_\_ Petrol Station and that the truck has been stopped by Kosovo Albanian Police officers.
- XXI.** The Accused was fully mentally competent.

## **2.2. Summary of the unproven facts**

44. Under the circumstances described above, on 14 August 2010 at around 19.00 hrs, on the road between Zvečan/Zveçan and Mitrovica, near Sokolica monastery junction, the Accused was driving a quad bike towards the Injured Parties who tried to stop him.
45. It could not be proven that:
- I.** The Accused used his vehicle deliberately as a lethal weapon with the intent to kill the Injured Parties;
  - II.** The Accused saw the possibility that he might hit them and they might be killed by this action and that he agreed with it.

## **2.3. Discussion and Analysis of evidence**

46. The above listed evidence (§§29-32) forms the basis for the Trial Panel's decision in this case.
47. As mentioned, the Trial Panel has considered the testimony of 12 witnesses as well as Police reports and other material evidence admitted as evidence to determine the alleged facts. After the examination of the witnesses and the



Defendant, the Trial Panel has considered as credible and reliable the testimonies of Witnesses A. T., F. S., B. S., B. D., A. B., S. G., \_\_\_ \_\_\_ E. M., Č. S. and D. S..

48. The Trial Panel has found that Witness S. V. is not reliable or credible. His testimony given before the Court and his previous statements given to the Prosecution strongly contradict one another<sup>12</sup>. As a result, the Trial Panel has decided not to attach any weight to his statements and his testimony in this case.
49. It is clear from the evidence in this case that, on 14 August 2010, an operation called “\_\_\_\_\_” was being implemented by the ROSU unit aimed at preventing the smuggling of illegal goods in the north of Kosovo<sup>13</sup>. The operation consisted of preventing goods from entering Kosovo without paying customs duties<sup>14</sup> (**FACT n<sup>o</sup>I**).
50. This operation was executed by ROSU Police officers wearing plain clothes from the civilian Task Force<sup>15</sup>. In doing so, they were mandated to stop cars and trucks and to send them to customs terminal in south Mitrovica in order to pay taxes (**FACT n<sup>o</sup>I**)<sup>16</sup>.
51. The Police officer in charge of the operation “\_\_\_\_\_” was Witness S. G.<sup>17</sup>. He was also the team leader on that critical day<sup>18</sup> (**FACT n<sup>o</sup>I**).
52. On 14 August 2010, the two Police officers from the civilian Task Force implementing the operation “\_\_\_\_\_” were Witness A. B. and Witness B. S.<sup>19</sup>. Both were wearing plain clothes<sup>20</sup> (**FACT n<sup>o</sup>II**).

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<sup>12</sup> See hearing minutes of 10 June 2014, Testimony of S. V., from page 25; See Record of the Witness S. V. Pre-Trial Interview Session dated 05 September 2013, see Tab 16, Court Binder PRE-TRIAL, VOLUME II; See Record of the Witness S. V. Interview Session dated 22 May 2014, Tab 11, Court Binder TRIAL, VOLUME III;

<sup>13</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 3 to page 4; See hearing minutes of 09 June 2014, Testimony of A. B., page 2; See hearing minutes of 09 June 2014, Testimony of S. G., page 14; See hearing minutes of 10 June 2014, Testimony of E. M., page 40; Document 330 from Prosecution file;

<sup>14</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3;

<sup>15</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 2 to page 3; See hearing minutes of 09 June 2014, Testimony of A. B., page 2; See hearing minutes of 09 June 2014, Testimony of S. G., page 15; Document 330 from Prosecution file;

<sup>16</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 3 to page 4; See hearing minutes of 09 June 2014, Testimony of S. G., page 15;

<sup>17</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 14; See hearing minutes of 03 June 2014, Testimony of A. T., page 4;

<sup>18</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 23 to page 24;

<sup>19</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 4; See hearing minutes of 09 June 2014, Testimony of A. B., page 3; See hearing minutes of 09 June 2014, Testimony of S. G., page 15;

<sup>20</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 4; See hearing minutes of 03 June 2014, Testimony of F. S., page 23; See hearing minutes of 04 June 2014, Testimony of B. S., page 5; See hearing minutes of 09 June 2014, Testimony of A. B., page 3;

53. On the critical day, evidence shows that \_\_\_\_\_ A. B. and B. S. managed to stop a cistern truck in the northern part of Mitrovica<sup>21</sup>. The truck, which was stopped on the road of Rudare<sup>22</sup>, near Sokolica Monastery junction<sup>23</sup>, had licence plate PA 107-335<sup>24</sup> (**FACT n°II**).
54. When the truck was stopped, the driver of the truck told the \_\_\_\_\_ B. S., A. B. and S G. that the cistern was loaded with oil<sup>25</sup> (**FACT n°III**).
55. Witness B. S. testified that the driver of the truck told him that the truckload's destination was \_\_\_\_\_ Petrol station<sup>26</sup>. Witness B. S. speaks Serbian, this is how he managed to communicate with the driver of the truck<sup>27</sup>. This is corroborated by the testimony of Witness D. V. 2. who stated that the fuel inside the truck was indeed intended for the \_\_\_\_\_ Petrol station<sup>28</sup> (**FACT n°IV**).
56. Witness B. S. told the Court that, while he conducted investigations against the \_\_\_\_\_ Petrol gas station for a period of six months, he discovered that it was owned by the Accused's brother, namely Z. V.<sup>29</sup>. This was confirmed by the Accused himself<sup>30</sup> and corroborated by Witness D. V. 2.<sup>31</sup> and Witness D. S.<sup>32</sup>. The Accused regularly worked at the gas station<sup>33</sup> (**FACT n°IV**).
57. Both Witness B. S. and Witness A. B. testified that, when asked to present documentation about the truck's load, the driver of the truck was not able to present any<sup>34</sup> (**FACT n°V**). Witness B. S. testified that at that moment the driver took his phone and had a conversation with someone where he stated

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<sup>21</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3 and page 6; See hearing minutes of 09 June 2014, Testimony of A. B., page 4;

<sup>22</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 16; See hearing minutes of 09 June 2014, Testimony of A. B., page 3 to page 4;

<sup>23</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 33; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 2; See hearing minutes of 11 June 2014, Testimony of Č. S., page 3; See hearing minutes of 19 June 2014, Testimony of the Accused, page 3 to page 4 and page 5;

<sup>24</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 16; Document 163 of Police file;

<sup>25</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3; See hearing minutes of 09 June 2014, Testimony of A. B., page 4; See hearing minutes of 09 June 2014, Testimony of S. G., page 16;

<sup>26</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3, page 11 and page 12;

<sup>27</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3 and page 8; See hearing minutes of 09 June 2014, Testimony of A. B., page 4;

<sup>28</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 11;

<sup>29</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 12;

<sup>30</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 3;

<sup>31</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7 and page 12 to page 13;

<sup>32</sup> See hearing minutes of 11 June 2014, Testimony of D. S., page 12;

<sup>33</sup> See hearing minutes of 11 June 2014, Testimony of D. S., page 12;

<sup>34</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 13; See hearing minutes of 09 June 2014, Testimony of A. B., page 4;

*“Come over because I am stopped by the police and I don’t know who these people are”<sup>35</sup>.*

58. At that moment, Witnesses B. S. and A. B. called their superior \_\_\_\_\_ S. G. for assistance<sup>36</sup>. Witness S. G. arrived on the scene by car with his colleague Witness B. D.<sup>37</sup> (**FACT n°IX**).
59. Witness S. G. requested for further assistance<sup>38</sup>. This request was made via radio at around 19:00 hrs<sup>39</sup> (**FACT n°XI**). Following this request, Injured Parties A. T. and F. S. arrived on the scene by car<sup>40</sup>. In total two separate teams of \_\_\_\_\_ came at the scene to assist their colleagues B. S. and A. B.<sup>41</sup> (**FACT n°XI**).
60. All \_\_\_\_\_ who arrived at the scene to assist their colleagues B. S. and A. B. were wearing \_\_\_\_\_ uniforms<sup>42</sup> (**FACT n°XI**).
61. \_\_\_\_\_ from Zvečan/Zveçan Police station also arrived at the scene<sup>43</sup>. Witness D. V. 2. stated that he was called there by Witness A. J.<sup>44</sup> (**FACT n°XI**).
62. When he arrived at the scene, Witness S. G. asked the driver of the truck to present him with the documents related to the truck and its load. He testified that the driver said he did not have any documents<sup>45</sup>. Injured Party F. S. confirmed this fact at trial<sup>46</sup> (**FACT n°V**).
63. Since the driver of the truck did not present any document in relation to the load of the truck, Witness S. G. ordered that the truck be brought to customs terminal located in south Mitrovica<sup>47</sup> (**FACT n°VI**). Witness B. S. confirmed

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<sup>35</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3;

<sup>36</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3; See hearing minutes of 09 June 2014, Testimony of A. B., page 4; See hearing minutes of 09 June 2014, Testimony of S. G., page 15;

<sup>37</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 16; See hearing minutes of 09 June 2014, Testimony of A. B., page 4;

<sup>38</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 4 and page 5; See hearing minutes of 03 June 2014, Testimony of F. S., page 23; See hearing minutes of 04 June 2014, Testimony of B. D., page 16;

<sup>39</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 5; See hearing minutes of 03 June 2014, Testimony of F. S., page 23;

<sup>40</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 5;

<sup>41</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 3;

<sup>42</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 5; See hearing minutes of 03 June 2014, Testimony of F. S., page 23; See hearing minutes of 04 June 2014, Testimony of B. S., page 6; See hearing minutes of 04 June 2014, Testimony of B. D., page 16 and page 25; See hearing minutes of 09 June 2014, Testimony of A. B., page 4; See hearing minutes of 09 June 2014, Testimony of S. G., page 15; See hearing minutes of 09 June 2014, Testimony of A. J., page 37

<sup>43</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 32 to page 33;

<sup>44</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 2;

<sup>45</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 16;

<sup>46</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 24;

<sup>47</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 16; See hearing minutes of 04 June 2014, Testimony of B. D., page 17; See hearing minutes of 09 June 2014, Testimony of A. B., page 5;

that Witness S. G. instructed him to order to the driver of the truck to follow them to customs terminal<sup>48</sup>. When he did so, the driver of the truck responded: “no customs”<sup>49</sup> (**FACT n°VI**).

64. Injured Party A. T., who arrived on the scene after Witness S. G., confirmed that Witness S. G. had told them that the truck driver was ordered by \_\_\_\_\_ to follow them to the customs terminal<sup>50</sup> (**FACT n°VI**).
65. Evidence in this case shows that when ordered to go to customs terminal, the driver of the truck went inside the truck. Instead of starting the engine of the truck, the driver escaped through the passenger’s door. This is confirmed by the testimonies of Witness B. D., Witness A. B. and Witness S. G.<sup>51</sup> (**FACT n°VII**). Witness S. G. told Injured Parties A. T. and F. S. on the scene that the driver had run away<sup>52</sup> (**FACT n°VII**).
66. Witness S. G. informed his superior \_\_\_\_\_ E. M. about the driver’s escape<sup>53</sup>.
67. In the meantime, a crowd of civilians had gathered at the proximity of the scene<sup>54</sup>. Evidence demonstrates that the crowd was hostile towards the \_\_\_\_\_ present at the scene<sup>55</sup>. This was confirmed by Witness Č. S., a representative of the \_\_\_\_\_ village, who testified that people from Zvečan/Zvečan did not want to see this \_\_\_\_\_ unit intervening “in their region”<sup>56</sup>. The evidence in this case shows that approximately 25 to 30 people had gathered<sup>57</sup> (**FACT n°VIII**).
68. Č. S., as representative of the village, approached the \_\_\_\_\_<sup>58</sup>. It is established by evidence that Witness S. G. communicated directly with him

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<sup>48</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 13;

<sup>49</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 13;

<sup>50</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 6;

<sup>51</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 17; See hearing minutes of 09 June 2014, Testimony of A. B., page 5; See hearing minutes of 09 June 2014, Testimony of S. G., page 16; See hearing minutes of 04 June 2014, Testimony of B. S., page 7;

<sup>52</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 6 and page 10; See hearing minutes of 03 June 2014, Testimony of F. S., page 23;

<sup>53</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 16;

<sup>54</sup> See hearing minutes of 09 June 2014, Testimony of A. B., page 5; See hearing minutes of 09 June 2014, Testimony of A. B., page 12; See hearing minutes of 09 June 2014, Testimony of S. G., page 16; See hearing minutes of 09 June 2014, Testimony of A. J., page 33; See hearing minutes of 11 June 2014, Testimony of Č. S., page 3; See hearing minutes of 11 June 2014, Testimony of D. S., page 10;

<sup>55</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 7 and page 16; See hearing minutes of 03 June 2014, Testimony of F. S., page 25;

<sup>56</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 4;

<sup>57</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 30; See hearing minutes of 09 June 2014, Testimony of A. B., page 12;

<sup>58</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 17; See hearing minutes of 11 June 2014, Testimony of Č. S., page 3;

and explained to him their operation and the reasons of their presence, namely that a truck loaded with goods did not pay customs duty<sup>59</sup>. Witness S. G. was very cooperative towards the \_\_\_\_\_ of the village<sup>60</sup>; this honest account from a Witness which, according to the circumstances, was expected to be distrustful of what Witness S. G. represented, added credibility to his statement (**FACT n°VIII**).

69. Injured Parties A. T. and F. S., who were both wearing \_\_\_\_\_ uniforms<sup>61</sup>, placed themselves near the rear of the truck<sup>62</sup> in order to regulate the on-going traffic coming from Zvečan/Zvečan which was at that time congested<sup>63</sup>. In order to do so, Injured Parties A. T. and F. S. placed themselves in the middle of the road<sup>64</sup> (**FACT n°X**).
70. At a certain moment, a four-wheel quad bike arrived with two persons on it<sup>65</sup> (**FACT n°XI**).
71. The driver of the quad bike, who arrived from the direction of Zvečan/Zvečan<sup>66</sup>, was driving towards the direction of Injured Parties A. T. and F. S.<sup>67</sup> (**FACT n°XI**).
72. Several Witnesses in this case testified that the driver of the quad was approaching them at high speed<sup>68</sup> (**FACT n°XI**). The actual rate of speed could not be established due to a lack of objective elements like skid marks, but the Court accepts that Police officers are capable of assessing if a vehicle's speed is appropriate for a certain terrain.

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<sup>59</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 17; See hearing minutes of 11 June 2014, Testimony of Č. S., page 4;

<sup>60</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 8;

<sup>61</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 5 and 14-15; See hearing minutes of 03 June 2014, Testimony of F. S., page 23 and page 32 to page 33;

<sup>62</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 17; See hearing minutes of 09 June 2014, Testimony of A. B., page 9;

<sup>63</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 5 to page 6 and page 20; See hearing minutes of 03 June 2014, Testimony of F. S., page 25 and page 30; See hearing minutes of 11 June 2014, Testimony of D. S., page 10;

<sup>64</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 14; See hearing minutes of 09 June 2014, Testimony of S. G., page 25;

<sup>65</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 26;

<sup>66</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 7 to page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 25; See hearing minutes of 09 June 2014, Testimony of A. B., page 5;

<sup>67</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8;

<sup>68</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. D., page 19; See hearing minutes of 09 June 2014, Testimony of A. B., page 5; See hearing minutes of 09 June 2014, Testimony of S. G., page 17 and page 27; See hearing minutes of 09 June 2014, Testimony of A. J., page 34;

73. The driver of the quad has been identified as being the Accused, **Ž. V.**<sup>69</sup> (**FACT n°XII**). The Accused himself testified that he was driving the quad bike at a fast speed, at no less than 60 km/h<sup>70</sup> (**FACT n°XI**).
74. There was a passenger on the quad bike along with the driver<sup>71</sup>. However there is no evidence in this case to ascertain his identity (**FACT n°XIII**).
75. While the driver of the quad was driving towards the two Injured Parties, Injured Party A. T. raised his hand to show the driver to slow down and stop<sup>72</sup> (**FACT n°XIV**). This fact is confirmed by the Accused during his testimony before the Court<sup>73</sup>. In doing so, A. T. raised his hand above his head and then used the sign to slow down<sup>74</sup>, an universal gesture easily recognized by any driver (**FACT n°XIV**). Police officers from Zvečan/Zvečan Police station who came to testify as Witnesses also confirmed this fact<sup>75</sup> (**FACT n°XIV**).
76. Realizing that the driver of the quad was not stopping, Injured Party A. T. made a sign for the driver to slow down. In doing so, A. T. lowered his hand fast paced<sup>76</sup>. The Accused confirmed this fact during his testimony<sup>77</sup> (**FACT n°XV**).
77. The Accused testified that, as soon as he realized that there was a Police officer in his way, he immediately started to slow down<sup>78</sup>. However this is not corroborated by a large majority of Witnesses who came to testify before this Court. It results from their testimonies that the driver of the quad did not follow the Police officer's order since he did not stop or slow down<sup>79</sup>. Witness S. G. testified that the driver of the quad actually increased his speed<sup>80</sup>. On the contrary, Witness A. J. stated that the quad slowed down once signalled to do

<sup>69</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 10; See hearing minutes of 03 June 2014, Testimony of F. S., page 28; See hearing minutes of 09 June 2014, Testimony of S. G., page 28; See hearing minutes of 09 June 2014, A. J., page 32 and page 34;

<sup>70</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4 and page 5: "*I can't say exactly what the speed was 60 km/h – 70 km/h or maybe 80 km/h*";

<sup>71</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9;

<sup>72</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 09 June 2014, Testimony of A. B., page 5 and page 9 to page 10;

<sup>73</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4 "*As I was passing by, I could see a man waiving his hands in a sign to slow down*";

<sup>74</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. D., page 19; See hearing minutes of 09 June 2014, Testimony of A. B., page 5;

<sup>75</sup> See hearing minutes of 09 June 2014, A. J., page 32;

<sup>76</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. S., page 3 to page 4;

<sup>77</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 5 and page 8;

<sup>78</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4;

<sup>79</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8; See hearing minutes of 03 June 2014, Testimony of F. S., page 26 to page 27; See hearing minutes of 04 June 2014, Testimony of B. S., page 4; See hearing minutes of 04 June 2014, Testimony of B. D., page 19;

<sup>80</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 17;

so by A. T.<sup>81</sup>. The Trial Panel does not consider accurate these two accounts. Evidence in this case shows that the driver was driving at the same speed<sup>82</sup> (**FACT n°XVI**). Witness D. V. 2. stated that he was informed by the Police officers from Zvečan/Zvečan Police station that the driver did not stop, or was not able to stop<sup>83</sup>, which further strengthens the version of his colleagues involved in operation “\_\_\_\_\_” (**FACT n°XVI**).

78. The driver of the quad kept driving towards the direction of Injured Party A. T.<sup>84</sup> and “*passed by the Police*” as stated by the Accused himself<sup>85</sup> (**FACT n°XVII**).
79. Because the driver of the quad did not stop or slow down, Police officers A. T. and F. S. had to instinctively move aside to get out of its way<sup>86</sup> (**FACT n°XVII**). Evidence suggests that Injured Parties A. T. and F. S. had to move aside quickly in order to avoid a collision with the quad bike, although not needing to execute any extreme acrobatics or to throw themselves aside to the ground<sup>87</sup> (**FACT n°XVII**).
80. Evidence in this case demonstrates that, after passing through the two Police officers, the driver of the quad continued driving for several metres towards Mitrovica and then executed a U – turn<sup>88</sup>. This was confirmed by the Accused during his testimony when he stated that, after passing by the Police officers, he then “*turned back*”<sup>89</sup> (**FACT n°XVIII**). Witness Č. S. testified that when he arrived on the scene, he saw the quad bike parked near the cabin of the truck<sup>90</sup>. Witness D. S. testified that the quad bike was parked somewhere near the truck around the rear part or the middle of the truck<sup>91</sup> (**FACT n°XVIII**).

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<sup>81</sup> See hearing minutes of 09 June 2014, A. J., page 32;

<sup>82</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 35 to page 36; See hearing minutes of 04 June 2014, Testimony of B. D., page 24;

<sup>83</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7;

<sup>84</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8 to page 9; See hearing minutes of 04 June 2014, Testimony of B. S., page 3;

<sup>85</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4 and page 8;

<sup>86</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 8 and page 9; See hearing minutes of 03 June 2014, Testimony of F. S., page 26 to page 27, page 36 to page 37; See hearing minutes of 04 June 2014, Testimony of B. S., page 4; See hearing minutes of 04 June 2014, Testimony of B. D., page 19; See hearing minutes of 09 June 2014, Testimony of A. B., page 6;

<sup>87</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9 and page 18, page 20; See hearing minutes of 04 June 2014, Testimony of B. D., page 19 to page 20; See hearing minutes of 09 June 2014, Testimony of A. B., page 6 and page 10; See hearing minutes of 09 June 2014, Testimony of S. G., page 17;

<sup>88</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9; See hearing minutes of 03 June 2014, Testimony of F. S., page 27; See hearing minutes of 04 June 2014, Testimony of B. D., page 20; See hearing minutes of 09 June 2014, Testimony of A. B., page 6 and page 11; See hearing minutes of 09 June 2014, Testimony of S. G., page 18 and page 24; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7;

<sup>89</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4;

<sup>90</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 4 to page 5;

<sup>91</sup> See hearing minutes of 11 June 2014, Testimony of D. S., page 10;

81. Evidence further shows that, once the driver of the quad stopped his vehicle, he went very close to the truck,<sup>92</sup> where Witness B. D. was standing<sup>93</sup>. This fact is confirmed by the Accused who testified that once he passed by the Police, he turned around and came back to the spot where he saw the Police officers standing and parked his quad close to the truck<sup>94</sup>. He further stated that he came in front of a group of Police officers standing there<sup>95</sup>. In addition, Witness B. D. testified that the driver of the quad wanted to walk in the direction of the truck but that he managed to grab him before he reached the truck<sup>96</sup>. Injured Party A. T. confirmed that the driver of the quad came very close to the door of the truck<sup>97</sup> (**FACT n°XVIII**).
82. Witness A. J. stated that the driver of the quad inquired into why the truck was stopped and what the problem was<sup>98</sup>. The testimony of Witness D. V. 2. corroborates this fact<sup>99</sup>. The Accused testified that he asked the Police officers what was happening but denied he inquired about the truck<sup>100</sup>. The Court did not consider this assertion truthful considering the credible statements to the contrary of the mentioned Kosovo Serb Police officers, which at times seemed somehow interested in covering up the Accused's actions (**FACT n°XVIII**).
83. While the Accused stopped, the passenger of the quad ran away and escaped into the crowd of people gathered at the proximity of the scene<sup>101</sup> (**FACT n°XIX**).
84. The ROSU Police officers then arrested the driver of the quad<sup>102</sup> (**FACT n°XIX**).
85. Many Witnesses testified that the arrest of the Accused followed the normal procedure<sup>103</sup> (**FACT n°XIX**).

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<sup>92</sup> See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. S., page 4;

<sup>93</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9;

<sup>94</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 4;

<sup>95</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 14;

<sup>96</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 20;

<sup>97</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 10;

<sup>98</sup> See hearing minutes of 09 June 2014, A. J., page 32 and page 43;

<sup>99</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7;

<sup>100</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 12;

<sup>101</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9 and page 21; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. D., page 20; See hearing minutes of 09 June 2014, Testimony of S. G., page 18;

<sup>102</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9 and page 10; See hearing minutes of 03 June 2014, Testimony of F. S., page 26; See hearing minutes of 04 June 2014, Testimony of B. S., page 4; See hearing minutes of 04 June 2014, Testimony of B. D., page 20; See hearing minutes of 09 June 2014, Testimony of A. B., page 6; See hearing minutes of 09 June 2014, Testimony of S. G., page 18; See hearing minutes of 11 June 2014, Testimony of Č. S., page 4; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7;



86. The Court did not find credible the statement of the Accused and Witness A. J. who stated that the Accused was mistreated during his unjustified and arbitrary arrest<sup>104</sup>. The Court is aware of the unique circumstances surrounding the northern part of Kosovo, especially in 2010, and finds it unconceivable that Kosovo Albanian Police officers would recourse to unnecessary violence towards a Kosovo Serb in the northern part of Mitrovica, in front of a crowd composed of Kosovo Serbs and Kosovo Serbs Police officers from Zvečan/Zveçan Police station. It was also not explained by Witness A. J. why he did not react in front of such violence allegedly committed by Kosovo Albanian Police officers<sup>105</sup> (**FACT n°XIX**).
87. In addition, Witness A. J. also testified that during the Accused's arrest, Witness S. G. pushed away a Zvečan/Zveçan Police officer with the palm of his hand<sup>106</sup>. However no other Witness who came to testify before this Court reported such inappropriate behaviour. Actually, Witness D. V. 2. testified that the team leader Sergeant from the ROSU Unit was behaving normally towards Police officers from Zvečan/Zveçan Police station<sup>107</sup>. In addition, as mentioned above (see §68), Witness S. G. was described by a Kosovo Serb representative as being cooperative under such very difficult circumstances, behaviour that does not match with one of a team leader who would abuse his powers (**FACT n°XIX**).
88. The arrest, concluded the Court, was a natural consequence of the Accused's actions moments before and not, as the Accused tried to portray, a prepotent or authoritarian behaviour by Kosovo Albanian Police officers.
89. Witness A. J. testified that at the moment the Accused was arrested, Witness S. V. informed their base via radio Bravo control. Witness A. J. also called the Commander of the Police station to inform him of the situation. He also stated that he informed the deputy Commander of operations<sup>108</sup>. Witness D. V. 2. confirmed that Witness A. J. contacted him as he was Acting Chief of Operations of Zvečan/Zveçan Police station<sup>109</sup>.
90. The Trial Panel finds that the Accused, as the driver of the quad, acted intentionally with the purpose of preventing the truck together with its load to

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<sup>103</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 10; See hearing minutes of 03 June 2014, Testimony of F. S., page 28;

<sup>104</sup> See hearing minutes of 09 June 2014, A. J., page 32, page 38 and page 43; See hearing minutes of 19 June 2014, Testimony of the Accused, page 4;

<sup>105</sup> See hearing minutes of 09 June 2014, A. J., page 43;

<sup>106</sup> See hearing minutes of 09 June 2014, A. J., page 32 and page 38;

<sup>107</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 6;

<sup>108</sup> See hearing minutes of 09 June 2014, A. J., page 32 to page 33;

<sup>109</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 2;

be driven to customs terminal in South Mitrovica and undergo customs procedure (**FACT n°XX**).

91. There is strong evidence linking the Accused with the truck and its load. Even though the Accused testified that he had no relation to the truck<sup>110</sup>, the evidence in this case shows the contrary (**FACT n°XX**).
92. As mentioned above, the evidence shows that the truck's load was intended for \_\_\_\_\_ Petrol station, a gas station owned by the Accused's family and where the Accused worked on a regular basis (**FACT n°XX**).
93. Furthermore, evidence clearly establishes that once the Accused passed through the two ROSU Police officers, he executed a U – turn. The Trial Panel believes that this was not a coincidence and that the Accused, on purpose, wanted to check what the problem with the truck was. This is corroborated by many Witnesses who testified that, once the Accused stopped his quad, he attempted to come very close to the door of the truck<sup>111</sup>. A. T. testified that he had the impression that the Accused was aiming to get into the truck and take it away from Police custody<sup>112</sup>. He even stated: "*the incident happened because of that truck*"<sup>113</sup>. Furthermore, Witness B. S. stated that they "*knew that someone was coming in order to remove us and get the truck*"<sup>114</sup>. This results from the fact that, once the driver of the truck was stopped by ROSU Police officers, he called someone over the phone and ask that person to come over (**FACT n°XX**).
94. Besides, there is strong evidence establishing that the Accused inquired about the truck. This concern shows a clear link between the Accused and the vehicle. According to Witness S. G., once the Accused stopped his quad, he asked about the truck<sup>115</sup>. This is corroborated by the testimonies of Witness A. J.<sup>116</sup> and D. V. 2.<sup>117</sup>. Witness A. J. also testified that he understood from the Accused's questions in relation to the truck that the truck's load belonged to the Accused<sup>118</sup>. A. J. further stated that once he picked up the Accused from the Police station in south Mitrovica, he asked him "*whether the goods in the truck had proper documents*". The Accused responded that "*he had possession of proper documentation*" and told the Zvečan/Zvečan Police officers that the truck went to customs without any problem<sup>119</sup> (**FACT n°XX**).

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<sup>110</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 11;

<sup>111</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9; See hearing minutes of 03 June 2014, Testimony of F. S., page 26 and page 31;

<sup>112</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9;

<sup>113</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 18;

<sup>114</sup> See hearing minutes of 04 June 2014, Testimony of B. S., page 4;

<sup>115</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 18 and page 23;

<sup>116</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 32 and page 43;

<sup>117</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 7 to page 8;

<sup>118</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 43;

<sup>119</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 44;

95. In light of the evidence in this case, the Trial Panel does not believe the version of facts presented by the Accused that he was driving by this road in order to attend a motor bike drivers' gathering<sup>120</sup>, version of the facts presented for the first time during the proceedings (**FACT n°XX**).
96. The Trial Panel finds that the Accused was aware that the truck was under Police custody and that the persons towards whom he drove the quad bike were Police officers acting in such capacity (**FACT n°XX**).
97. As mentioned earlier, when stopped by the ROSU Police officers, the driver of the truck called someone over the phone and asked that person to come over. Even though there is no evidence that the person he called was the Accused himself, it is highly probable that it may have been him or someone who immediately contacted him. In fact, it did not take long for the Accused to show up at the scene of the events after that phone call was made and the Accused inquired about the truck as soon as he arrived and right before being arrested.
98. Moreover, it is established by evidence that the Accused arrived at the scene at a high speed regardless of the fact that the traffic was congested with a line of vehicles parked on the side of the road and that a crowd had gathered<sup>121</sup>. This demonstrates that the Accused intended to reach the scene and wanted to do this with the utmost urgency (**FACT n°XX**).
99. Furthermore, the Trial Panel finds that the Accused could not prevail himself of the fact that he did not see that the scene was under Police control. There is clear evidence that shows that several Police officers were present at the scene. All except two Police officers were wearing Police uniforms. It is also established by evidence that Injured Party A. T., as the first person towards whom the Accused was driving, was wearing a \_\_\_\_ uniform. Furthermore, the Injured Party A. T. was carrying a long weapon, AK47<sup>122</sup>. In addition, Police cars were parked around the truck<sup>123</sup>. This was confirmed by the Accused himself who testified that there were Police vehicles on the scene<sup>124</sup>. As a result, the Trial Panel does not believe the Accused, especially after being confronted with his opposing previous statements<sup>125</sup>, when he testifies in front

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<sup>120</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 11;

<sup>121</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 10;

<sup>122</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 14; See hearing minutes of 04 June 2014, Testimony of B. S., page 6; See hearing minutes of 09 June 2014, Testimony of A. J., page 37; See hearing minutes of 19 June 2014, Testimony of the Accused, page 8;

<sup>123</sup> See hearing minutes of 04 June 2014, Testimony of B. D., page 18; See hearing minutes of 09 June 2014, Testimony of A. B., page 8; See hearing minutes of 09 June 2014, A. J., page 32; See hearing minutes of 11 June 2014, Testimony of D. S., page 11; See hearing minutes of 03 June 2014, Testimony of A. T., page 7; See hearing minutes of 11 June 2014, Testimony of C. S., page 4;

<sup>124</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 8 to page 9;

<sup>125</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 7;

of the Court that he only realized that the person making a sign to slow down was a \_\_\_\_\_ officer once he passed by him<sup>126</sup> (**FACT n°XX**).

100. Evidence also shows that the free space that remained on the road on which the Accused drove was very narrow. Witness A. B. stated that there was no other way he could drive through apart from there<sup>127</sup>. Witness A. J. testified that there was between 2 to 3 meters width of free space left on the road between the truck and the ROSU vehicles parked on the side<sup>128</sup>. Evidence shows that the truck was stopped partly on the road partly on the side of the road<sup>129</sup>. In addition, Witness A. J. and Witness D. V. 2. stated that traffic was not able to pass through because of the little space left on the road<sup>130</sup> (**FACT n°XVII**).
101. In light of the evidence in this case, the Trial Panel found that the Accused was also aware that the truck load was destined for \_\_\_\_\_ Petrol station and that the truck has been stopped by Kosovo Albanian Police officers (**FACT n°XX**).
102. This is confirmed by evidence that links the Accused with the truck as assessed above (**FACT n°XX**).
103. Besides, evidence shows that there was a clear hostility towards Kosovo Albanian Police officers who tried to implement operation “\_\_\_\_\_”. Witness Č. S., the representative of \_\_\_\_\_ village, testified that people from Zvečan/Zvečan “*didn’t want any of these units to intervene in [their] region*”<sup>131</sup> and that “*our people do not allow any arrests*”<sup>132</sup>. He also explained the local self-management policy of the region<sup>133</sup>. Those are the reasons why a crowd composed of Kosovo Serbs had gathered at the vicinity of the incident.
104. There is also evidence that recounts the issue of Kosovo Albanian Police officers enforcing Police operation in the north of Kosovo. On the critical day, Witness Č. S. told ROSU Police officers that their units were not supposed to intervene in this region and that they could see how people reacted to their presence, which could end up causing big problems<sup>134</sup>. He further testified that

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<sup>126</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 6;

<sup>127</sup> See hearing minutes of 09 June 2014, Testimony of A. B., page 11;

<sup>128</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 33 and page 40;

<sup>129</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 3; See hearing minutes of 11 June 2014, Testimony of D. S., page 10; See hearing minutes of 19 June 2014, Testimony of the Accused, page 4;

<sup>130</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 33; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 6;

<sup>131</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 4;

<sup>132</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 3;

<sup>133</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 4;

<sup>134</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 4

the local management had made a decision in their assembly meeting “*not to allow any other Police to work in our territory*”, except for their local Police<sup>135</sup>.

105. Besides, it is established by evidence that there was a misunderstanding on the scene of the incident as to who had the responsibility to act<sup>136</sup>. Police officers from Zvečan/Zvečan Police station finally took over the investigation with regard to the truck and the driver of the quad<sup>137</sup>. Witness A. J. informed the Court that S. M. took over the case<sup>138</sup>. It is established that \_\_\_\_\_ E. M. decided that the case had to be taken by Zvečan/Zvečan Police station<sup>139</sup>.
106. There is also evidence that attests that Zvečan/Zvečan Police officers did not contact the appropriate chain of command on the critical day. D. V. 3., who was the Deputy of N. D., was the acting Commander on that day<sup>140</sup>. However evidence demonstrates that he was not contacted on that day nor informed on the case<sup>141</sup>. Instead, Witness D. V. 2. called the Police station Commander N. D. although he was on leave on that day<sup>142</sup>. He confirmed that the acting Commander on that day was D. V. 3.<sup>143</sup>. As stated by Witness E. M. during trial, the proper procedure would have been to contact the acting Commander<sup>144</sup>.
107. It resulted from all of this that the Accused was finally taken from the Police station in South Mitrovica and brought by Kosovo Serbs Police officers to Zvečan/Zvečan Police station, from where he was subsequently released<sup>145</sup>.
108. There is evidence that shows that the load of the truck was suspicious, starting with the driver’s escape. In addition, Document 360 from the Prosecution file, which was authenticated by Witness D. V. 2.<sup>146</sup>, states that the truck was loaded with “thinner” of a quantity of “23,340 kg”<sup>147</sup>. Witness D. V. 2. confirmed before the Court that he saw that document at the time and understood from that document that the truck was loaded with fuel<sup>148</sup>. He stated in his pre-trial interview that he believed that “*the fuel inside the vehicle*

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<sup>135</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 6 to page 7;

<sup>136</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 11;

<sup>137</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 11 and page 16;

<sup>138</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 35 and page 36;

<sup>139</sup> See hearing minutes of 10 June 2014, Testimony of E. M., page 39; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 18;

<sup>140</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 35 to page 36;

<sup>141</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 23;

<sup>142</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 3 to page 4; See hearing minutes of 09 June 2014, Testimony of A. J., page 36;

<sup>143</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 3 to page 4;

<sup>144</sup> See hearing minutes of 10 June 2014, Testimony of E. M., page 41 to page 42;

<sup>145</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 33; See hearing minutes of 19 June 2014, Testimony of the Accused, page 6;

<sup>146</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 10;

<sup>147</sup> Document 360 from Prosecution file; See also Document 163 from Police file;

<sup>148</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 11;

was [Ž. V.'s] and intended to be transported to his gas station"<sup>149</sup>. He confirmed such statement at trial<sup>150</sup>. Moreover, Witness D. V. 2. further testified that he thought it was "unusual" for thinner to be heading to a gas station<sup>151</sup>. Although confronted to multiple suspicious elements, Witness D. V. 2., who was in a position of authority, did not make any efforts to check the content of the truck nor the legality of the loads transported by the truck<sup>152</sup>. Nevertheless, he stated before the Court that it was their duty, as Police officers, to check the documents and the goods in such cases<sup>153</sup>. Although he checked the documents, Witness D. V. 2. omitted to check the nature and quantity of the goods transported even though the loads were suspicious. Once the Zvečan/Zvečan Police station took over the case, the truck was however released from Police custody and not taken to customs terminal<sup>154</sup>. Even though Witness A. J. testified that the customs documents of the truck were eventually brought to the Zvečan/Zvečan Police station by the fugitive driver of the truck himself<sup>155</sup>, the Trial Panel does not consider this version of facts reliable<sup>156</sup>.

109. A third consequence of the takeover of the case by Zvečan/Zvečan Police station is that the quad bike was not seized by the Police<sup>157</sup>.
110. The Trial Panel however finds that it could not be proven that the Accused used his vehicle deliberately as a lethal weapon with the intent to kill the Injured Parties (**UNPROVEN FACT n°I**). The Trial Panel also finds that it could not be proven that the Accused foresaw the possibility that he might hit them and that they might be killed by his action and that he agreed with it (**UNPROVEN FACT n°II**).
111. While driving his quad, the Accused had a passenger at the back<sup>158</sup> and was wearing normal clothes<sup>159</sup>. If he intended to use his vehicle as a lethal weapon with the intention to kill the Police officers, one may think that he would have used another way rather than simply driving an open vehicle towards them with no protection, such as a helmet, and another person at the back of his vehicle (**UNPROVEN FACTS n°I and II**).

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<sup>149</sup> See Pre-trial examination of Witness D. V. 2., see Tab 13, Court Binder PRE-TRIAL, VOLUME II;

<sup>150</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 11;

<sup>151</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 11 and page 13;

<sup>152</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 13;

<sup>153</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 22;

<sup>154</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 19; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 21; See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 13;

<sup>155</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 39;

<sup>156</sup> See hearing minutes of 09 June 2014, Testimony of A. J., page 42 to page 43;

<sup>157</sup> See hearing minutes of 10 June 2014, Testimony of D. V. 2., page 24;

<sup>158</sup> See hearing minutes of 03 June 2014, Testimony of A. T., page 9;

<sup>159</sup> See hearing minutes of 09 June 2014, Testimony of S. G., page 27;

112. Furthermore, once he passed by the Injured Parties, who had to swiftly move aside to avoid a collision but not execute any *in extremis* movement, the Accused then executed a U – turn and stopped his quad in the vicinity of the truck. As the Accused stated, if he tried to deprive the lives of the two Police officers, he would have not come back<sup>160</sup>. In addition, evidence establishes that the Accused tried to approach the truck towards the direction where ROSU Police officers were standing. This again demonstrates that the Accused intended to approach the truck, no matter that the truck was under Police custody. Witness A. B. told the Court that the Accused “*certainly thought that no Police officers could arrest him*”<sup>161</sup>. This is confirmed by the testimony of Witness Č. S. who stated that a crowd had gathered at the proximity of the scene because “*the police arrested Ž. V.*” and “[*p*]eople were worried”<sup>162</sup>. Being in the north of Kosovo, the Accused may have felt in a certain position of authority and a sense of security since the Accused is well-known to the population over there (**UNPROVEN FACT n°I**).
113. Evidence also shows that the Accused did not follow the Police officers’ order to slow down and stop. As stated by Witness A. B., “*when a person does not obey a Police rule/order it is obvious that he/she intends to assault an official while performing their duty*”<sup>163</sup>. It must be noted that even though he did not slow down, the Accused did not increase his speed while approaching the Injured Parties. The two Police officers had to move aside to avoid a collision with the quad and did that with apparent ease (**UNPROVEN FACTS n°II**).

### III. LEGAL FINDINGS

114. The Panel is not bound by the legal qualification of the criminal offence as set out in the Prosecution’s Indictment pursuant to Article 360 Paragraph (2) of the CPC.
115. The Trial Panel hereby refers to the Court of Appeals’ Judgment dated 25 April 2013 in which the Court of Appeals found that “*pursuant to Article 386(2) of the KCCP, the First Instance Court was not bound by the motions of the Prosecutor regarding the legal classification of the act. Thus, the legal re-classification of the original charge of Organized Crime to Fraud does not in itself constitute a substantial violation of the provisions of the criminal procedure as this possibility is clearly foreseen by the procedural code*”.<sup>164</sup> The Court of Appeals further ruled that “*it is established jurisprudence of the*

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<sup>160</sup> See hearing minutes of 19 June 2014, Testimony of the Accused, page 6;

<sup>161</sup> See hearing minutes of 09 June 2014, Testimony of A. B., page 6;

<sup>162</sup> See hearing minutes of 11 June 2014, Testimony of Č. S., page 7;

<sup>163</sup> See hearing minutes of 09 June 2014, Testimony of A. B., page 10;

<sup>164</sup> Court of Appeals, Ruling on appeal, PAKR 1122/2012, Judgment of 25 April 2013, para. 12;

*Supreme Court of Kosovo that when proceeding to a re-classification under Article 386 of the KCCP, the Trial Panel must ensure that the accused is notified of such re-classification in a timely manner*<sup>165</sup>.

116. Accordingly, the European Court of Human Rights (ECHR) found that Article 6 of the European Convention on Human Rights was breached when the legal characterisation of the facts was changed without affording the defence the possibility of filing observations. Indeed, the defence must be afforded “*the possibility of exercising their defence rights on that issue in a practical and effective manner and, in particular, in good time*”<sup>166</sup>. This embraces the defence’s right to be informed in a detailed manner on the nature and cause of the accusation brought against the Defendant as well as the defence’s right to have adequate time and facilities for the preparation of his or her defence<sup>167</sup>.
117. After having heard the evidence in this case, the Trial Panel informed the Prosecution and the Defence on 09 July 2014 that the Trial Panel may *ex-officio* reclassify the original charge into a different one based on facts not entirely coincident with those described in the Indictment but which do not configure a substantial change in the circumstances. Accordingly, the Trial Panel informed the Defence that the Court might find elements of the criminal offence of “Obstructing Official Persons in Performing Official Duties” contrary to Article 316 Paragraph (1), Paragraph (2) and Paragraph (3) of the CCK.
118. The Trial Panel informed the Defence in a timely manner since the Court had to hear all the evidence brought at trial before considering a possible re-classification *ex-officio* of the original criminal offence.
119. On the same day, the Trial Panel granted the Defence with the possibility of filing any observation and to present any additional evidence in relation to such possible re-classification, in compliance with the Court of Appeals’ requirement as set out in its Judgment dated 25 April 2013 and in line with the jurisprudence emanating from the ECHR.
120. On 09 July 2014, the Defence informed the Court that it did not wish to present any additional evidence with regard to such possible re-classification of the original criminal charge and that it would present observations on that matter during its closing statement. The Defence presented its closing statement to the Court on 09 July 2014.

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<sup>165</sup> Court of Appeals, Ruling on appeal, PAKR 1122/2012, Judgment of 25 April 2013, para. 12; See Supreme Court of Kosovo, Ap-Kz no. 61/2012, Judgment of 02 October 2012, para. 29; See also International Criminal Court, ICC-01/04-01/07-3319, Decision on the implementation of regulation 55 of the Regulations of the Court and severing the charges against the accused persons, 21 November 2012, para. 37;

<sup>166</sup> ECHR, *Pélissier and Sassi v. France*, App. no. 25444/94, Judgment of 25 March 1999, para. 62;

<sup>167</sup> ECHR, *Mattei v. France*, App. no. 34043/02, Judgment of 19 December 2006, para. 43;



121. In addition, under the new CCRK, the presumption is that the provision in force at the time of the offence will continue to apply except if a new provision is more favorable to the Defendant in accordance with Article 3 Paragraphs (1) and (2). The Trial Panel took those provisions into account when primarily assessing the substantive elements of the criminal offence but also the level and calculation of any associated punishment.

### **3.1. Attempted Aggravated Murder**

#### **Legal Qualification**

122. The Prosecution's Indictment charges the Accused with the criminal offence of "Attempted Aggravated Murder", contrary to Article 147 Paragraph (1.10) in conjunction with Article 20 of the CCK, with regard to the attempt to deprive the lives of A. T. and F. S..

123. Article 20 Paragraph (1) of the CCK defines "Attempt" as follows:  
*"Whoever intentionally takes an immediate action towards the commission of an offence and the action is not completed or the elements of the intended offence are not fulfilled has attempted to commit a criminal offence".*

124. An attempt means the lack of full completion of the offence. According to the law, it is the perpetrator's expectation of the course of his actions that defines the attempted act.

125. It is clear that the elements of the offence referred to are the active elements of the offence and not the mental elements. *Mens rea* required for the full offence must always be fulfilled in order for there to be an attempt: on the cognitive side, the person's intention must cover all the elements of the offence, including criteria that increases the punishment; on the volitive side, the person must have the requisite degree of intent demanded by the offence in question.

126. Article 146 of the CCK defines "Murder" as:  
*"Whoever deprives another person of his or her life [...]"*.

127. The *actus reus* of murder includes elements of conduct and a result: the causing of the death of another human being.

128. The mental element of this offence requires intention as specified under Article 15 of the CCK.

129. Murder and aggravated murder are to be considered in a relation of basic and qualified norms. The latter is an aggravated form and not a separate offence, as

it is shown in Article 147 of the CCK by the reference to a person who is the murderer (who has deprived under certain circumstances another person of his or her life). As such, linked with Article 146 of the CCK, aggravated murder is committed if an aggravating factor listed under Article 147 of the CCK is present in the offence.

130. This can take the form of a mental element or a purely factual position. In this case the Panel considered Article 147 Paragraph (10):

*“(10) Deprives another person of his or her life at the time when such person is executing his or her duty of protecting legal order, safeguarding persons or property (...) or keeping public order and peace”.*

### **Criminal Liability**

131. As mentioned, the Indictment charges the Accused with “Attempted Aggravated Murder”.

132. After assessing all the facts as established above, the Court found that the legal qualification of “Attempted Murder” could not be established.

133. In the present case, it was proven that the Accused drove a quad bike in the direction of Police officers A. T. and F. S. (**FACT n°XVI**), who could only avoid a collision with the oncoming vehicle by swiftly moving aside (**FACT n°XVII**). Both Police officers remained therefore unharmed and no death occurred as a consequence of the Accused’s actions. It is clear that a full offence of murder was not committed.

134. The intention of the Accused must then be scrutinized.

135. In order for an act to be regarded as an attempt to a crime, there must be an intentional - either with direct or eventual intent - and immediate action toward the commission of a criminal offence, pursuant to Article 20 Paragraph (1) of the CCK.

136. The Court found not established that the Accused had any intent to deprive Injured Parties A. T. or F. S.’s lives. It was not proven that the action of the Accused, even though carrying the risk of causing life threatening injuries, was aimed toward murdering the Injured Parties. Therefore, the legal qualification of “Attempted Murder” cannot stand.

137. Since the elements defining this criminal offence in the law in force at the time the acts were committed were not found, it is superfluous to analyse what the constitutive elements of such offence are in the new CCRK, since, as stated in § 121, above, “[t]he law in effect at the time a criminal offence was committed shall be applied to the perpetrator”.

## **3.2. Obstructing Official Persons in Performing Official Duties**

### **Legal Qualification**

138. The Court is however not bound by the legal qualification as set out by the Prosecutor in the Indictment, as mentioned in §§ 114, 115, 116 above. This is to say that the Court can requalify the criminal offence as set out in the Indictment if the proven facts so support.
139. Article 316 of the CCK defines the criminal offence of “Obstructing Official Persons in Performing Official Duties” and reads:  
*“(1) Whoever, by force or threat or immediate use of force, obstructs an official person in performing official duties falling within the scope of his or her authorizations (...) shall be punished (...).  
(3) When the offence provided for in paragraph 1 or 2 of the present article is committed against an official person performing his or her duties of maintaining public security, the security of Kosovo or public order or apprehending a perpetrator of a criminal offence or guarding a person deprived of liberty, the perpetrator shall be punished (...).  
(4) An attempt of the offence provided for in paragraph 1 or 2 of the present article shall be punishable”.*

### **Criminal Liability**

140. The Court found that the objective elements of the core criminal offence are met. The Accused, on 14 August 2010, managed to break through a perimeter established by Police forces around a truck stopped in the course of a police operation aimed at tackling illegal smuggling of goods. He did so by driving a quad bike towards Police officers who had to quickly step aside in order to avoid a collision with the incoming vehicle (**FACTS n<sup>o</sup>I, II, XI, XII, XVI and XVII**).
141. The use of force by the Defendant in a way capable of creating a risk of bodily harm or worse is clearly established by the use of a moving solid object of considerable size towards a human body.
142. The obstructing element in the Accused’s actions was not completed and therefore qualifies the offence as an attempt (see above §§124, 125, 133 ).
143. Article 316 Paragraph (4) of the CCK punishes the attempted obstruction, which is in accordance with Article 20 Paragraph (2) of the same Code.
144. The Accused aimed at preventing the truck together with the transported load from being taken to customs terminal and undergo customs procedure (**FACT**

n°XX). He did not succeed in this as he was arrested immediately after stopping the quad bike near the truck.

145. It is irrelevant that the truck was never taken to the customs terminal and later on returned to the driver (see above §108). This happened not because of the Defendant's actions but because third parties who had such authority decided so.
146. After establishing the committed criminal offence (*actus reus*), the Trial Panel then turned to evaluate whether the subjective elements (so called *mens rea*) of the Defendant can be established.
147. Pursuant to Article 11 Paragraph (1) of the CCK, "[a] person is criminally liable if he or she is mentally competent and has been found guilty of the commission of a criminal offence". Pursuant to the same provision, "[a] person is guilty of the commission of a criminal offence when he or she commits a criminal offence intentionally or negligently".
148. Two are, therefore, the elements to be considered: the mental capability of the person and the intent to commit or the negligence in committing a criminal offence.
149. Firstly, there is no doubt to the fact that the Accused was fully mentally competent during the critical time. As a matter of fact, this issue was never the subject of argumentation during the proceedings.
150. Secondly, the Trial Panel had to evaluate whether, when committing the above established criminal offence, the Accused acted with intent. The law requires intent as the form of *mens rea* before criminal liability can be established, as negligence is the exception as per Article 11 Paragraph (3) of the CCK.
151. Article 15 of the CCK, when describing the notion of intent, states that:  
“(1) A criminal offence may be committed with direct or eventual intent.  
(2) A person acts with direct intent when he or she is aware of his or her act and desires its commission.  
(3) A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence”.
152. The Panel found that the definition of direct intent is clear: a person must know he or she is doing something and wants to do so. In other words, the person must know the elements of the offence (cognitive element) and have the will to bring about its completion (volitional element).
153. It is proven that the Accused was fully aware and envisaged that, with his actions, he would hinder the Police officers – who he was aware were acting in

their official capacity (**FACT n°XX**) – from moving the truck to the customs terminal. By desiring to do so, he acted with direct intent. The conclusion is that, on the subjective side, the Accused had the *mens rea* required for the full offense.

154. The aggravating circumstance foreseen under Article 316 Paragraph (3) of the CCK is also present: the official persons against whom the Accused acted were maintaining public security and order. It was established that the official persons performing official duties, Police officers A. T. and F. S., were maintaining public peace and controlling an open area where an official and approved Police operation was undergoing and was facing the hostility of the population, who had gathered there in a great number to protest against the presence of public authorities whom they regarded as illegitimate (**FACTS n° I, II, VI, VIII, XX**)
155. The Accused's *mens rea* also covers this element which increases the punishment; he was aware they were Police officers acting as such.
156. Thus, the Trial Panel found the Accused guilty and criminally liable for the incomplete criminal offence of "Obstructing Official Persons in Performing Official Duties", pursuant to Article 316 Paragraphs (1) and (4) of the CCK and aggravated under Paragraph (3) of the same Article.
157. The new CCRK also punishes "Obstructing official persons in performing official duties" in its Article 409. It now reads:  
*"(1) Whoever, by force or serious threat, obstructs or attempts to obstruct an official person in performing official duties or, using the same means, compels him or her to perform official duties shall be punished ...".*  
*"(5) When the offense provided for in paragraph 1 or 2 of this Article is committed against a judge, a prosecutor, an official of a court, prosecution officer or a person authorized by the court and prosecution office, a police officer, a military officer, a customs officer or a correctional officer during the exercise of their official functions the perpetrator shall be punished ...".*
158. The only relevant changes introduced compared to the CCK, apart from new punishing ranges, are the following: the attempt is now foreseen in the core description of the offence itself; the aggravating factors now describe categories of official persons specially protected, as opposed to expressly specifying the functions covered, as previously.
159. This means that the relevant elements of the offence remain the same under the CCRK as under the CCK. It also means that the Accused is also guilty under Article 409 Paragraphs (1) and (5) of the CCRK.

#### IV. SENTENCING

160. When imposing the criminal sanction, the Court has to consider both the general purpose of the punishment, namely to suppress socially dangerous activities by deterring others from committing similar criminal acts, and the specific purpose, that is to prevent the offender from re-offending. According to Article 34 of the CCK: “*The purposes of punishment are: 1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; and 1.2 to deter other persons from committing criminal offences*”. Article 41 of the CCRK adds as a purpose of punishment: “*1.4 to express the judgment of society for criminal offences, increase morality and strengthen the obligation to respect the law*”. Bearing this in mind, the Trial Panel decides as follows.
161. Based on what is stated in § 121 above concerning the entry into force of the new Criminal Code of the Republic of Kosovo as of 01 January 2013, and considering the principle of preemptory applicability of *lex mitior*<sup>168</sup>, the Trial Panel has to *in concreto* consider what law would be more favourable to the Accused, taking into account his or her characteristic, the nature of the offence and the circumstances in which the offence was committed<sup>169</sup>. Therefore, the *lex mitior* has to be found *in concreto*<sup>170</sup>.

##### 4.1. Calculation of punishment under the old CCK

162. With regard to the criminal offence of “Obstructing Official Persons in Performing Official Duties”, Article 316 Paragraph (4) of the CCK provides that an attempt of the offence provided in Article 316 Paragraph (1) shall be punishable.
163. Article 20 Paragraph (3) of the CCK foresees that “[a] person who attempts to commit a criminal offence shall be punished more leniently than the perpetrator, in accordance with Article 65(2) of the present Code”. Article 65 Paragraph (2) of the CCK stipulates that “[t]he punishment imposed for attempt [...] shall be no more than three-quarters of the maximum punishment prescribed for the criminal offence”.
164. Article 316 Paragraph (3) of the CCK foresees a punishment of **three (3) months to five (5) years** for the criminal offence for which the Accused is guilty of.

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<sup>168</sup> See ECHR, *Scoppola v. Italy* (no. 2), app. no. 10249/03, 17 September 2009;

<sup>169</sup> See ECHR, *Scoppola v. Italy* (no. 2), App. no. 10249/03, Judgment of 17 September 2009, para. 109; ECHR, *Maktouf and Damjanovic v. Bosnia and Herzegovina*, separate opinions, page 43;

<sup>170</sup> See above, ECHR, *Maktouf and Damjanovic v. Bosnia and Herzegovina*, page 44;

165. Taking into consideration Article 20 Paragraph (3) and Article 65 Paragraph (2) of the CCK and noting that the maximum punishment foreseen in the CCK for an aggravated obstruction of “Obstructing official persons in performing official duties” is five (5) years of imprisonment, the Trial Panel considered that the maximum sentence for the attempt is a sentence of **three (3) years and nine (9) months of imprisonment**.
166. According to Article 64 Paragraph (1) of the CCK:
- “The Court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of the punishment (mitigating and aggravating circumstances) and, in particular, the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender”.*
167. Concerning the mitigating circumstances for the Accused **Ž. V.**, the Trial Panel found that there were no mitigating circumstances in this case.
168. Concerning the aggravating circumstances for the Accused **Ž. V.**, the Trial Panel considered the following facts as such: the criminal offence took place in the north of Kosovo, where the rule of Law has not always been present, the strong patent in the north of Kosovo of illegal smuggling of goods, the image of the authority of the Kosovo Albanian Police officers in the north of Kosovo, which was damaged, the public perception of the incident and that the Accused believed he had a sense of power in that part of Kosovo and used it in his favour.
169. Therefore, taking into consideration all of the above mentioned circumstances, the Trial Panel would impose against the Defendant **Ž. V.** a sentence of **twelve (12) months of imprisonment**.
170. The Court then considered the alternative punishments foreseen in Article 41 of the CCK. It concluded none of those punishments would satisfy the purposes of punishment inscribed in Article 34 of the CCK, especially the general deterrence purpose. The actions of the Accused demonstrate he acted in defiance of the Law and with a sense of impunity by expecting to take advantage of the time and place where he acted, that is, of the presence of a crowd of Kosovo Serbs hostile to the Kosovo Police operating there in order to tackle some criminal activities. The execution of the sentence serves to

demonstrate that criminal actions are not to be tolerated and that the Rule of Law is applicable irrespective of the area where the crime is committed.

#### **4.2. Calculation of punishment under the new CCRK**

171. With regard to the criminal offence of attempt of “Obstructing Official Persons in Performing Official Duties”, Article 409 Paragraph (5) of the CCRK foresees a punishment of **one (1) year to five (5) years of imprisonment** when the offence provided in Paragraph (1) of the provision was committed against a Police officer.
172. Article 28 Paragraph (3) of the CCRK provides that “[a] *person who attempts to commit a criminal offense shall be punished as if he or she committed the criminal offense, however, the punishment may be reduced*”.
173. As opposed to the former Code, the sentence mitigation for not completed offences is not automatically triggered but, instead, an option that shall take into account the purpose of punishments. Therefore, the first test the Panel faces is to whether mitigate it or not. The Panel considers the sense of impunity with which the Accused acted in broad daylight in front of a crowd prevents any possible mitigation, as reasons of general and special prevention advise against it.
174. On the basis of the same aggravating circumstances, the Trial Panel would have imposed against the Accused **Ž. V. 18 (eighteen) months of imprisonment** under the CCRK.
175. The Court again considered the alternative punishments foreseen in Article 49 of the CCRK. It concluded none of those punishments would satisfy the purposes of punishment inscribed in Article 41 of the CCRK for the reasons already mentioned above (see §170).

#### **4.3. Lex mitior and final calculation**

176. The Trial Panel considers that by applying the old CCK the most favourable outcome for the Accused **Ž. V.** would be *in concreto* reached.
177. Therefore, in relation to the Accused **Ž. V.**, the Trial Panel imposed a sentence of twelve (12) months of imprisonment for the criminal offence of attempt of “Obstructing Official Persons in Performing Official Duties”, pursuant to Article 38 Paragraph (1), Article 65 Paragraph (2) and Article 316 Paragraphs (1), (3) and (4) of the CCK.



178. The time spent in detention on remand from 29 July 2013 until 28 February 2014 and the time spent under the measure of house detention from 28 February 2014 until 20 June 2014 are to be included in the punishment of imprisonment pursuant to Article 73 Paragraphs (1) and (4) of the CCK.

## V. AMNESTY LAW

179. According to Article 2 Paragraph (1) of the Law on amnesty (Law no. 04/L-209):

*“[a]ll perpetrators of offences listed in Article 3 of the Law that were committed before 20 June 2013 shall be granted a complete exemption from criminal prosecution or from the execution of punishment for such offences, in accordance with the terms and conditions of Article 3 of this law”.*

180. The Trial Panel had to assess whether the Law on amnesty is applicable in this case since the criminal offence was committed before 20 June 2013.

181. Article 3 of the Law on amnesty lists the criminal offences that are completely exempted from criminal prosecution or from execution of punishment.

182. Article 3 Paragraph (1) subparagraph (1.1.13) foresees the exemption for the criminal offence of “Obstructing official persons in performing official duties (Article 409, Paragraph (1), (2) and (3))” when the offence was committed with the aim of committing the criminal offence of “Call for resistance”.

183. The Trial Panel found that, in this case, the Law on amnesty does not apply since the criminal offence the Accused was found guilty of was not committed with the aim of committing the criminal offence of “Call for resistance”.

## VI. COSTS AND COMPENSATION CLAIM

### **6.1. Costs of Proceedings**

184. The Trial Panel found the Accused **Ž. V.** guilty and, pursuant to Article 453 Paragraph (1) of the CPC, the Accused shall reimburse the costs of criminal proceedings. Considering the number of hearings held and the economic conditions of the Accused, the Trial Panel decided that the Accused shall reimburse three hundred (300) Euros as part of the costs of criminal proceedings, but is relieved of the duty to reimburse the remaining costs in accordance with Article 453 Paragraph (4) of the CPC.

185. The Accused shall reimburse the ordered sum no later than thirty (30) days from the day the Judgment becomes final.

## **6.2. Compensation claim**

186. The Trial Panel takes note that the Injured Parties did not submit any claim for compensation during the Trial period.

### **Basic Court of Mitrovicë/a**

**Nuno de Madureira**

**Roxana Comsa**

**Iva Niksic**

**Presiding Judge**

**Panel Member**

**Panel Member**

**Vera Manuello**

**Recording Officer**

**LEGAL REMEDY:** A Defendant, their legal counsel, the Prosecutor or an Injured Party have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.