COURT OF APPEALS

Case number: **PAKR 943/13**

Date: **25 August 2014**

THE COURT OF APPEALS OF KOSOVO in the Panel composed of EULEX Judge James Hargreaves as Presiding and Reporting Judge, and EULEX Judge Manuel Soares and Kosovo Appellate Judge Driton Muharemi as Panel Members, with the participation of Clemens Mueller, EULEX Legal Officer,

in the criminal proceedings against

S.P., son of father xxx and mother xxx, born xxx in xxx, xxx, residing in xxx, xxx, with university xxx degree, xxx and xxx, Serbian,

acquitted in first instance in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013 of the criminal offences of Abuse of Official Position or Authority pursuant to Article 339 (3) read in conjunction with Article 23 (co-perpetration) of the Provisional Criminal Code of Kosovo – UNMIK Regulation 2003/25, in force from 06.04.2004 until 31.12.2012 (hereinafter CCK 2004) (Count 1), Misappropriation in Office pursuant to Article 340 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 2), and Fraud in Office pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

B.G., son of father xxx and mother xxx, born xxx in xxx, Former Yugoslav Republic of Macedonia (FYROM), xxx, residing in xxx, xxx, former xxx, xxx and xxx, university degree, Kosovo Serbian,

convicted in first instance and sentenced to four (4) years imprisonment and an accessory punishment of prohibition from exercising public administration or public service functions for a period of two (2) years in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013 after having been found guilty of the criminal offences of *Abuse of Official Position or Authority* pursuant to Article 442 (1) of the Criminal Code of the Republic of Kosovo – Law no. 04/L-082, in force since 01.01.2013 (hereinafter CCK) (Count 2), *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

N.V., son of father xxx and xxx, born xxx in xxx, xxx, residing in xxx, xxx, former xxx until xxx, with secondary school, xxx and xxx, Kosovo Serbian;

convicted in first instance and sentenced o three (3) years and six (6) month imprisonment and an accessory punishment of prohibition form exercising public administration or public service functions for a period of two (2) years in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013 after having been found guilty of the criminal offences

of *Abuse of Official Position or Authority* pursuant to Article 442 (1) of the CCK (Count 3) and *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6)

M.S., son of father xxx and mother xxx, born xxx in xxx, xxx, residing in xxx, "xxx" Street, xxx worker, with high school degree, xxx and xxx, Kosovo Albanian;

convicted in first instance and sentenced to one (1) year and six (6) month imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

R.P., son of father xxx and mother xxx, born xxx in the village of xxx, Municipality of Pristinë/Priština, laborer, with high school degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year and six (6) month imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6)

I.H., son of father xxx and mother xxxx, born xxx in the village of xxx, Municipality of Podujevë/Podujevo, xxx, residing in xxx, xxx xxx xxx, with high school degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year and six (6) month imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6)

F.S., son of father xxx and mother xxx, born xxx in xxx, xxx, residing in xxx, "xxx" Street, with university degree in xxx, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year and six (6) month imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

R.S. son of father xxx and mother xxx, born xxx in the village of xxx, Municipality of Podujevë/Podujevo, xxx residing in xxx, "xxx" Street, xxx xxx xxx, with university xxx degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

Sh.H., son of father xxx and mother xxx, born xxx in the village of xxx, Municipality of Podujevë/Podujevo, xxx, residing in the village of xxx, xxx xxx, with high school degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year imprisonment, suspended for the period of three (3) years, with Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

D.H., son of father xxx and mother xxx, born xxx in the village of xxx, Municipality of Podujevë/Podujevo, xxx residing in the village of xxx, xxx, xxx, with high school degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

G.Z., son of father xxx and mother xxx, born xxx in the village xxx, Municipality of Podujevë/Podujevo, xxx xxx, with high school degree, xxx and xxx, Kosovo Albanian,

convicted in first instance and sentenced to one (1) year imprisonment, suspended for the period of three (3) years, in Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013, after having been found guilty of the criminal offense of *Fraud in Office* pursuant to Article 341 (1) and (3) read in conjunction with Article 23 (co-perpetration) of the CCK 2004 (Count 6);

acting upon the following appeals filed against Judgment no. P 200/2010 of the Basic Court Pristinë/Priština dated 28 February 2013 (hereinafter: Impugned Judgment):

- Appeal by the Special Prosecution Office of Kosovo (hereinafter SPRK), filed 17.06.2013,
- Appeal by Defence Counsel B.T. and A.H. on behalf of defendant **B.G**., filed 17.06.2013,
- Appeal by Defence Counsel R.G. filed on behalf of defendant **N.V**., filed 18.06.2013,
- Appeal by Defence Counsel S.M. on behalf of defendant **M.S.,** filed 18.06.2013,
- Appeal by Defence Counsel O.M. on behalf of defendant **R.P**., filed 21.06.2013,
- Appeal by Defence Counsel L. B. Y. on behalf of defendant **I.H**., filed 18.06.2013,
- Appeal by Defence Counsel H.L. on behalf of defendant **F.S.,** filed 01.07.2013,

- Appeal by Defence Counsel E.Sh. on behalf of defendant **R.S.** filed 18.06.2013; and appeal by defendant **R.S.** filed 18.06.2013,
- Appeal by Defence Counsel K.R. on behalf of defendant **Sh.H**., filed 18.06.2013,
- Appeal by Defence Counsel Xh.R. on behalf of defendant **G.Z.,** filed 18.06.2013;
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having reviewed the Opinion of the Appellate State Prosecutor no. PPA/I no. 256/2013 dated 5 November 2013;

after having held a public session on 28 April 2014 in the presence of the defendant and the EULEX Appellate State Prosecutor Judit Eva Tatrai;

having deliberated and voted on 28 April 2014, 20 June 2014 and 24 July 2014;
pursuant to Articles 420 *et seq.* of the Provisional Criminal Procedure Code – UNMIK Regulation 2003/26 (hereinafter "KCCP");

renders the following

JUDGMENT AND RULING

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1. The appeal filed by the Special Prosecutor on 17.06.2013 is DISMISSED as INADMISSIBLE.

2. As to the defendant B.G.:

A. His conviction on Count 2—Abuse of Official Position is **reversed** and the charge is **dismissed**

B. His conviction on Count 6—Fraud in Office in co-perpetration with defendant **N.V.** is **affirmed;** however the legal grounds for the charge and conviction is modified to be based on Article 33, Article 120, paragraph 2 and Article 426 paragraph 2 CCK to the extent that the conviction relies on the participation of the defendants **M.S., R.P., I.H., F.S., R.S., Sh.H., G.Z.,** and **D.H.,** which the Panel finds to have been by way of "assistance" and not of "co-perpetration".

C. His sentence to pay costs is **reversed**

D. His sentence to imprisonment is **modified** to be for 3 years

E. Except as modified above, his sentence is **affirmed** in all other respects

3. As to the defendant N.V.:

A. His conviction on Count 2—Abuse of Official Position is **reversed** and the charge is **dismissed**

B. His conviction on Count 6—Fraud in Office in co-perpetration with defendant **B.G.** is **affirmed;** however the legal grounds for the charge and conviction is modified to be based on Article 33, Article 120, paragraph 2 and Article 426 paragraph 2 CCK to the extent that the conviction relies on the participation of the defendants **M.S., R.P., I.H., F.S.,R.S., Sh.H., G.Z**., and **D.H.** which the Panel finds to have been by way of "assistance" and not of "co-perpetration".

C. His sentence to pay costs is **reversed**

D. His sentence to imprisonment is **modified** to be for 3 years

E. Except as modified above, his sentence is **affirmed** in all other respects

4. As to the defendants M.S., R.P., I.H., F.S.,R.S., SH.H., G.Z., and D.H.:

A. Each of their convictions on Count 6—Fraud in Office in Co-perpetration—is **reversed**.

B. Each of the defendants is found **guilty** of Assisting in Fraud in Office in violation Article 33, Article 120, paragraph 2 and Article 426, paragraphs 2 CCK because on various dates, between 1 January and 31 December 2006, each of the defendants intentionally assisted the defendant **B.G.,** as xxx xxx and later xxx xxx xxx, and defendant **N.V.,** as Head of xxx of the xxx, both acting as official persons and in co-perpetration in the criminal acts described above, by acting as xxx and xxx of xxx companies, particularly **M.S.,** as xxx and xxx of his own xxx companies xxx xxx xxx and NPSh; **R.P**., as xxx and xxx of xxx companies xxx xxx and xxx xxx; **I.H**., xxx and xxx of xxx company xxx xxx; **F.S**., as xxx and xxx of xxx company xxx xxx; **R.S.** as xxx and xxx of xxx company xxx xxxx; **Sh.H**., as xxx and xxx of xxx company xxx xxx; **G.Z**., as xxx and xxx of xxx company xxx xxx; and **D.H**., as xxx and xxx of xxx company xxx xxx, by assisting in defrauding the responsible desk officer(s) of the xxx by presenting false contracts for work that was never done and diverting funds to work that was not contracted for and/or by authorizing payments for work that was not contracted for an/or work that was not contracted for as further specified above.

C. Each of the defendants' sentences to pay costs is **reversed**

D. As to defendants **M.S., R.P., I.H. and F.S**., their sentences are **reduced** to 1 year and 4 months imprisonment, suspended for 3 years

E. As to defendants **R.S. Sh.H., G.Z. and D.H**., their sentences are **reduced** to 10 months imprisonment, suspended for 3 years

F. As to Defendant **P.,** in accordance with Article 365 of the CCK the 10 days that he spend in pretrial confinement is **included** in his sentence

Except as specifically modified by this court, the Judgment of the Trial Court is affirmed in all other respects.

PROCEDURAL BACKGROUND

The instant case involves a scheme in the xxx and xxx whereby funds for the construction and renovation of housing for xxx after the armed conflict in 1999 were secretly misdirected to other construction projects through the use of various false contracts and other documents.

On 6 August 2010, the SPRK filed Indictment no. PP 58/2010 with the (then) District Court of Pristinë/Priština. The Indictment was filed against all the defendants mentioned above for the criminal offence of Misappropriation in Office, committed in co-perpetration (Count 1), Misappropriation, committed in co-perpetration (Count 2), Fraud in Office, committed in co-perpetration (Count 3); against the defendant **N.V.** for Accepting Bribes (Count 4); against the defendant **R.P.** for Giving Bribes (Count 5); and against all the defendants mentioned above except the defendants **S.P. and B.G.** for Falsifying Official Documents, committed in co-perpetration (Count 6 and 7).

The Indictment was confirmed in its entirety by the Ruling of the Confirmation Judge of the District Court of Pristinë/Priština, KA no. 185/2010, dated 7 February 2011.

The main trial commenced on 18 November 2011, and continued in 39 trial sessions throughout the year 2012 and the beginning of 2013.

On 9 December 2011, the SPRK filed the Amended Indictment no. PP 58/2010 with the District Court of Pristinë/Priština against all the defendants mentioned above except the defendant **N.V.** for the criminal offence of Misappropriation in Office, committed in co-perpetration (Count 1); against all the defendants mentioned above for Misappropriation, committed in co-perpetration (Count 2), Fraud in Office, committed in co-perpetration (Count 3); against the defendant **N.V.** for Accepting Bribes (Count 4); against the defendant **R.P.** for Giving Bribes (Count 5); against all the defendants mentioned above for Falsifying Official Documents, committed in co-perpetration (Count 6 and 7).

On 13 April 2012, the SPRK filed the Second Amended Indictment no. PP 58/2010 and on 21 November 2012 the Third Amended Indictment no. PP 58/2010 with the District Court of Pristinë/Priština. The Third Amended Indictment charged the defendant **S.P.** with the criminal offence of Abusing Official Position or Authority (Count 1); the defendants **S.P. and B.G.** with the criminal offence of Abuse of Official Position or Authority, committed in co-perpetration (Count 2); the defendant **N.V.** with the criminal offence of Abuse of Official Position or Authority (Count 3); all the defendants mentioned above with the criminal offence of Misappropriation in Office, committed in co-perpetration (Count 4); Misappropriation, committed in co-perpetration (Count 5); Fraud in Office, committed in co-perpetration (Count 6); the defendant **N.V.** with the criminal offence of Accepting Bribes (Count 7); the defendant **R.P.** for the criminal offence of Giving Bribes (Count 8); all the defendants mentioned above with the criminal offence of Falsifying Official Documents and Falsifying Documents, committed in co-perpetration (Count 9 and 10).

On 19 February 2013, during her closing argument presented in Court, the Special Prosecutor withdrew the charge of Giving Bribes against **R.P.** (Count 8), and Falsifying of Official Documents and Falsifying Documents against all the defendants mentioned above (Count 9 and 10) because of expiry of the period of absolute statutory limitation, and the charge of Accepting Bribes against **N.V.** (Count 7), for lack of evidence.

The Basic Court of Pristinë/Priština announced Judgment no. P 200/2010 on 28 February 2013. The Trial Panel rejected the charges of counts 7, 8, 9, and 10 pursuant to Article 389 (1) of the KCCP because the Special Prosecutor withdrew these charges at the conclusion of the main trial. All eleven defendants mentioned above were acquitted in regards to the charges of Misappropriation in Office (Count 4) and Misappropriation (Count 5).

The defendant **S.P.** was acquitted of all charges brought against him (Counts 1, 2, and 6).

The defendant **B.G.** was found guilty of the criminal offences of Abusing Official Position or Authority (Count 2) and co-perpetration of Fraud in Office (Count 6). He was sentenced to two years of imprisonment for Count 2 and three years of imprisonment for Count 6 with an aggravated punishment of four years of imprisonment. As an accessory punishment, the defendant **B.G.** was prohibited from exercising xxx or xxx for two years.

The defendant **N.V.** was found guilty of the criminal offences of Abusing Official Position or Authority (Count 3) and co-perpetration of Fraud in Office (Count 6). The defendant was sentenced to two years of imprisonment for Count 3, and three years of imprisonment for Count 6 with an aggravated punishment of three years and six month of imprisonment. As an accessory punishment, the defendant **N.V.** was prohibited from exercising public administration or public service functions for two years.

Defendants **M.S., R.B., I.H., F.S., R.S. Sh.H., Gani Z. and D.H.** were found guilty for the criminal offences of co-perpetration in Fraud in Office.

Defendants **M.S., R.P., I.H. and F.S.** were sentenced to one year and six month of imprisonment, suspended for three years. Defendants **R.S. Sh.H., G.Z. and D.H.** were sentenced to one year of imprisonment, suspended for three years.

The Basic Court required all defendants to reimburse the costs of proceedings, the amount determined at 3000 EUR.

The Impugned Judgment was appealed by the SPRK and all the defendants except the defendant **D.H..**

The Court of Appeals held a public session in the case on 28 April 2014 in the presence of the defendants, and the Appellate State Prosecutor. Defendant **M.S.** was duly summoned to the session but did not attend. The Appeals Panel continued the proceedings in his absence pursuant to Article 410 (4) of the KCCP.

FINDINGS OF THE COURT OF APPEALS

1. Competence of the Court of Appeals

The Court of Appeals is the competent court to decide on the Appeal pursuant to Article 17 and Article 18 of the Law on Courts (Law no. 03/L-199).

The Panel of the Court of Appeals is constituted in accordance with Article 19 Paragraph (1) of the Law on Courts and Article 3 of the Law on the jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo (Law no 03/L-053). The parties did not file any objections against the constitution of the panel.

2. Applicable procedural law - *mutatis mutandis* Kosovo Code of Criminal Procedure (KCCP) as in force until 31.12.2012

The criminal procedural law applicable in the respective criminal case is the KCCP that remained in force until 31 December 2012.[1] The proper interpretation of the transitional provisions of the Criminal Procedure Code (CPC), in force since 1 January 2013, stipulates that in criminal proceedings initiated prior to the entering into force of the new Code, for which the trial already commenced but was not completed with a final decision, provisions of the KCCP will apply *mutatis mutandis* until the decision becomes final. Reference in this regard is made to the Legal opinion no. 56/2013 of the Supreme Court of Kosovo, adopted in its general session on 23 January 2013.

REASONING

INTRODUCTION

This case was tried under the provisions of the former Kosovo Criminal Procedure Code (KCCP) and involves a scheme in the xxx and xxx whereby funds for the construction and renovation of housing for xxx after the war was secretly misdirected to other construction projects through the use of various false contracts and other documents.

The court found that **Mr. P., Mr. G.** and **Mr. V**. were respectively, the xxx, xxx xxx (and later xxx) and xxx of xxx of the xxx of xxx and xxx. The court further found that each of the other defendants were in the xxx business, doing xxx work directed by the xxx.

The court found that Mr. **V.** as the xxx of xxx, abused his official position by drafting and signing contracts for renovations and reconstructions of houses of xxx without specifying the names of the xxx or the addresses of the work to be perform and then directing work to be carried out on various projects not within the scope of the work of the xxx.

[1] Kosovo Code of Criminal Procedure (KCCP) - UNMIK Regulation 2003/26, in force from 06.04.2004 to 31.12.2012.

The court further found that **Mr. G.,** as xxx xxx, directed various people to sign false inspection reports showing that work was done when it fact other, different work was done, thus concealing that fact. These false inspection reports then formed the basis for disbursing money to the people doing the actual xxx work.

Finally, the court found that the remaining defendants were xxx xxx owners or xxx workers who actually carried out the work. The court found that all but one signed false documents relating to the places that the work was done. One defend did not sign all of the contracts but those not signed by him were signed by his brother on behalf of the company and with his knowledge and consent. As to the cost of the work done, this was consistently broken out into multiple payments of less than 10,000 euro each so that a lesser amount of scrutiny would be given to the billings before payment was authorized.

APPEALS

In relation to Mr. **H.** who has not filed an appeal, and to all other defendants, the court will apply the provisions of Article 419 which state:

"If upon an appeal the court of second instance finds that the reasons which governed it decision in favour of the accused, and which are not of a purely personal nature, are also to the advantage of a co-accused who has not filed an appeal or has not filed an appeal along the same lines, the court shall proceed ex officio as if such appeal was also filed by the co-accused."

Thus, throughout this opinion the court will refer to "all economic operators" as though Mr**. H.** had filed an appeal and deal with all issues as though they had all been raised by each defendant.

Before turning to some of the myriad of issues raised by the parties on appeal the court needs to address the issue of the admissibility of the appeal of the prosecution and the appeal of defendant **F.S..**

Admissibility of the Appeal of the Prosecution

The Special Prosecution Office of Kosovo (SPRK) filed an appeal in this matter raising only the issue of the acquittal of defendant **P.** In its review of the appeal the Appellate Prosecutor pointed out that the record of the trail court did not reflect any "announcement" of the intent to appeal by the trial prosecutor at the time of the entry of the judgment nor a written "announcement" within eight days thereafter as required by Art. 400 (1) (KCCP). Article 400 (2) provides that if a party fails to make the required announcement in one of the two ways allowed under Art. 400 (1) that party is, "…deemed to have waived the right to appeal…"

The Appellate Prosecutor, in a footnote, also indicated that he had been contacted by the SPRK Prosecutor and told by her that when the Presiding Judge asked the parties to announce their intent to appeal she "nodded". The appellant SPRK Prosecutor has not sought to supplement the record of this case to provide evidence of this alleged head nod. See Article 401 (4).

This panel, acting in accordance with Article 409 (4), sought a report from the judges of the trial panel, the recorder and the translator regarding any recollection these trail participants might have regarding this issue. Four of the participants reported no recollection of the relevant event and the fifth, while not having a specific recollection reported that it was his "impression" at the time, at a level of "almost 50% accuracy" that the trial prosecutor seemed satisfied with the outcome.

Article 400 (1) does not prescribe any particular method by which the required "announcement" of an appeal must be expressed at the time of the announcement of the judgment. However, it is clear that it is the burden of the party wishing to appeal to make some form of "announcement" that is sufficient to clearly and unequivocally bring to the attention of the court that intent and to ensure its inclusion in the record.

Assuming without deciding that the trial prosecutor did in fact "nod" when the Presiding Judge called for the announcement of intent to appeal, the prosecutor would have been well advised to have availed herself of the provisions of Article 350 (2) and to have checked the finalized record of the proceedings to make sure that her "announcement" had been captured in the record.

Given the forgoing, and based on Article 420 (1) 1), the Panel finds that the appeal filed by the Special Prosecution Office of Kosovo (SPRK) is inadmissible and will not be considered.

Admissibility of the Appeal of defendant F.S.

The facts regarding the question of the admissibility of this appeal are very similar to those just dealt with in regard to the question of admissibility of the appeal of the prosecution. There is no indication in the record of any "announcement" of intent to appeal by this defendant at the time of the announcement of the judgment nor a written announcement within eight days of the judgment. The only explanation for this was simply a statement by the attorney for Mr. **S.** at the time of argument before the panel. At that time the attorney stated that in response to inquiry of the Presiding Judge he "waived his hand and nodded."

There is no need to repeat the analysis and reasoning set forth above to find the actions of the attorney clearly as insufficient as the "nodding" of the prosecutor. However, despite his attorney's insufficient "announcement," the outcome for Mr. **S.** is very different.

The waiver of appeal provision in Article 400 (2) has an exception that is found in subsection (4). There, if the party who failed to "announce" was sentenced to prison the waiver of appeal under subsection (2) does not occur. In this case **Mr. S.** was sentenced to one year and six months in prison, suspended for a period of three years. While subsection (4) of the statute does not address the question of a suspended sentence the Panel considers that since the defendant faces the potential of actually serving the sentence imposed, the reason for the exception applies equally to a suspended prison term.

Given the forgoing, the Panel finds the appeal of **F.S.** is admissible and it will be considered.

EVALUATION OF EVIDENCE

Each of the defendants has challenged various aspects of the legal and factual findings and reasoning of the trial panel. This Panel has carefully reviewed all of these challenges.

The Court of Appeals of Kosovo has often applied the general principal that it is required to give some substantial degree of deference to the finding of fact of the trial panel as it has heard the evidence and is in the best position to assess its weight and value.[2] In addition, the Kosovo Supreme Court has held that it must, "…defer to the assessment by the trial panel of the credibility of the trial witnesses who appeared in person before them and who testified in person before them. It is not appropriate for the Supreme Court of Kosovo to override the trial panel assessment of credibility of those witnesses unless there is a sound basis for doing so." The Court went on to say that the standard to be applied was "…to not disturb the trial court's findings unless the evidence relied upon by the trial court could not have been accepted by any reasonable tribunal of fact, or where its evaluation has been wholly erroneous."[3]

Here it is apparent that the trial panel has reasonably analyzed and weighed the evidence involving each and all of the defendants. Given the review of the evidence by the trial panel and their generally clear explanation of their reasons for their findings, *except as indicated in particular aspects of this opinion set out below*, the court accepts the factual findings and reasoning of the trial panel.

ISSUES AFFECTING MULTIPLE DEFENDANTS

Enacting Clause does not Make Specific Finding of Material Benefits Attributable to Each Defendant

In the Enacting Clause of the Judgment the trial panel made general finding that the various defendants, through their criminal actions, obtained material benefits exceeding 5,000 €, the sum set out in the relevant articles of the criminal code that establish the various levels of punishment. The trial panel did not make a specific finding *in the Enacting Clause* as to the actual amount of material benefits obtained by each defendant. These sums as relate to the defendants **M.S., R.P., I.H., F.S.,R.S., Sh.H., G.Z.,** and **D.H**. were determined by the trial panel and set forth in Section IV Subsection 1b "Other relevant facts proven during the trial" at page 47 of the English language version of the Judgment.

As to the defendants **G.** and **V.,** the trail panel found in Section IV subsection 1a, "Relevant facts in the indictment considered proved" at page 45 of the English language version of the Judgment, that each of them had acted together and together with all of the economic operators to commit the offence of Fraud in Office. Thus the court necessarily found defendants **G.** and **V.,** responsible for all of the unlawful material benefits acquired by the economic operators in the total sum of € 422.502.85.

[2] See for example, Court of Appeals of Kosovo PAKR 1121/12, 25 September 2013, para. 48

[3] Supreme Court of Kosovo, AP-KZi 84/2009, 3 December 2009, para. 35; Supreme Court of Kosovo, AP-KZi 2/2012, 24 September 2012, para. 30

The court finds that the Enacting Clause only need contain the finding that the illegal activities of the defendants produced a benefit of more than € 5,000 as that is an element establishing the seriousness of the offense. The findings of the panel in other than the Enacting Clause, regarding the actual amount of illegal benefit produced, is only relevant to the issues of severity of sentence and possible restitution.

Knowledge and Intent of Economic Operators to Commit a Criminal Offence

At trial and on appeal, all of the economic operators contend that they did not have any intent to participate in any sort of criminal activity. They all basically claim they just thought that **xxx** had their own way of doing things and that they needed to follow that process so that they could bet paid for their work. Given the evidence that they all either signed invoices saying they performed work where they knew they had not and further drafted invoices in such a way to keep most payments under 10,000 euro, (or had knowledge of this and consented), the trial panel would have been naïve in the extreme if it had believed that these defendants were unaware that they were participating in some sort of illegal scheme involving obtaining payments from the xxx. It is not necessary that they knew the exact nature of the scheme as long as they knew they were assisting in some illegal scheme for payment. The evidence clearly proved that the economic operators had the intent to participate in the criminal scheme.

Defendant M.S.

This defendant claims that he did not sign contracts No. 12138, 12140 and 12141. While that appears to be true, these three contracts were only three of a series of contract for work to be done by the defendant's company. Defendant clearly stated in his statements to investigators that he actively participated in the falsification of invoices on various contracts so that his company could get paid. He further said that he knew that his brother had signed these contracts on behalf of the company as part of this fraudulent scheme that directly benefited defendant's company and thereby benefitted him personally. He affirmed all of these statements at trial. This evidence is ample to cause defendant to be criminally liable on these contracts as well as the others which he personally signed.

Fraud in Office in Co-perpetration

All of the defendants except for defendant **P.** were convicted on Count 6 of the Indictment charging Fraud in Office in Co-perpetration in violation of Article 23, Article 107 paragraph 1 and Article 341, paragraphs 1 and 3 of the prior criminal code. The issues before the Panel, applying the old code, are: 1) what are the legal qualifications for being able to commit this crime in co-perpetration and 2) who among the convicted defendants meets these legal qualifications?

In this case, the trail court found defendants **G.** and **V.** were each an "official person" in the xxx of xxx and xxx (xxx) apparently because of they were "appointed to a public entity" as provided in Article 107 paragraph 1. The trial court found that the other eight defendants were all xxx contractors or engaged in xxx work and who actually performed the work that created the

foundation for the charges here. In the judgment the eight defendants are collectively referred to as "economic operators" and that terminology will be used here as well.

Defendant **V.** has challenged the finding of his being an "official person" on appeal, claiming that the evidence only showed that he was simply a civil servant and not an "official person" as defined by law. This court has carefully reviewed the evidence and the findings and reasoning by the trial panel in this matter. Based on this review this court finds that the trial panel's findings of fact and reasoning were entirely reasonable and their conclusion that defendant **V.** was an "official person" will not be disturbed on appeal.

Economic Operators as Official Persons

The question that next needs to be addressed is whether the individual economic operators were each also an "official person" under the old code. If they were not an "official person" then the issue of whether or not a person who is not an "official person" can act in co-perpetration with an "official person" arises where the crime alleged is Fraud in Office.

Fraud in Office can only be committed by an "official person" according to the provisions of Article 341 (1):

"An official person who, with the intent to obtain an unlawful material benefit…by presenting a false statement of account or in any other way deceives an authorized person into making an unlawful disbursement shall be punished…"

In this case the prosecution charged that **G.** and **V**., each as an "official person" in the xxx, committed these crimes as part of a fraudulent scheme that necessarily required the wrongful actions of the "economic operators" to carry it out.

The term "official person" is defined in Article 107 (1) of the prior code. The Article reads in relevant part:

"(1) The term "official person" means:
1) A person elected or appointed to a public entity;
2) An authorized person in a business organization or other legal person, who by law or by other provision issued in accordance with the law, exercises public authority, and who within this authority exercise specific duties;
3) A person who exercises specific official duties based on authorization provided for by law"

It appears clear that the economic operators do not qualify to be an "official person" under Section (1) 1) since it is clear that they are not elected or appointed to a public entity.

Looking at Section (1) 2) there is a real lack of clarity as to a number of terms used. Despite this lack of clarity one key phrase would seem to exclude the economic operators. The phrase, "exercises public authority" on its face would seem to exclude the economic operators. As the officials of their respective businesses they certainly exercise authority within their businesses but it is hard to see how this would be "public" authority. This seems especially clear when one

looks at the roles of "official persons" that are referred to throughout other parts of this Article. For example: persons elected or appointed to public entities; UNMIK or KFOR personnel; persons in international or supranational organizations; and judges or prosecutors in an international tribunal.

As with the two previous sections, it seems unlikely that Section (1) 3) applies to make the economic operators an "official person." The analysis is much the same as above. When one looks at the roles that are referred to throughout this Article, such as: persons elected or appointed to public entities; UNMIK or KFOR personnel; persons in international or supranational organizations; and judges or prosecutors in an international tribunal, it is difficult to see how the owner of a private construction business could have been contemplated to be covered by this.

From the foregoing, we conclude that none of the economic operators qualified as an "official person". This, however, is not the end of the analysis. This conclusion begs the question whether someone who is not an "official person" can commit the crime of Fraud in Office "in co-perpetration" with one who is an "official person".

Co-perpetration between Official Persons and Those Who are Not Official Persons

For the answer to the forgoing question we begin by turning to Article 107 (3) of the prior code which states:

"When an official person…is described as the perpetrator of a criminal offence, all persons referred to in paragraphs 1 or 2 of the present Article may be the perpetrators of such criminal offence, provided that it does not follow from the elements (of) the criminal offence that the perpetrator may only be one of those persons."

Thus, we must look to the elements of the offences of Fraud in Office to see if the offence can be committed in co-perpetration by someone who is not an "official person." The answer is clearly, "no". Article 341 has as a basic element of the crime that the person committing the crime must be an "official person". Since we have found that none of the economic operators are an "official person" they could not themselves commit the crimes of Fraud in Office. Since they legally are incapable of personally committing this crime, they cannot commit it in co-perpetration under Article 341 of the prior code. But, again, this is not the end of the discussion.

Other Criminal Activity of Economic Operators

Having found that the economic operators could not be guilty of Fraud in Office by Co-perpetration under the prior code does not end the discussion of potential liability for this group. Article 386 (2) specifically indicates that the court is not bound by the prosecutor's legal classification of the acts set forth in the indictment.

Article 25 creates criminal liability for intentionally assisting another in the commission of a criminal offense. The Article states:

"(1) Whoever intentionally assists another person in the commission of a criminal offence shall be punished as provided in Article 65(2) of the present Code."
"(2) Assistance in committing a criminal offence includes giving advice or instruction on how to commit a criminal offence, making available for the perpetrator the means to commit a criminal offence, removing the impediments to the commission of a criminal offence, or promising in advance to conceal evidence of the commission of a criminal offence, the identity of the perpetrator, the means used for the commission of a criminal offence, or the profits which result from the commission of a criminal offence."

Article 341 defining the criminal offence of Fraud in Office reads in relevant part:

"(1) An official person who, with the intent to obtain unlawful material benefit for himself, herself or another person by presenting a false statement of an account or in any other way deceives an authorized person in to making an unlawful disbursement shall be punished…"

In its decision the trail panel found that each of the economic operators participated in a scheme whereby they signed documents for work not contracted for and work not performed at the contemplated location. In addition, the trial panel found that the payment sought for this work was falsely stated in incremental amounts designed to avoid a review process more likely to reveal the false nature of the contracts. The trial panel further went on to find that these false documents then formed the basis for defendants **G.** and **V.,** "official persons," to request budgeted funds to pay for the amounts presented by the economic operators.

Given the findings of the trial panel it is clear that the facts found to be proven show that the economic operators intentionally "made available to the perpetrator (**G.** and **V.,**) the means to commit a criminal offence by signing false statements of account that were in turn used to deceive an authorized person in the government into making an unlawful disbursement. Thus, under the old code the economic operators should have been found guilty of Assisting in Fraud in Office.

Fraud in Office, "Co-perpetration" and "Assistance" under the current code

Fraud in Office

Except for changes regarding the amounts that define the seriousness levels of the offense, the definition of the crime of Fraud in Office in Article 426 of the current code is identical to that in the prior code.

A major change between the old code and the current code however is that Article 120 of the current code pertaining to the definition of "Official Person" contains no counterpart to Article 107 (3) of the prior code which is as follows:

"When an official person…is described as the perpetrator of a criminal offence, all persons referred to in paragraphs 1 or 2 of the present Article may be the perpetrators of such criminal offence, provided that it does not follow from the elements (of) the criminal offence that the perpetrator may only be one of those persons." (Emphasis added)

Thus, it appears that under the current code there is no requirement that, as to Fraud in Office, only an "official person" can act in co-perpetration with another "official person." Given the elimination of this restriction, the provisions of the new code present an interesting question. The question arises when one attempts to decide between the application of Article 31 regarding "co-perpetration" and the application of Article 33 regarding "assistance."

Article 31 Co-perpetration

"When two or more persons jointly commit a criminal offense by participating in the commission of a criminal offense or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offense."

Article 33 Assistance

"1. Whoever intentionally assists another person in the commission of a criminal offense shall be punished more leniently.

2. Assistance in committing a criminal offense includes, but is not limited to: giving advice or instruction on how to commit a criminal offense; making available the means to commit a criminal offense; creating conditions or removing the impediments to the commission of a criminal offense; or, promising in advance to conceal evidence of the commission of a criminal offense, the perpetrator or identity of the perpetrator, the means used for the commission of a criminal offense, or the profits or gains which result from the commission of a criminal offense."

As can be seen, in Article 31 there are two ways defined to jointly commit an offense: 1) "by participating the in the commission of the offense'" or 2) "by substantially contributing to its commission in any other way." This means that we must first look to a clear definition of the offense committed. Here, the ultimate offense was the misdirection of agency funds to unauthorized building projects. From the proven facts it is clear that the actual misdirection of the funds was directly as the result of the actions of the two "official persons," **G.** and **V.,** working in concert. Thus, under the current code, as with the prior code, defendants **G.** and **V.,** can be convicted for Fraud in Office in co-perpetration. A more interesting question arises as to the economic operators.

While it could be argued that the actions of the economic operators could fall within the definition of co-perpetration under the, "substantially contributing to its commission in any other way" language of Article 31, this Panel finds otherwise. The actions of the economic operators seem to fall more clearly within the provisions of Article 33 paragraph 2 defining "assistance," in that through their actions of making false documents they, made "available the means to commit" the criminal offense rather directly assisting in the actual commission of the crime. Thus, this Panel finds that, just as under the prior code, the correct conviction for the economic operators should have been for Assisting in Fraud in Office.

Dual Convictions for Abuse of Official Position or Authority and Fraud in Office

Defendants **G. and V.,** were each convicted of both Abuse of Official Position or Authority and Fraud in Office. The offence of Abuse of Official Position or Authority is defined in Article 339. It reads in relevant part:

"(1) An official person who, with the intent to obtain an unlawful material benefit for himself, herself or another person or a business organization…abuses his or her official position , exceeds the limits of his or her authorization, or does not execute his or her official duties shall be punished…"

Fraud in Office is defined in relevant part in Article 341 as:

"(1) An official person who, with the intent to obtain unlawful material benefit for himself, herself or another person by presenting a false statement of an account or in any other way deceives an authorized person in to making an unlawful disbursement shall be punished…"

The Appellate State Prosecutor submits in her opinion that even though these two criminal offences protect the same social values, their concurrences in the presence case is real as they only partially share identical elements and the conduct of the criminal offences is different. Thus, she proposes that the defendants can be convicted for both criminal offences and be punished by an aggregate punishment. The defendants in their submissions argue that the defendants can only be convicted, if at all, for the single offence of Fraud in Office. The Court of First Instance did not discuss the matter of concurrences in its judgment explicitly but simply imposes an aggregate punishment, i.e. assuming real concurrence in the present case.
Generally, the concept of concurrence of criminal offences distinguishes between the so called real concurrence and ideal concurrence.

Real concurrence embraces the cases where a person by a set of separate actions perpetrates several crimes against one or more victims. In this case the perpetrator is accountable for breaches of different rules of criminal law. No particular problem arises with regard to the charging of the offender and his sentencing by a court: he will be accused of various crimes; if found guilty, he will be sentenced for each of these crimes, with the highest penalty being enforced. A person may instead breach the same rule against various persons: for instance, he murders the members of a whole family. In this case only one rule is breached, that prohibiting unlawful killing, but the offence is committed against several victims.

Ideal concurrence, on the other hand, covers cases where a person, by a single act or transaction, simultaneously violates more than one rule. Here, again, one ought to distinguish among various categories of breaches. First, it may happen that the same act in some respects violates one rule and in other respects violates another rule, the two rules covering different matters. In such cases the same criminal conduct simultaneously breaches two different rules and amounts to two different crimes. However, this is subject to the rule of specialty (*lex specialis derogat lex generalis*).

If both rules are general provisions of law, most civil law systems consider that the perpetrator is to be convicted of both crimes, with the most severe penalty to be applied. If however one of the

rules is a special provision, this provision should be applied, and the Judges should enforce the penalty mentioned in the special provision rather than the more general provision.
The rationale behind the principle of speciality is that if an action is legally regulated both by a general provision and by a specific one, the latter prevails as most appropriate, being more specifically directed towards that action. Particularly in case of discrepancy between the two provisions, it would be logical to assume that the law-making body intended to give pride of place to the provision governing the action more directly and in greater detail. When one is faced with a single conduct or transaction that successively breaches two different rules *vis-a-vis* the same victim and may thus amount in theory to two offences, but one is lesser then (i.e., contained in) the other, the principle of consumption applies: the more serious offence prevails over and subsumes, as it were, the other.

The legal matter of concurrences of criminal offences has been already dealt with by the Court of Appeals, inter alia in *Puka et al* where the Court found that the criminal offence of Issuing Unlawful Judicial Decisions is *lex specialis* in relation the criminal offence of Abuse of Official Position or Authority. The same, in this panel's opinion, also applies for the criminal offence of Fraud in Office.[4] Thus, the Court of First Instance violated the criminal law when convicting the defendants **G. and V.,** for both criminal offences. The judgment should be modified in this regard to reflect only convictions for Fraud in Office.

Punishment for Fraud in Office for G. and V.,

The trial panel found these defendants guilty under the old code. In regard to sentencing, the trial panel found that for each defendant the appropriate sentence for the crime of Fraud in Office was 3 years imprisonment and as an accessory punishment under Articles 54 and 56 of the former criminal code imposed upon each of these defendants a prohibition against the exercising of public administration or public service functions for a period of 2 years.

In determining whether the court was correct in proceeding under the old code as the most advantageous for the defendants we must examine the provisions of the current criminal code as well. There, as previously stated, we find that the elements of the crime are the same. Given that the basic elements of the crime are the same under both the old and new codes, the only differentiating factor is found in the punishment aspect of each law.

Since the defendants committed their crimes under the old criminal code where the maximum punishment was for benefitting in amount exceeding € 5,000 we should then look at the punishments for that level of culpability in each code to determine which to apply. If we do that

[4] See also S. Nikola, Commentary of the Criminal Code of Serbia, 5th edition 1995, Article 242, para. 8: "*In relation to these criminal acts [violation of the law by a judge; fraud in office; illegal mediation; taking of bribes] abuse of office is a general criminal act and may not be in ideal concurrence with them as they are special forms of abuse. If by any abuse of office a perpetrator realizes the essence of some of the aforementioned acts he will be held liable only for the special criminal act as per the principle of specialty.*"; see further L. Lazarevic, Commentary on the Criminal Code of FRY, 1999, Article 174: "*Abuse of office is the basic criminal act against official duty. However, some other criminal acts from this group also encompass illegal acting of officials by abuse of their position or authorities, and in that sense they represent special forms of this criminal act. Therefore ideal concurrence between them is not possible.*"

we find that under the old code the sentence range would be 1-10 years. Under the new code the sentencing range would be 1-8 years. Thus, the new code is clearly more advantageous to the defendants and should have been the one applied. Of course, this conclusion has no practical meaning as the sentences given to these two defendants fall within the permitted range whether the old or new code is applied.

There is one issue regarding sentencing that does make a difference and which needs to be addressed. Both of the defendants received aggregated sentences since they were convicted of both Fraud in Office and Abuse of Official Position. The trial panel found that **G.** should receive 2 years on the Abuse of Official Position conviction and 3 years on the Fraud in Office conviction. In aggregate, the court found that the appropriate sentence should be 4 years. As to **V.,** the trial panel found that for Fraud in Office the appropriate sentence was 3 years and for Abuse of Official Position it was 2 years, with an aggregate sentence of 3 years and 6 months.

Given the fact that we have determined that these two defendants should only be convicted for Fraud in Office, the issue becomes one of what sentence is required to be applied for each of them. To begin with, the trial panel assessed each charge separately in regard to sentencing and determined that, for Fraud in Office the sentence for each defendant should be 3 years.

Article 417 of the criminal procedure code states:

"Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the classification of the act and the criminal sanction imposed."

In this case the prosecution did not file an appeal in regard to these two defendants.

Given the provisions of Article 417 the most onerous sentence that can be imposed upon these defendants is the one imposed by the trial panel as set forth above. The question then becomes whether a lesser sentence should be imposed given that these defendants will now stand convicted of only one criminal offense and not two?

This court finds that limiting of the defendants to one conviction instead of two arises out of the proper application of law and not from any change in the factual circumstances. The sentences imposed by the trail panel were reasonable and are adopted by this court as the appropriate sentences for these defendants for Fraud in Office.

Punishment for Assisting in Fraud in Office for Economic Operators

We need to begin by applying the same analysis as used above in regard to **G.** and **V.,**. First, it must be note that as with **G.** and **V.,** the crime for which the economic operators were charged and convicted in co-perpetration was Fraud in Office with the benefit exceeding € 5,000. Thus, also under the analysis above the basic sentence under the old code was 1-10 years and 1-8 years under the new code.

The next step in the analysis that needs to be applied for the economic operators is to see what each code provides for sentencing for "assisting" in fraud in office. Under Article 25 of the old code we are directed to apply the provisions of Article 65 (2). That code section provides that the punishment for "assisting," "…shall not to be more than three-quarters of the maximum punishment prescribed for the criminal offense." Thus, under the old code the maximum punishment was 10 years so the maximum punishment for "assistance" would be 7 years and 6 months.

If we turn to the new code, Article 33 (1) simply provides that, *"Whoever intentionally assists another person in the commission of a criminal offense shall be punished more leniently."* Applying this provision in our case requires a two-step analysis.

The first part of the analysis requires a determination of the meaning of the language, "…more leniently." In our case, where the main perpetrators were convicted and sentenced at the same time as the economic operators who were "assisting" them, the analysis is very direct. If we follow the analysis above, **G.** and **V.,** as the main perpetrators should have properly been convicted and sentenced under the new code and their sentences are 3 years each. It is then logical to apply the new code as well to the economic operators who have been convicted of assisting them. If we do that then the sentences for the economic operators needs to be more lenient than that given to **G.** and **V.,**. Since the economic operators were in fact given sentences by the trial court that were more lenient than the sentences given to **G.** and **V.,**, the new code has been complied with and all of the participants have been convicted and sentenced under the same code.

Having determined that the sentences given the economic operators complied with the statutory requirements of Article 33 (1) of the new code, the question remains whether these sentences are still appropriate given the change of the crime of conviction from Fraud in Office in Co-perpetration to Assisting in Fraud in Office.

The provisions of Article 417 states:

"Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the legal classification of the act and the criminal sanction imposed."

Since the appeal by the prosecution was only as to the acquittal of the defendant **P.,** and that appeal has been found to be inadmissible, the sentences imposed by the trial panel are the upper limits for any punishment that may be imposed on these defendants.

The trial panel sentenced defendants **M.S., R.P., I.H.** and **F.S.** to imprisonment for 1 year and 6 months but then suspended those sentences for a 3 year period. In regard to defendants **R.S. Sh.H., G.Z.** and **D.H.** the trial panel sentenced each to a period of 1 year imprisonment but then suspended those sentences for a 3 year period. The difference in the sentences between the two groups was based upon the findings of the trial panel that the first group obtained substantially more material benefit through their criminal activity than did the second group.

Having reviewed the facts and the reasoning of the trial panel in regard to the sentences imposed this court finds no reason to *substantially* reduce the sentences particularly since the panel views the current sentences as minimal. However, to give at least *some* recognition to the fact that these defendants are now being convicted of a lesser offence, the sentences for defendants **M.S., R.P., I.H.** and **F.S**. are reduced to 1 year and 4 months imprisonment, suspended for 3 years. The sentences for defendants **R.S. Sh.H., G.Z.** and **D.H**. are reduced to 10 months imprisonment, suspended for 3 years.

At the time of argument of this case in public session the attorney for defendant **R.P.** raised the issue of his being credited for the prior time he spent in pretrial detention. It appears that the defendant spent 10 days in such detention and, pursuant to the provisions of Article 73 this time is included in the prison sentence received by the defendant.

Assessment of Costs

The trial panel "determined" the amount of costs of the criminal proceeding based upon the following statement: *"Having into consideration the total amount of witnesses, sessions hold (sic) and international legal assistance requests, the costs of the criminal proceedings is hereby DETERMINED in the amount of € 3 000 (three thousand Euros) pursuant to Article 100 paragraph 2 KCCP."* A review of the provisions of the current criminal procedure code reveals that the language in Articles 450 and 451 are nearly identical and do not vary in any material way that is relevant to these proceedings.

It is clear that the trail panel failed to determined costs pursuant the provisions of Article 99 and Article 100 (2) of the prior code or Articles 450 and 451 of the current code, but instead, simply invented an amount with no basis in fact. Since there is nothing in the record upon which to base a true determination of costs, the obligation imposed upon the defendants to pay costs is reversed and they are relieved of any obligation to pay costs.

Done in English, authorized language. Reasoned Judgment completed on 25 August 2014.

Presiding Judge

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James Hargreaves
EULEX Judge

Panel member

_____

Manuel Soares
EULEX Judge

Panel member

_____

Driton Muharemi
Judge

Legal Officer

_____

Clemens Mueller
EULEX Legal Officer

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25.08.2014