

**BASIC COURT OF MITROVICË/MITROVICA**

**P no. 42/14**

**PP.I. no. 103/2013**

**12 February 2015**

**IN THE NAME OF THE PEOPLE**

THE BASIC COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judge Franciska Fiser, acting as Presiding Trial Judge, EULEX Judge Nuno Manuel Ferreira De Madureira and EULEX Judge Paulo Duarte De Mesquita Teixeira, with EULEX Legal Advisor Jana Božović as Recording Officer in the criminal case against:

**Đ.K., father's name H., mother's maiden name H.S., born on                      in                      , with residence in                      , at                      neighborhood with no number,                      ethnicity, citizen of the Republic of Kosovo, married,                      by profession, employed as                      , average economic status, in detention on remand from 3 June 2013;**

**Indicted with:**

*Count 1 Sexual Abuse of Persons under the age of 16 years*, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of the Criminal Code of Kosovo ("CCK");

*Count 2 Facilitating Prostitution*, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK;

*Count 3 Sexual Assault*, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK;

*Count 4 Sexual Abuse of Persons under the age of 16 years*, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK;

*Count 5 Rape*, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK;

Count 6 Rape, contrary to Article 193, Paragraph (3) Subparagraph (4) of the CCK;

Count 7 Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraph (2) and (3) in conjunction with Article 20 of the CCK;

Count 8 Rape, contrary to Article 193, Paragraph (2) Subparagraph (3) of the CCK; and

Count 9 Facilitating or compelling prostitution, contrary to Article 241, Paragraph (3) of the CCRK;

*After holding* the main trial, closed to the public, on 15, 16, 17 and 20 October 2014, on 10 November 2014, on 2, 8 and 9 December 2014, on 27 and 28 January 2015, on 11 February 2015, in the presence of the Defendant Đ.K. , his Defence Counsels Kapllan Baruti and Habib Hashani, EULEX Prosecutor Lili Oprea Steluta, Representative of the Injured Parties Burhan Maxhuni, Based on the ruling on (upon) Prosecution Petition for Protective Measures dated 8 September 2014 during the witness testimony of the injured parties: A. F. on 16 October and 8 December 2014, N. T. on 17 October and 8 December 2014, A. L. on 20 October and 8 December 2014, S. N. on 10 November and 9 December 2014 and witnesses: H. P. on 17 October and 8 December 2014, R. A. 20 October and 8 December 2014 and B. F. on 2 December 2014 the Defendant was removed from the courtroom.

*Following* the trial panel's deliberation and voting held on 11 February 2015;

*Pursuant* to Articles 359 and 366 of the Criminal Procedure Code of Kosovo (hereinafter: CPC) on 12 February 2015 announces in public and in the presence of the Accused, his Defence Counsels and the EULEX Prosecutor;

*Renders the following:*

## **J U D G M E N T**

### **I.**

### Under Count 1

**Đ. K.** is found **GUILTY** because:

It is proven beyond reasonable doubt that the defendant on unknown dates between                      and                      , in his house located in                      ,                      neighbourhood, knowing her age, had more than once sexual intercourse with S. N., born on                      .

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) of CCK, thereby *re-qualifying* the original charge of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of CCK.

### Under Count 2

**Đ. K.** is found **GUILTY** because:

It is proven beyond reasonable doubt, that the defendant on unknown dates between                      and                      at his house located at                      neighbourhood, proposed S.N., born on                      , to have sexual intercourse with unknown persons, amongst them other                      staff, his brother and a Serbian person, for an amount of 50 euros which amount would be split in equal parts between the Defendant and injured party S.N., but the injured party refused to do so.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Attempted Facilitating Prostitution, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK.

### Under Count 3

**Đ. K.** is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that at unknown date and time in \_\_\_\_\_, in his vehicle ” \_\_\_\_\_” the defendant touched with sexual intent the juvenile S.T., who was 15 years old, in the following way: while the defendant was driving his vehicle, the juvenile S.T. was sitting in the co-driver seat, whereas the injured party S.N. was sitting in the back seat. The defendant started to fondle, with sexual intent, the injured party S.T. on her left leg.

THEREBY, **Đ. K.** is **ACQUITTED** of committing the criminal offence of Sexual Assault, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK.

#### Under Count 4

**Đ. K.** is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that on \_\_\_\_\_ in the morning hours at the same location as under count 1 of the enacting clause, the defendant forced injured party under 16 years of age, to have sexual intercourse and intentionally caused her intoxication with alcohol of the person under 16 years of age – injured party – juvenile S.T. who was 15 years old with the purpose of breaking down her resistance and showing her firearm, pistol of unknown brand and calibre which he kept in the closet and he recorder the sexual intercourse with video camera.

THEREBY, **Đ. K.** is **ACQUITTED** of committing the criminal offence of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK.

#### Under Count 5

**Đ. K.** is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that at unknown time and date in        until        at the location as under count I of the enacting clause forced the injured party S.T. of 16 years of age to have sexual intercourse without her consent. Knowing that she is 16 years old, the defendant requested that she have sexual intercourse with him and when the injured party, minor S.T. refused, the defendant intentionally caused her intoxication with alcohol with the purpose of breaking down her resistance and showing her a firearm, pistol of unknown brand and calibre by saying her: “No one can do anything to me, neither        nor the police because I have all of them in my pocket” and in this manner, managed to scare the injured party S.T., by forcing her into having sexual intercourse with him without her wish, because of this when injured party S.T. went to her house attempted to commit suicide drinking sedative pills and Domestos and as a result she was laid in the hospital”.

THEREBY, **Đ. K.** is **ACQUITTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK.

#### Under Count 6

**Đ. K.** is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt that in spring of        around        hrs at his house in the        side of        located at        neighbourhood, the defendant forced the injured party N. T. to have sexual intercourse with him without her consent, by getting her drunk with some suspicious substances, in the manner so he made a previous verbal agreement for an amount of 20 euros so she would clean his house located in the north so the defendant took her to his house and initially he prepares a coffee for her and the injured party who as soon as she started to drink it felt dizzy and then lost consciousness and the defendant by taking advantage of her infirm state committed the sexual act with her, and recorded her with camera.

THEREBY, **Đ.K.** is **ACQUITTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (3) Subparagraph (4) of the CCK.

Under Count 7

**Đ. K.** is found **GUILTY** because:

It is proven beyond reasonable doubt that at the end of \_\_\_\_\_ at unknown time in \_\_\_\_\_ village – Municipality, the defendant proposed and took the injured party A.L., born on \_\_\_\_\_, a student, Kosovo \_\_\_\_\_ ethnicity, who never been alone in \_\_\_\_\_ and suffering from skin illness – acne on her face, with his vehicle to a skin specialist, a \_\_\_\_\_ doctor in \_\_\_\_\_ (J. I.) who specified the diagnosis and the therapy. After the consultation at the doctor, the prescription was taken by the defendant. After looking for the medicine in \_\_\_\_\_ and \_\_\_\_\_, on the way to the village of \_\_\_\_\_, the defendant stopped the vehicle close to a petrol station, and requested from injured party that in exchange for buying the medication, she should have sexual intercourse with him and he began to touch her on the chest and tried to kiss her. The injured party refused this and began screaming and crying, fled from the vehicle and intended to jump from a bridge.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Attempted Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraph (3) in conjunction with Article 20 of the CCK, thereby *re-qualifying* the original charge of Attempted Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraphs (2) and (3) in conjunction with Article 20 of the CCK.

Under Count 8

**Đ. K.** is found **GUILTY** because:

It is proven beyond reasonable doubt that from the end of \_\_\_\_\_ until \_\_\_\_\_ at his house located at \_\_\_\_\_ in the \_\_\_\_\_ side of \_\_\_\_\_ the defendant forced the injured party A. F. to continue to

have for several times sexual intercourse without her consent in the manner, when she told the defendant she wanted to stop having sexual intercourse with him, the defendant threatened her to spread out the word that she had had sexual intercourse with him so her family would find out this, he would come to her house, disgrace her, tells her brothers about their relationship.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (1) of CCK, thereby *re-qualifying* the original charge of Rape, contrary to Article 193, Paragraph (2) Sub-Paragraph (3) of the CCK.

#### Under Count 9

**Đ. K.** is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt that at unknown time since                    until                    at the location as in the count 1 of the enacting clause with the purpose of unlawful financial benefit for himself, he threatened injured party A. F. to commit an action, so initially, after he gave the injured party time after time money in amount of 20 – 50 euros and when the injured party told him that she wanted to stop the contact with him, the defendant seriously threatened her and forced her to commit sexual act with him or return 900 euros, when the injured party asked from him to give her some two months until she finds a job, he tells her “one night of sex with me and 5 euro will be deducted from your debt”.

THEREBY, **Đ. K.** is **ACQUITTED** of committing the criminal offence of Facilitating or compelling prostitution contrary to Article 241, Paragraph (3) with reference to Article 228, Paragraph (8) of the CCRK.

## **II.**

1. THEREFORE, pursuant to the provisions of Article 36, Paragraph (1) Sub-Paragraph (2) and Article 38, Paragraphs (1) and (2) of CCK, the court imposes the following sentences:

- **D. K.** having been convicted of the said criminal offence under Count 1 is **SENTENCED** to 5 years of imprisonment; and
- **D. K.** having been convicted of the said criminal offence under Count 2 is **SENTENCED** to 3 years of imprisonment; and
- **D.K.** having been convicted of the said criminal offence under Count 7 is **SENTENCED** to 3 years of imprisonment; and
- **D. K.** having been convicted of the said criminal offence under Count 8 is **SENTENCED** to 6 years of imprisonment.

2. Pursuant to Article 71, Paragraph (2) Sub-paragraph (2) of CCK the court imposes the following **AGGREGATED** punishment:

**D. K.** is **SENTENCED** to 14 years of imprisonment.

### **III.**

Pursuant to Article 365, Paragraph (1) Sub-paragraph (1.5) of CPC the time spent in detention on remand by **D. K.** from 3 June 2013 until the Judgment becomes final shall be credited against the punishment.

### **IV.**

The Court **ORDERS** that vehicles \_\_\_\_\_, \_\_\_\_\_ in colour identified with the registration plates \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ in colour identified with the registration plates \_\_\_\_\_ which were



temporarily confiscated by Police shall be returned immediately upon the judgment in this case becoming final.

## V.

Pursuant to Article 453, Paragraphs (1) and (2) of CPC **Đ. K.** shall pay the costs of the proceedings in an amount of 300 euros no later than 30 days from the day this Judgment is final.

## VI.

Pursuant to Articles 458, 459, 460 and 463, Paragraphs (1) and (2) of the CPC, the property claims filed by witnesses R. A. and H. P. are rejected, the Injured Parties S. N., N. T. and A. L. are instructed that they may pursue their property claims in civil litigation.

## **R e a s o n i n g**

### **I. Procedural background**

1. On 31 March 2014, the State Prosecutor of the Basic Prosecution Office of Mitrovicë/Mitrovica filed the Indictment PP.I. no. 103/2013 against the Defendant **Đ. K.**, thereby charging the Defendant with the criminal offences of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Sub-Paragraph (3) of the CCK; Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Sub-Paragraph (3) of the CCK; Trafficking of Human Beings, contrary to Article 139, Paragraph (1) and (2) in conjunction with

Paragraph (7) and Article 20 of the CCK; Sexual Assault, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK; Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK; Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Sub-Paragraph (2) of the CCK; Rape, contrary to Article 193, Paragraph (3) Sub-Paragraph (4) of the CCK; Sexual Assault, contrary to Article 195, Paragraph (2) Sub-Paragraph (2) and (3) in conjunction with Article 20 of the CCK; Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Sub-Paragraph (3) of the CCK; Extortion, contrary to Article 340, Paragraph (1) of the CCK.

2. On 15 April 2014, the President of the Assembly of EULEX Judges allocated the respective case to the EULEX Judges of the Basic Court of Mitrovicë/Mitrovica in accordance with the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo<sup>1</sup> (hereinafter: Law no. 03/L-053).
3. On 29 May 2014, the Initial Hearing on Indictment was held as per Article 245 of the CPC, at which the Accused pleaded not guilty to the offences above mentioned.
4. On the Initial Hearing on Indictment, the Defendant Đ.K. raised issues of translations in respect of the Albanian and English versions of Indictment. The Presiding Trial Judge has requested that the Prosecutor provides the Trial Panel the response to these issues and which version of the Indictment, the English or Albanian is the original one. On 3 June 2014, the State Prosecutor Zejnije Kela in cooperation with EULEX Prosecutor Neeta Amin, drafted the Indictment in Albanian version and submitted to the court and parties. Both versions of the Indictment have been thoroughly checked and corrected. The English and Albanian versions of the Indictment are originals as per Article 16 of the Law no. 03/L-053.
5. 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. On 23 June 2014, the Defence filed their submissions. On 15 July 2014, the State Prosecutor filed the response to the Defence submissions. On 25 July 2014, the Presiding Trial Judge issued a Ruling, thereby partially granted the Defence application

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<sup>1</sup> Law no. 03/L-053

to dismiss the Indictment and sending the case for Main Trial. By the same Ruling, the Presiding Trial Judge rejected as ungrounded all the Objections on admissibility of evidence, and also dismissed the charge of Rape from Article 193, Paragraph (4) in conjunction with Paragraph (2) Sub-Paragraph (3) of the CCK as in count 2 of the enacting clause.

6. The Main Trial was held closed to the public on 15, 16, 17 and 20 October 2014, on 10 November 2014, on 2, 8 and 9 December 2014, on 27 and 28 January 2015 and on 11 February 2015.
7. The verdict was announced on 12 February 2015.
8. Pursuant to Article 369, Paragraph (1) of the CPC upon the Ruling of the President of the Basic Court GJA.Nr.99/2015 dated 27 February 2015 the deadline for the judgment to be drawn up was extended for 60 more days.

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

9. Pursuant to Article 11 and Article 9, Paragraph (2) of the Law on Courts, the Basic Court of Mitrovicë/Mitrovica is the competent judicial body to adjudicate this criminal case.
10. EULEX has competence over the case pursuant to the Law No. 04/L-273 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic Kosovo (hereinafter: Law on Jurisdiction), Agreement Between the Head of the EULEX Kosovo and the Kosovo Judicial Council on Relevant Aspects of the Activity and Cooperation of EULEX Judges and Prosecutors in Kosovo dated 18 June 2014 (hereinafter: the Agreement) and Decision for the Approval of the Request from EULEX for the Continuation of Trials in Relation to Cases That Have Been Allocated to EULEX Judges Between 15 April and 30 May 2014 in the Basic Court in Mitrovica dated 2 July 2014 (hereinafter: the Decision).
11. The Trial Panel was composed of EULEX Judge Franciska Fiser, acting as Presiding Trial Judge, and EULEX Judge Nuno Manuel Ferreira De Madureira and EULEX Judge Paulo Duarte De Mesquita Teixeira as Panel members.
12. The State Prosecutor in the appeal dated 15 September 2014 objected the composition of the Trial Panel and alleged that according to Article 51 of the Juvenile Justice Code the

Trial Panel should be composed by the judges for the juveniles in order to protect the rights of injured party that have been of a minor age.

13. The Court of Appeals in its Ruling dated 9 October 2014 in point 'J' amongst other alleged, "The Trial Panel notes that prior to this decision being taken the case was assigned to the department of juveniles in the court of Mitrovica. The case was therefore assigned to EULEX judges regardless of the requirement in the Juvenile Justice Code for the case to be heard by a juvenile Trial Panel." And in point 'K' the Court of Appeals referred to the Agreement based on which currently appointed Trial Panel of EULEX Judges must proceed to hear the case and adjudicate it.
14. EULEX Prosecutor on the hearing which held on 15 October 2014 objected again the jurisdiction of the Trial Panel since EULEX judges have no jurisdiction over the legal provision for this case because of the following reasons. Firstly, the EULEX judges cannot base their jurisdiction on Article 3, Sub-Paragraph (1) and (3.1) on Law on Jurisdiction because they have been appointed to the current case, based on the request of the Defendant, only on 15 of April 2014 and not before 15 April 2014. Furthermore, the Kosovo Judicial Council on 2 of July 2014 appointed the EULEX judges for this case although KJC does not have such authority. And secondly, the Prosecutor was of opinion that according to the provisions of the Juvenile Justice Code, namely pursuant to Article 51, Paragraph (1), the composition of the Trial Panel should be a juvenile presiding judge, and two lay judges.
15. Since the Court of Appeals in its decision dated 9 of October 2014 already took into consideration both arguments presented by the Prosecutor, the Trial Panel on the hearing on 15 October 2014 rejected the Prosecution objection. Furthermore, the Trial Panel pointed out also Article 2, Sub-Paragraph (2.3) of the Law on jurisdiction where it is stated 'that to the necessary extent in a separate arrangement between the Head of EULEX and the Kosovo Judicial Council, the relevant aspects of the activity and cooperation of EULEX judges working with Kosovo judges would be further outlined, in a separate Arrangement between the Head of the EULEX KOSOVO and the Kosovo Judicial Council.' Based on quoted provision the special Agreement between Head of EULEX Kosovo and Kosovo Judicial Council was signed on the 18 of June 2013, which foresees also the transitional phase; this means the period between 15 of April and 30

May 2014. And based on this Agreement special Decision was issued by Kosovo Judicial Council on 2 of July 2014 where is, in point 2, listed also the criminal case P.No. 42/14.

### **III. Applicable law**

16. Pursuant to Article 539 of the CPC the applicable procedure law during the Main Trial is the CPC.
17. However, on 1 January 2013 the new CCRK had entered into force. Pursuant to Article 3, Paragraph (1) of this Code, the law in effect at the time a criminal offense was committed, shall be applied. In the event of change in the law applicable to given case prior to a final decision pursuant to Paragraph (2) of the same Article the question of most favorable law would be assessed in the continuation of the written reasoning of the judgment.

### **IV. The Main Trial**

18. The Main Trial sessions were held on 15, 16, 17 and 20 October 2014, on 10 November 2014, on 2, 8 and 9 December 2014, on 27 and 28 January 2015 and on 11 February 2015.
19. All hearings were closed to the public based on the Ruling dated 8 September 2014, issued upon the Prosecution's Petition for Protective Measures. On the basis of the same ruling the Defendant was removed from the courtroom during the witness testimony of injured parties A. F. on 16 October 2014, N. T. on 17 October 2014, A. L. on 20 October 2014 and S.N. on 10 November 2014, and witnesses H. P. on 17 October 2014 and R. A. on 20 October 2014.
20. The Defendant's right to put the questions to the witnesses was satisfied in the following manner. The witnesses were examined according to the provisions of the CPC, Article 333, Article 334 and Article 335. The Defendant was later provided with the minutes translated into Albanian and was given a deadline to prepare the questions for the witnesses. The questions were firstly reviewed by the Trial Panel; pursuant to Article

258, Paragraph (2) of the CPC, irrelevant, repeated and unnecessary questions were excluded; the rest were put to the witnesses on the hearings which held on 8 and 9 December 2014.

21. The witness B. F. was proposed during the main trial by the Prosecutor and she gave her testimony on the hearing held on 2 December 2014. While giving the testimony the same protective measures as ordered in the Ruling issued on 8 September 2014 were applied. The Defense Counsel agreed that there has been no material breach for the defense and it has been entirely acted based on ruling rendered on 8 September 2014.
22. The injured party S. T. and the witness Xh. S. were not accessible for the court. The Prosecutor proposed to read the statements that were given during the investigation; witness S. T. to the Police on 13 August 2013 and to the Prosecution on 4 September 2013, witness Xh. S. to the Police on 24 May 2014. The Trial Panel rejected<sup>2</sup> the Prosecutor's proposal since the statements given to the Police and the Prosecutor do not fulfil the requirements pursuant to Article 338, Paragraph (1) of the CPC. The Trial Panel finds that statements were not taken as a testimony pursuant to Article 132 of the CPC. Furthermore, as regards S. T. the Trial Panel considers that the Defendant and his defense counsels were not properly informed about the interviewing of the witness.
23. In an opening statement<sup>3</sup> the Defense objected admissibility of the Criminal Report No. 2013-DHTQNJ-43 dated 6 June 2013, the Police Officers' Report dated 4 June 2013 and Information Report of 8 and 12 March 2013. Regarding the Information Report of 12 March 2013 the Prosecution with submission dated 25 November 2014 explained that in the Indictment a technical error was done and instead of 12 March 2013 should be the date of 12 April 2014.
24. Although quoted documents have no strength of evidence in legal-penal sense, because they are actually official acts for the purposes of internal information and as such pursuant to the Article 361 paragraph (2) of the CPC all these evidence do not have meaning of procedural evidence, on which the court could base the judgment or decision

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<sup>2</sup> Minutes of Main Trial hearing on 9 December 2014, pages 9 and 10.

<sup>3</sup> Minutes of Main Trial hearing on 15 October 2014.

in the main proceedings, the Trial Panel on the hearing held on 9 December<sup>4</sup> 2014 decided that such evidence cannot be declared as inadmissible.

25. Based on the same reasons the Trial Panel rejected<sup>5</sup> the Defense's request and declared the following evidence as admissible: Police information report on page 235, Police Information Report on pages 237 to 239, Information Report on pages 333 and 334, Officer's Report on page 480, Notification Report on pages 482 and 483, Officer's Report on page 486, Notification on Undertake Actions on page 488, Information Report on pages 492 and 493, List of Evidence on page 496, Notification on Investigative Actions on pages 566 and 567 and Notification on Covert and Technical Measures of Investigation on pages 570 and 571.
26. During the Main Trial the Defendant gave his statement on 27 and 28 January 2015.
27. Evidentiary proceeding was concluded on 28 January 2015.
28. On the main hearing which held on 28 January 2015 the Prosecutor pursuant to Article 350 of the CPC orally amended the indictment as follows.<sup>6</sup> In respect to the first count of the enacting clause the part of the sentence "From the mid of        until        " has been replaced with "From        until        ". In second count the words "        staff" have been deleted and the charge was re-qualified to criminal offense of Facilitating prostitution contrary to Article 201, Paragraphs (1) and (4) in conjunction of Article 20 of the CCK. In respect with the count three previous factual description has been replaced with the text "At unknown time in        , in his vehicle        the Defendant touched with sexual intent the juvenile S.T., who was 15 years old, in the following way: while the Defendant was driving his vehicle, the juvenile S.T. was sitting in the co-driver seat, whereas the injured party S.N. was sitting in the back seat. The Defendant started to fondle, with sexual intent, the injured party S.T. on her left leg." Regarding the count four the date "        " was replaced with the date "        ." In count five after the last sentence a new sentence was added "Because of this when injured party S.T. went to her house attempted to commit suicide drinking sedative pills and "Domestos" and as a result she was laid in the hospital." In count seven the name of the injured party "A. L." was added. The Prosecutor re-qualified the count eight into criminal offense of Rape contrary

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<sup>4</sup> Minutes of Main Trial hearing on 9 December 2014, page 9.

<sup>5</sup> Minutes of Main Trial hearing on 9 December 2014, page 11.

<sup>6</sup> Minutes of Main Trial hearing on 28 January 2015, page 32.

to Article 193, Paragraph (2) Sub-Paragraph (3) of the CCK. And finally the Prosecutor re-qualified the count nine into criminal offense of Facilitating or compelling the prostitution contrary to Article 241, Paragraph (3) with reference to Article 228, Paragraph (8) of the CCK.

29. The judgment was announced on 12 February 2015.

## **V. List of evidence presented during the main trial**

30. During the course of the Main Trial the following injured parties and witnesses were heard:

- A. F.;
- N. T.;
- A. L.;
- S. N.;
- H. P.;
- R. A.; and
- B. F..

31. The following documents were accepted as evidence and read into the minutes:

- Minutes on interrogation of the injured party S.N. , pages 64-68 and 74-77;
- Minutes on interrogation of the injured party R.A., pages 82-84 and 88-91;
- Minutes on interrogation of the injured party H.P., pages 101-104;
- Minutes on interrogation of the injured party A.L., pages 109-111 and 115-119;
- Minutes on interrogation of injured party A.F. , pages 125-127 and 131-134;
- Minutes on interrogation of witness N.J., pages 155-157 and 161-163;
- Minutes on interrogation of witness B.F., pages 167-169;
- Minutes on interrogation of injured party N.T., pages 173-177 and 183-185;
- Certificate on temporary confiscation of items, page 196;
- Photo Album, pages 198 – 210;
- Expertise report from laboratory on expertise of computers, pages 211-212;
- Record on the search of premises, houses and persons, pages 215-216;



- CD from laboratory placed between pages 222 and 223;
- Vehicle examination report, pages 227-228;
- Record on the search of premises, houses and persons, pages 231-232;
- Police information report, page 235;
- Police information report, pages 237-239;
- Transcriptions, pages 281-316;
- Information report, pages 333-334;
- Response from municipal center of civil registration, pages 337-338;
- Birth certificate S.T., page 343;
- Birth certificate S.N., page 344;
- Birth certificate Xh.S., page 345;
- Birth certificate H.P., page 346;
- Birth certificate A.L., page 347;
- Birth certificate R.A., page 348;
- Birth certificate N.T., page 349;
- Copy of ID card and passport N.T., page 353;
- Copy of ID card and passport R.A., page 354;
- Copy of ID card and passport H.P., page 355;
- Copy of ID card and passport A.L., page 356;
- Birth certificate A.F. , page 362;
- CDs from IPKO, Z-MOBILE and VALA placed between pages 369-370;
- List of SMS from Z mobile, pages 406-407;
- List of SMS from Z mobile, page 410;
- Officer's report, page 480;
- Notification report, pages 482-483;
- Officer's report, page 486;
- Notification on undertaken actions, page 488;
- Information report, pages 492-493;
- List of evidences, page 496;
- Search report, page 501;
- Certificate on confiscation of items, page 508;

- Information from IPKO provider, page 518;
- Information from Z-MOBILE provider, page 520;
- Information from Z-MOBILE provider, page 526;
- Information form IPKO provider, page 528;
- Information from PTK provider, page 530;
- Information from PTK provider, page 532;
- Information from IPKO provider, page 536;
- Notification on investigative actions page 566-567; and
- Notification: covert and technical measures of investigation, page 570-571.

## **VI. Factual Findings and Analysis of the Evidence**

### **A. Count 1**

32. Under Count 1 the Defendant was indicted that he from \_\_\_\_\_ until \_\_\_\_\_, in his house located in \_\_\_\_\_, “\_\_\_\_\_” neighbourhood, forced the person under the age of 16 (sixteen) year to have sexual intercourse the injured party, a minor S.N., knowing that she is 15 years of age to have sexual intercourse with him in that manner that he will murder her family members, her brother and father as well as the minor herself if she refuses to have sexual intercourse, and showed her the firearm, a black pistol of unknown brand and calibre that he kept in the cupboard in the living room and then recorded the sexual intercourse with her; thus committed criminal offense of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of the CCK.
33. It results from the S.N.’s statement during the Main Trial hearing on 10 November 2014 that she was 15 years old when she met the Defendant for the first time. She met him through a friend S.T., who introduced him as her uncle. The Defendant came with a \_\_\_\_\_ and pick up S.N. and S.T. at the saloon where S.N. was working. They went for a ride

and when the Defendant started to touched S.T., S.N. realized that the Defendant was not S's uncle<sup>7</sup>.

34. The witness S.N. stated that just before she became 18, she got engaged, and at that time they stopped their contacts<sup>8</sup>.
35. She was on the 8<sup>th</sup> grade, when she first met the Defendant. She didn't finish the primary school, she had to attend also the 9<sup>th</sup> grade but she dropped it out and started working<sup>9</sup>.
36. The witness also stated the Defendant knew that she was 15 years old. When he found out about her age, he said "that even kids know everything today."<sup>10</sup> It was her evidence that the Defendant asked her how old she was and she told him she was 15.<sup>11</sup>
37. Next time S. met the Defendant about one week later after the first meeting. S.T. addressed to witness S. and told her that the Defendant was asking S. out.<sup>12</sup> When S. stated that she cannot go out with an old person such as he is, the Defendant continued to insist, saying she has to go out with him otherwise he will do his actions, telling the witness that "whoever comes in his car will be his"; "it would be fun"; "you will enjoy"; he expressed he had money.<sup>13</sup>
38. On this second meeting, the Defendant took them, namely S. and S., to his house in the North. He started having sexual intercourse with S.T., and then he came to S. and asked the same thing from her. At first S. refused to have sex but the Defendant told her to undress; she wanted to go out of the house but the house was locked. The Defendant grabbed her, took her to the room and he pointed a pistol at her,<sup>14</sup> which he kept under his bed.<sup>15</sup> By this the Defendant pushed her into having sexual intercourse with him and then he dropped her and S. back to the place where he picked her up.

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<sup>7</sup> Minutes of Main Trial hearing on 10 November 2014, page 5.

<sup>8</sup> Minutes of Main Trial hearing on 10 November 2014, page 12.

<sup>9</sup> Minutes of Main Trial hearing on 10 November 2014, page 17.

<sup>10</sup> Minutes of Main Trial hearing on 10 November 2014, page 6.

<sup>11</sup> Minutes of Main Trial hearing on 10 November 2014, page 17.

<sup>12</sup> Minutes of Main Trial hearing on 10 November 2014, page 18.

<sup>13</sup> Minutes of Main Trial hearing on 10 November 2014, page 19.

<sup>14</sup> Minutes of Main Trial hearing on 10 November 2014, pages 10 and 20.

<sup>15</sup> Minutes of Main Trial hearing on 10 November 2014, page 16.

39. After this event the Defendant continuously pushed S. to go out with him. S.N. stated she had sexual intercourse with the Defendant three or four times a week in period of 2 and half, approximately 3 years, usually during his break time at o'clock.<sup>16</sup>
40. S. stated that she was forced to have sexual intercourse with the Defendant. He called her on her phone, she changed the phone number but he found the number again.<sup>17</sup> At the beginning the Defendant was threatening her about her family; later on he was threatening her about the footages and photographs.<sup>18</sup> The Defendant called her by phone; he invited her out and when she refused, he was saying that he would go to her brother and her father, that he would publish on internet the pictures and footage.<sup>19</sup>
41. S. stated that once the Defendant came to her house; he only showed up at the door and when her father came out, he went away. Then he texted the witness saying “don’t you think I’m kidding”.<sup>20</sup>
42. The witness gave evidence that she didn’t dare to tell the true to her family; she stated if she would dare to tell the true, she wouldn’t allow such a long time for the Defendant to play with her; she was 15 years old child and considering she was very young, she took his threats very close to her heart.<sup>21</sup>
43. She was still 16 years old when the Defendant entered the saloon and said to her mother “your daughter owes me 180 euros.” And her mother said “I don’t believe that she owes you,” because she was surprised that an old person likes him came because of her daughter. The Defendant said to her mother “your daughter has to pay back me the money as she knows what I have against her.” And “don’t let your daughter to lead me to put those things on internet; because if I want to be evil I can be bad.”<sup>22</sup> Then S. told her mother about the threats; but she didn’t open herself to her and didn’t tell her the details.<sup>23</sup> Later, when also her brother found out about the threats, her mother and brother reported the Defendant to the police. The police questioned her but did not undertake anything. S. saw the persons, which she gave the statement to, talking with the

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<sup>16</sup> Minutes of Main Trial hearing on 10 November 2014, pages 7 and 12.

<sup>17</sup> Minutes of Main Trial hearing on 10 November 2014, page 5.

<sup>18</sup> Minutes of Main Trial hearing on 10 November 2014, page 25.

<sup>19</sup> Minutes of Main Trial hearing on 10 November 2014, page 21.

<sup>20</sup> Minutes of Main Trial hearing on 10 November 2014, page 26.

<sup>21</sup> Minutes of Main Trial hearing on 10 November 2014, page 15.

<sup>22</sup> Minutes of Main Trial hearing on 10 November 2014, page 25.

<sup>23</sup> Minutes of Main Trial hearing on 10 November 2014, page 26.

- Defendant.<sup>24</sup> When her father found out about the Defendant, he forced the witness to tell everything; but even that time she didn't dare to express herself entirely because she found the Defendant extremely dangerous and out of his threats she didn't dare to talk.<sup>25</sup>
44. S. could not recall how many times she had sexual relations with the Defendant before she became 16 and how many times after she became 16 years old. At least four times a week he called her and came to her saloon; it happened that he called twice a day.<sup>26</sup> It happened also rather often that S., S. and the Defendant had sex together.<sup>27</sup> The witness stated that most of the time the Defendant offered her alcohol; and then she felt weak, she didn't feel well.<sup>28</sup> She testified that she spent a night in his house twice in whole period.<sup>29</sup>
45. The Defendant had pictures and recordings of her but the witness stated she was not aware about this.<sup>30</sup>
46. During the Main Trial hearing on 9 December 2014 S. answered on questions prepared by the Defendant, which were relevant to the charges, and explained some discrepancies in her statements given to the Prosecutor and in the court. In front of the Prosecutor<sup>31</sup> S. stated that the Defendant "went to my house and said to my father, your daughter forgot her underwear at my place." In the court she stated "He came to my door and showed them to me." The witness explained that the Defendant came to the saloon – hairdresser shop first, where she was together with S., he stopped by the door and showed her those things, and after that, he went at her house and there her father went out and the Defendant threw those things on the ground, showing S.'s father that "these are the belongings of your daughter" and then he went away.<sup>32</sup>
47. The statement by S.N. is corroborated by the statements of the witnesses R.A., A.L. , H.P. and A.F. .
48. R.A. gave the statement during the Main Trial hearings on 20 October 2014 and 8 December 2014. She stated that she knew S. as well as H. since elementary school, 3<sup>rd</sup> or

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<sup>24</sup> Minutes of Main Trial hearing on 10 November 2014, page 11.

<sup>25</sup> Minutes of Main Trial hearing on 10 November 2014, page 11.

<sup>26</sup> Minutes of Main Trial hearing on 10 November 2014, page 12.

<sup>27</sup> Minutes of Main Trial hearing on 10 November 2014, page 14.

<sup>28</sup> Minutes of Main Trial hearing on 10 November 2014, page 15.

<sup>29</sup> Minutes of Main Trial hearing on 10 November 2014, page 15.

<sup>30</sup> Minutes of Main Trial hearing on 10 November 2014, page 26.

<sup>31</sup> Record of the injured-Victim Interview, binder 1, page 76.

<sup>32</sup> Minutes of Main Trial hearing on 9 December 2014, page 6.

4<sup>th</sup> grade.<sup>33</sup> R. stated she was 15 or 16 years old, when she, H. and S. met the Defendant; H. was a little bit older, while S. was younger than R.<sup>34</sup> R. also stated that she was a friend with S., not close friend; but there were certain times when she went with S. and other friends out and also in one occasion with the Defendant. They were young and inclined to wander around with cars.<sup>35</sup>

49. A.L. gave statements on 20 October 2014 and 8 December 2014. In her first statement she stated that while they were driving back from the doctor, the Defendant told her that he had sex with S. and that R. was his only girlfriend.<sup>36</sup>

50. H.P. testified on 17 October 2014 and confirmed she used to go out with the Defendant and that also S. joined them. S. was at that time around 14 to 15 years old.<sup>37</sup> H. also stated that she didn't have many opportunities to be with S. but she heard afterwards that S. was going out with the Defendant in his car. She also saw them once.<sup>38</sup> H. was not her close friend, they didn't have so much discussion but on the other hand they spent a lot of time together.<sup>39</sup>

51. A.F. in front of the Prosecutor on 4 June 2013 stated that the Defendant told her how he took S.'s underwear at her house; her father showed up at the door; he was crying when the Defendant said to him "look what kind of girl you have."<sup>40</sup>

52. The allegation that the Defendant had a gun confirmed also the witnesses N.T. and A.F. , although they stated that he kept it in a wardrobe.<sup>41</sup>

53. For the Court is important also the fact that the statements by the S.N. during the investigation stage, in their most essential points, don't contradict her statement given during the main trial session. She gave the statement to the Police on 27 March 2013 and she stated that she met the Defendant when she was 15 years old. She met him through friend S. who was that time 14 years old. In front of the Police she stated that three months later when she met the Defendant for the first time he took her and S. to his house

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<sup>33</sup> Minutes of Main Trial hearing on 20 October 2014, page 4.

<sup>34</sup> Minutes of Main Trial hearing on 20 October 2014, page 5.

<sup>35</sup> Minutes of Main Trial hearing on 20 October 2014, page 9.

<sup>36</sup> Minutes of Main Trial hearing on 20 October 2014, page 23.

<sup>37</sup> Minutes of Main Trial hearing on 17 October 2014, pages 5 and 13.

<sup>38</sup> Minutes of Main Trial hearing on 17 October 2014, pages 8 and 9.

<sup>39</sup> Minutes of Main Trial hearing on 17 October 2014, page 16.

<sup>40</sup> Record of the injured-Victim Interview, binder 1, page 133.

<sup>41</sup> Minutes of Main Trial hearing on 17 October 2014, page 24 and Minutes of Main Trial hearing on 16 October 2014, page 7.

in the north. When they entered inside, he initially told them not to be scared because there are no cameras in the house, and then he started to take off the clothes of S. and had sex with her. The he asked from S. to take off her clothes and have sex. But S. did not accept and wanted to go out but the Defendant closed the door from inside and threatened her and in one moment he took out the gun from the sofa and threatened her by saying that no one can help her even the police because he had people he knew at the police.<sup>42</sup> S. stated she was very frightened and for this reason she accepted to have sexual intercourse with the Defendant and in the same time together with S..

54. S.N. gave the statement to the Prosecutor on 31 October 2013. She confirmed again she was 15 years old when she met the Defendant and that she met him through her friend S.. She stated that the Defendant followed her around and threatened her. Regarding the threats she stated that the Defendant asked money from her, increasing the amount; he came to the hairdresser saloon of her mother, telling the mother that she, namely S., owes him money, telling her “you better pay me the money or you will have troubles with me.”<sup>43</sup> She also stated that she didn’t know that he was video-recording and taking a pictures with camera. In a moment she didn’t answer his phone call, he was threatening her telling her that he would kill her brother, once he brought her personal belongings to her house and showed them to her parents telling “your daughter forgot her underwear at my place”.

55. The Court deems that the statement given by S.N. during the Main Trial hearings on 10 November 2014 and 9 December 2014 is credible and corroborated by other evidence. She gave a detailed account of the essential facts; her testimonies are consistent with other evidence. Her statement is credible and accepted as accurate by the Trial Panel.

56. It is a fact that in her statement to Police S. stated that she and S. had sexual intercourse with the Defendant three month later when she met him for the first time. In front of the Trial Panel she stated that this happened one week later. Despite such discrepancy for the Trial Panel S.’s statement is still credible. When she gave the statement to Police, her memory was fresher; furthermore from her answer to the Trial Panel could be seen she was not sure about exact time. But the fact, that her statement was consistent when stated

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<sup>42</sup> Record of the injured-Victim Interview, binder 1, page 65.

<sup>43</sup> Record of the injured-Victim Interview, binder 1, page 76.

she had sexual intercourse with the Defendant while she was still less than 16 years old, is important and decisive.

57. The Defendant stated during the Main Trial hearing on 27 January 2015 that S.N. was introduced to him through S.T. and that he had sexual intercourse with S. two years after he got to know her, it happened in . Before that time, they had contacts occasionally, because S. used to date a guy who was called Zh. They would go out with S.T. and her little brother; later they got closer to each other and they started having sexual relations.<sup>44</sup>
58. The Defendant stated that based on her birth certificate, which is contained in the case file, S. had 17 years and 1 month when they had sexual intercourse for the first time. After the first sexual intercourse they didn't continue intimate relations, because S.T. told S.'s boyfriend about them and at that point they in a way broke their relations with each other and after two or three days the Defendant also broke up with S.. They restarted the relation by the and for the last time they had sexual intercourse on ; three days after S. got engaged.<sup>45</sup>
59. The Defendant stated also that there was no need to force S.N. or other witnesses; in particular not with S. and S.T., because they were the ones who proposed to have sexual relations.<sup>46</sup>
60. Regarding the event when the Defendant brought S.'s underwear to her mother's hairdressing shop, the Defendant stated that this happened in the beginning; maybe a month or two after they got to know each other. S. asked him to exercise in driving his car, and they agreed for a payment of 10 euros per hour. One Saturday she drove for five hours and she was supposed to pay 50 euros for that. For several days S. didn't answer the phone and when she answered, she said "talk to my mother." The Defendant spoke to S.'s mother who said "why you gave your car to be driven by her, she is not to be blamed and she has no money" and things like that. S. was with Defendant and told him that was not S.'s mother on the phone and that S.'s friend F. pretended to speak as her mother. After several days when S. made jokes about this, the Defendant went to S.'s mother hairdressing shop to clarify the issue. He met S. and her mother in the shop, they were

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<sup>44</sup> Minutes of Main Trial hearing on 27 January 2015, page 3.

<sup>45</sup> Minutes of Main Trial hearing on 27 January 2015, page 4.

<sup>46</sup> Minutes of Main Trial hearing on 27 January 2015, page 5.



painting the shop and he explained S.'s mother about the telephone call and that S. owed him money. The Defendant stated that S.'s mother was not aware about that and she said "why you gave the car to her without our consent" and then the Defendant left the shop.

61. In relation to S.'s underwear and socks, the Defendant stated that S. was in his place with his brother; they spent a night at his place and after she took a shower, she washed her underwear and the socks in the bathroom. The Defendant saw S.'s brother searching his pants and that he took 10 euros. S. got angry, telling "my brother does not steal, does not search"; they dressed up and the Defendant took them to her house. When the Defendant came back home he saw S.'s underwear and the socks in the bathroom, he washed them along with his clothing in the washing machine and dried them up. The Defendant sent S. a message in order to take those items and she said "I do not care". The Defendant told her "are you coming somewhere to take them or I will take them to my house"; then S. said "do whatever you like" and the Defendant told her "I will take them to your house and give them to your mother." It was Sunday when he went to S.'s house, her grandfather was in front of the door; the Defendant asked if S.'s mother is in the house. When S.'s father heard this, he came out and the Defendant told him "take these because S. forgot them at my place." S.'s father took the items, which were wrapped in the paper, entered the house and the Defendant left.<sup>47</sup>
62. The Defendant stated that this event happened one or two months before they had sexual intercourse; in fact they didn't have sexual relations because her brother did not sleep and they stayed late, having chat.<sup>48</sup>
63. Regarding the weapon the Defendant stated that he never had a weapon; he does not know how to operate a weapon because he never served in the army. And it was not found during house search.<sup>49</sup>
64. When asked by Prosecutor, the Defendant stated that he found out S.'s age when he was in prison and repeated that they became more closely from \_\_\_\_\_ when they had sexual intercourse for the first time.<sup>50</sup>

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<sup>47</sup> Minutes of Main Trial hearing on 27 January 2015, pages 5 and 6.

<sup>48</sup> Minutes of Main Trial hearing on 27 January 2015, page 6.

<sup>49</sup> Minutes of Main Trial hearing on 27 January 2015, page 7.

<sup>50</sup> Minutes of Main Trial hearing on 27 January 2015, pages 12 and 13.

65. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. Regarding the events that relates to S.N. he stated that he knows S. because S. introduced her to him.<sup>51</sup> He stated also that S. was one year older than S. and that she had ID card where the year of birth was although she was born in . He had sex with both of them for the first time in , it happened about the after they went to Lake. S. was 17 years and one month old when he had sexual intercourse with her for the first time. It happened that S. slept over at his place in and two or three times and the last time she slept over at his place, was on . He stated also that he took pictures of them in clothes and sometimes in underwear but he never took pictures of having sex with them. He did not threaten them by that if they did not have sex with him he would post their pictures on Facebook. He confirmed he went to S.'s mother hairdresser shop to ask her for the money S. owed him and that he sent an SMS to S. only when asked her 50 euros for driving his car and 70 euros that she owed him.<sup>52</sup> He stated that S. from the looks of her breasts and buttocks looked like 20 and if he would suspect that they were under 16, and then for sure he would not have had sex with them.<sup>53</sup>
66. Based on all afore factual findings and presented evidence the Court considers as proven the fact that the Defendant had sexual intercourse with injured party S.N. when she was less than 16 years old; that he had her sexual intercourse with her more than once and that he knew her age.
67. These facts are proven by the statement of S.N. who stated that she was 15 years old when she met the Defendant for the first time. It was the Defendant who asked her how old she was and when she told him she was 15, the Defendant replied with "that even kids know everything today." They had sexual intercourse three or four times per week; usually during his break time; it also happened he called her twice a day. The witness couldn't recall how many times they had sexual intercourse before she became 16 and how many after she became 16; but essential is that the Defendant had sexual intercourse with S.N. before she became 16 years old and that he knew her age.

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<sup>51</sup> Record of the Defendant hearing, binder 1, page 52.

<sup>52</sup> Record of the Defendant hearing, binder 1, pages 53 and 54.

<sup>53</sup> Record of the Defendant hearing, binder 1, page 56.

68. The Defendant stated he had sexual intercourse with S.N. for the first time in \_\_\_\_\_ ; they were together with S.T. at \_\_\_\_\_ Lake; then all of them went to his house and had sexual intercourse, first with S. and then with S..
69. The Court doesn't deem his statement as proven. Firstly, the Trial Panel finds S.N. statement given to the Court as credible; her statement didn't contradict the statements given prior to the Police and the Prosecutor. Secondly, S.'s statement is corroborated by the statement of R.A. who knew S. and H.P. since elementary school, 3<sup>rd</sup> or 4<sup>th</sup> grade. R. stated she was 15 or 16 years old, H. was a little older, and S. was younger when they met the Defendant.
70. Furthermore, A.L. stated that the Defendant told her, while they were driving back from the doctor, that he had sex with S.. The event with A. happened at the \_\_\_\_\_ ; this means before \_\_\_\_\_ , so he had sexual intercourse with S. before that time.
71. And finally, the Trial Panel does not consider the Defendant's statement credible and reliable when he stated he had sexual intercourse with S. for the first time in \_\_\_\_\_ also because the Trial Panel does not believe they didn't have sexual intercourse although she slept over in his house (together with her younger brother). Initially the Defendant stated that S. slept over in his house before they had sexual intercourse for the first time.<sup>54</sup> Later he stated S. slept over at his place in \_\_\_\_\_ and \_\_\_\_\_ two or three times.<sup>55</sup> The version of event as presented by Defendant how S. forgot her underwear and socks in his house and his persistence to give them back to her, even this is not a circumstance that shall have significance in relation to committing of criminal offense, shows, what actually their relationship was. The situation, when he, as much older man, brought underwear and socks to his parents is simply odd and far away from carefulness for things that belong to other. It could indicate only on presumption he wanted to put the witness under the pressure.
72. Likewise, the photos<sup>56</sup> which were taken on \_\_\_\_\_ , \_\_\_\_\_ and \_\_\_\_\_ , show that the relationship was not only as between friends, although S. was not naked on those photos.

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<sup>54</sup> See point 60.

<sup>55</sup> See point 65.

<sup>56</sup> List of evidence no. 13; copies from the CD, pages, 1, 5,6,21 and 23.

73. The calculation of dates as the Defendant presented in his final statement,<sup>57</sup> according to which the date of first sex should be \_\_\_\_\_, and the calculation of dates that could indicate S.'s age, are misleading. The witness indeed stated "I met him about three years ago." The Court emphasizes she stated "about"; but it's normally that each person is more precise when has to recall his or her age because there are other circumstances that the person keeps in his or her memory; instead of recalling the exact time period that passed.
74. The statement of S.N. when stated that S.T. was 14 years old, even the birth certificates show they were both born in \_\_\_\_\_, is not decisive.<sup>58</sup> It's possible she thought and that she still thinks that S.T. is one year younger than she; but it is important that in all statements that S. gave during investigation and in front of the Court, she gave the same evidence; this means that she was less than 16 years old when she had sexual intercourse with the Defendant and that the Defendant knew her age.
75. The Court cannot find as proven the fact that the Defendant was in possession of the gun and that he used it in order to force her into sexual intercourse. S. stated that the Defendant kept the gun under the bed; and when she didn't accept to have sexual intercourse with him, he took the gun and pointed at her saying that no one can help her even the police. Although, not only S. but also N.T. and A.F. stated that the Defendant showed them the gun, the Court does not consider this fact as proven. The gun was not found at the house search; from the S.'s statement derives that he used it only once; this means when they had sexual intercourse for the first time. She stated that later on, the Defendant threatened her that he would go to her brother and father; that he would publish footages and photographs on internet but she didn't state that he used the gun anymore.
76. The Court assessed presented evidence and on the basis of such assessment finds as proven beyond reasonable doubt that the Defendant on unknown dates between \_\_\_\_\_ and \_\_\_\_\_, in his house located in \_\_\_\_\_, "\_\_\_\_\_" neighbourhood, knowing her age, had more than once sexual intercourse with S.N., born on \_\_\_\_\_.

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<sup>57</sup> Written final statement of the Defendant, page 3.

<sup>58</sup> Written final statement of the Defendant, page 4.

77. Therefore, the Trial Panel re-qualified the original charge of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of CCK and convicted the Defendant of committing the criminal offense of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) of the CCK.

## **B. Count 2**

78. Under Count 2 the Defendant was indicted that he since [redacted] until the [redacted] at his house located at “ [redacted] ” neighbourhood, being official-consulting assistant at in [redacted], participated in trafficking of human beings – juvenile S.N. in the way so after having sexual intercourse with her, attempted the trafficking of her to other for offering for sexual services for an amount of 50 euros which amount would be split in equal parts so Defendant D. would take 25 euros as the intermediate and the other part – amount of 25 euros will be given to the injured party S.N. but the injured party refused to do so; thus committed criminal offense of Facilitating Prostitution, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK.

79. It was S.N.’s evidence during the Main Trial hearing on 10 November 2014 that the Defendant proposed her to have sex with his brother who was 65 years old, with his friend from [redacted] and with a Serb.<sup>59</sup> The witness stated she was 16 years old when the Defendant proposed her to different persons and he proposed her many times to have sex with other persons; it happened whenever he came to pick her up.

80. As regards to [redacted] staff S. stated that one of them was the Defendant’s chief and the other a worker, same as the Defendant. This employee, his friend, used to have a red SUV and was rather tall.<sup>60</sup> The Defendant proposed her to go out with that one from [redacted] and said that he will give her 50 euros but S. has to give the Defendant 25 euros. When

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<sup>59</sup> Minutes of Main Trial hearing on 10 November 2014, page 6.

<sup>60</sup> Minutes of Main Trial hearing on 10 November 2014, page 14.

saying “to go out with him” S. explained that the meaning of this was “to have sex with him.”<sup>61</sup>

81. S. stated she saw his friend from \_\_\_\_\_, he was with his car; the Defendant stopped him and said to him while laughing “do you like this one?” Later on, while S. was still with the Defendant, this friend called him on his phone telling him “if this is for real then bring her [namely S.] to me.” And then the Defendant asked S. if she is willing to go out and have sex with him.<sup>62</sup>

82. As regards to the Defendant’s brother and other Serbian person S. stated they were not present; the Defendant talked with them through the phone. He called them saying if they want to come to his house and she [referring to S.] will ask for 50 euros and after he hung up the phone, he told S. what he told to the speakers.<sup>63</sup>

83. For the Court is important the fact that the statements of S.N. \_\_\_\_\_ during the investigation stage, in most essential points, don’t contradict her statement given during the main trial session. She gave the statement to the Police on 27 March 2013 and she stated that the Defendant proposed her to go out with one of his friends who had a red jeep and he told her that this friend works for \_\_\_\_\_; he was around 40-ies. She didn’t remember the name but she could recognize him. The Defendant told her that if she would go out with this person, he would give her 50 euros, and then the Defendant would give her half and he would keep the other half for himself. S. did not accept to go out with this person.<sup>64</sup>

84. S.N. gave her statement to the Prosecutor on 31 October 2013. It was her evidence that in one occasion, when she was in Defendant’s house, there was an \_\_\_\_\_ employee, who was talking Albanian and the Defendant told S. to go out with this person, to take from him 50 euros and then to give the Defendant his share, so that 50 euros would be split between her and the Defendant. S. described this person as taller, maybe 180 cm, heavy built, black hair, and dark complexion. The Defendant never mentioned his name; he just called him “his friend.” S. stated she didn’t accept<sup>65</sup>.

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<sup>61</sup> Minutes of Main Trial hearing on 10 November 2014, page 22.

<sup>62</sup> Minutes of Main Trial hearing on 10 November 2014, page 23.

<sup>63</sup> Minutes of Main Trial hearing on 10 November 2014, page 24.

<sup>64</sup> Record of the injured-Victim Interview, binder 1, page 65.

<sup>65</sup> Record of the injured-Victim Interview, binder 1, page 76.

85. It is a fact that regarding S. the Trial Panel didn't find any direct corroborative evidence, that the Defendant proposed her to have sexual intercourse with other persons. But the Trial Panel accepts the statement of S. as credible since the same *modus operandi* was used by the Defendant in relation to N.T.. N. in her statement gave many details how the Defendant forced her to have sexual intercourse for money with other persons.<sup>66</sup> So the court can conclude the same behaviour of the defendant.
86. The Court deems that the statement given by S.N. during the Main Trial hearings on 10 November 2014 and 9 December 2014 is credible. She gave a detailed account of the events; her testimonies have been consistent in significant details about events regarding the charge.
87. The Defendant stated during the Main Trial hearing on 27 January 2015 that he had never proposed S. to any other person.<sup>67</sup>
88. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. He stated that it is not true that he suggested S. to go out with some other person from [redacted] and the he would split the money with her.<sup>68</sup>
89. Based on all afore factual findings and presented evidence the Court considers as proven the fact that the Defendant offered S.N. to other persons when she was more than 16 years old and less than 18. In order not to repeat the facts that prove that the Defendant knew the age of S.N. the Trial Panel entirely refers to the explanation already given under previous count.
90. It is a fact that S. in her statement in the court mentioned also his brother and Serbian person although in investigative stage she referred only to one occasion and described the person as "his friend works at [redacted]." This may be explained due to the fact that in front of the Court she was asked more detailed regarding those facts, so her answers were more accurate.
91. The Court cannot find as proven the fact that the Defendant acted as official person – 'consulting assistant at [redacted] in [redacted],' although he offered S. amongst other persons also to some friends who worked for [redacted]. Nevertheless, there is no need this fact to be proven.

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<sup>66</sup> Minutes of Main Trial hearing on 17 October 2014, pages 20 and 23.

<sup>67</sup> Minutes of Main Trial hearing on 27 January 2015, page 25.

<sup>68</sup> Record of the Defendant hearing, binder 1, page 54.

92. Based on above facts the Court finds as proven beyond reasonable doubt, that the Defendant on unknown dates between \_\_\_\_\_ and \_\_\_\_\_ at his house located at “ \_\_\_\_\_ ” neighbourhood, proposed S.N. , born on \_\_\_\_\_ , to have sexual intercourse with unknown persons, amongst them other \_\_\_\_\_ staff, his brother and a Serbian person, for an amount of 50 euros which amount would be split in equal parts between the Defendant and injured party S.N., but the injured party refused to do so.
93. Therefore, the Trial Panel convicted the Defendant of committing the criminal offense of Attempted Facilitating Prostitution, contrary to Article 201, Paragraph (4) of the CCK.
94. The Defendant took actions toward the commission of an offense as quoted in previous point. Since S.N. refused to have sexual intercourse with persons that Defendant proposed to her, the criminal offense was not completed and the Trial Panel convicted the Defendant of committing as attempted criminal offense pursuant to Article 20 of the CCK.

### **C. Count 3**

95. Under Count 3 the Defendant was indicted that at unknown date and time in \_\_\_\_\_ , in his vehicle ” \_\_\_\_\_ ” he touched with sexual intent the juvenile S.T., who was 15 years old, in the following way: while the Defendant was driving his vehicle, the juvenile S.T. was sitting in the co-driver seat, whereas the injured party S.N. was sitting in the back seat. The Defendant started to fondle, with sexual intent, the injured party S.T. on her left leg; thus committed criminal offense of Sexual Assault, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK.
96. S.T. gave the statement to the Police on 27 March 2013 and to the Prosecutor on 4 September 2013. Since the statement given to the Prosecution was not the testimony according to the Article 123 Paragraph (3) of the CPC, the statement was not read in the Main Trial session as foreseen in 338 Paragraph (1) of the CPC.
97. When S.N. was heard as a witness on the hearing, which held on 10 November 2014, S. stated that she met the Defendant through S.. S. introduced him to her as her uncle. He



came to pick them up at the saloon where S. was working and they all went for a ride. When the Defendant started to touch S., S. realized that he was not her uncle.<sup>69</sup>

98. The Defendant stated during the Main Trial hearing on 27 January 2015 that he got to know S. through her sister N. who worked with regional administrator as a cleaning lady.<sup>70</sup> Initially S. came with S. and her youngest brother to his house in order to use the internet. The Defendant never invited her to his house; he stated it was their initiative, S. came either with S. or with S. and her brother, and later on they offered him sexual relations in social manner.<sup>71</sup>

99. The Defendant stated he met S. for the first time in . She came with her sister N. and sometimes with I.. And he broke up with her at the end of .<sup>72</sup>

100. The Defendant also stated that he knew that S. was 15 years old when he offered her a ring for birthday. He stated that she asked for it and she told him “it is my birthday” and “what are going to buy for me.”<sup>73</sup>

101. Regarding the photos that were presented to the Defendant during the main trial he stated that were taken on and confirmed that S. and he were naked but they had no sexual relation.<sup>74</sup>

102. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. He stated that he met S. in the apartment of ex in R. A. where her sister N. used to work as a cleaner and cook. He did not see her for almost 5 years; and when she was in the eighth grade, she used to come to him in “J.”, where he used to work, and asked for money. She started to ask for more money and in order to get rid of her he would say to her “give it to me”; she said to him she was a virgin but she had a friend called S. who was not a virgin and who was one year older than S.. He stated he had sex with both of them for the first time in middle of .<sup>75</sup>

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<sup>69</sup> Minutes of Main Trial hearing on 10 November 2014, page 5.

<sup>70</sup> Minutes of Main Trial hearing on 27 January 2015, page 28.

<sup>71</sup> Minutes of Main Trial hearing on 27 January 2015, page 29.

<sup>72</sup> Minutes of Main Trial hearing on 27 January 2015, pages 30 and 31.

<sup>73</sup> Minutes of Main Trial hearing on 27 January 2015, page 31.

<sup>74</sup> Minutes of Main Trial hearing on 27 January 2015, pages 31 and 32.

<sup>75</sup> Record of the Defendant hearing, binder 1, pages 52 and 53.

103. He stated that he knew S. was a minor. He had a sexual intercourse with her for the first time when she was 16 years and five months old.<sup>76</sup> He met her for the last time in and with her initiative they continued the relationship.<sup>77</sup> The Defendant stated also that S. had a well-built body, her breasts and buttocks were very much developed considering her age, and she looked like 20 years old.<sup>78</sup>
104. S.T. was not reachable for the Court; the Prosecutor cannot provide her address. As it has been previously explained, her testimony given to the Prosecutor in investigative stage does not fulfil requirements pursuant to Article 338, Paragraph (1) of the CPC. Her statement would be crucial since other evidence were very limited.
105. Based on presented evidence and all afore mentioned factual findings the Court cannot find as proven the fact that the Defendant touched S.T. with sexual intent and committed the act with which he has been charged.
106. Therefore, pursuant to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC the Trial Panel acquitted the Defendant of committing the criminal offense of Sexual Assault, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK.

#### **D. Count 4**

107. Under Count 4 the Defendant was indicted that on \_\_\_\_\_ in the \_\_\_\_\_ hours at the same location as under count 1 of the enacting clause, he forced injured party under 16 years of age, to have sexual intercourse and intentionally caused her intoxication with alcohol of the person under 16 years of age – injured party – juvenile S.T. who was 15 years old with the purpose of breaking down her resistance and showing her firearm, pistol of unknown brand and calibre which he kept in the closet and he recorder the sexual intercourse with video camera; thus committed criminal offense of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK.

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<sup>76</sup> Record of the Defendant hearing, binder 1, page 54.

<sup>77</sup> Record of the Defendant hearing, binder 1, page 55.

<sup>78</sup> Record of the Defendant hearing, binder 1, page 56.

108. The Defendant stated during the Main Trial hearing on 27 January 2015 that he met S. for the first time in \_\_\_\_\_ and at that time S. was 11. From that time they didn't have contacts for four, five years.<sup>79</sup>
109. He stated also that they had sexual intercourse for the first time on \_\_\_\_\_ when S. offered him to have a sexual intercourse as a gift for his birthday.<sup>80</sup> After this, he had sexual intercourse with S. for two to three times and later on 15 to 20 times together with S. and S..<sup>81</sup>
110. The Defendant stated that he had sexual intercourse with S.T. and that it was always with her consent. He recorded a sexual intercourse with consent of both of them, meaning S. and S..<sup>82</sup>
111. S.T. gave the statement to the Police on 27 March 2013 and to the Prosecutor on 4 September 2013. The Prosecution proposed S. to be heard as a witness during the Main Trial session but cannot provide the Court with her address; so she was not reachable for the Court. Then the Prosecution proposed to read her previous statements but the Trial Panel rejected such a request since the statement given to the Prosecution was not a testimony according to the Article 123 Paragraph (3) of the CPC. The Trial Panel did not allow its reading in the main trial as foreseen in 338 Paragraph (1) of the CPC.
112. There are photos<sup>83</sup> in the case file which were taken on \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ that show S.T. drinking beer and smoking; there are photos on which S. and the Defendant can be seen in intimate poses. However, the Trial Panel considers those photos as insufficient evidence; the statement given by S.T. would be crucial.
113. Based on this the Court cannot find as proven the fact that the Defendant on \_\_\_\_\_ has committed the act as prescribed in enacting clause of the indictment under count 4 and therefore, acquitted him according to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC.

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<sup>79</sup> Minutes of Main Trial hearing on 27 January 2015, page 34.

<sup>80</sup> Minutes of Main Trial hearing on 27 January 2015, page 33.

<sup>81</sup> Minutes of Main Trial hearing on 27 January 2015, page 36.

<sup>82</sup> Minutes of Main Trial hearing on 27 January 2015, pages 32 and 33.

<sup>83</sup> List of evidence no. 13; copies from the CD.

## **E. Count 5**

114. Under Count 5 the Defendant was indicted that at unknown time and date in until at the location as under count I of the enacting clause he forced the injured party S.T. of 16 years of age to have sexual intercourse without her consent. Knowing that she is 16 years old, the Defendant requested that she have sexual intercourse with him and when the injured party, minor S.T. refused, the Defendant intentionally caused her intoxication with alcohol with the purpose of breaking down her resistance and showing her a firearm, pistol of unknown brand and calibre by saying her: “No one can do anything to me, neither nor the police because I have all of them in my pocket” and in this manner, managed to scare the injured party S.T., by forcing her into having sexual intercourse with him without her wish, because of this when injured party S.T. went to her house attempted to commit suicide drinking sedative pills and Domestos and as a result she was laid in the hospital; thus committed criminal offense of Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK.

115. The Defendant stated during the Main Trial hearing on 27 January 2015 that he never said the words as are mentioned in the factual description and that all recordings were made by his phones and in consent of S.. The Defendant stated he had three phones, Nokia 6300, Nokia 6800 and Anycool.<sup>84</sup>

116. He also stated that S. physically gave an impression of being at the age of more than 20, however in terms of her maturity, in particular in terms of her experience, she gave higher impressions, of 30, 40 or 45 years of age.<sup>85</sup>

117. S.T. gave the statement to the Police on 27 March 2013 and to the Prosecutor on 4 September 2013. As it has been already confirmed, she was not reachable for the Court to be heard during the Main Trial since the Prosecution cannot provide the Court with her address. The Prosecution’s proposal to read her previous statements was rejected since the statement given to the Prosecution was not the testimony according to the Article 123

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<sup>84</sup> Minutes of Main Trial hearing on 27 January 2015, page 37.

<sup>85</sup> Minutes of Main Trial hearing on 27 January 2015, page 38.

Paragraph (3) of the CPC. The Trial Panel did not allow its reading in the Main Trial as foreseen in 338 Paragraph (1) of the CPC.

118. Witness N.T. is S's sister. N. stated that she found out that S. was in relation with the Defendant when S. started getting pills, medication and she was very stressful.<sup>86</sup> The fact that S. attempted to commit suicide is corroborated from transcription of phone call between the Defendant and N. on \_\_\_\_\_ at \_\_\_\_\_.

119. As regards to the photos<sup>87</sup> that were also presented as evidence, the Trial Panel entirely refers to explanation given in previous count and points out additional discrepancy. The time of commission of the criminal offence is "unknown time and date in \_\_\_\_\_ until \_\_\_\_\_" while S.T. attempted to commit suicide in \_\_\_\_\_, most probably on \_\_\_\_\_ or earlier.<sup>88</sup>

120. Based on all afore factual findings and presented evidence the Court cannot find as proven the fact that the Defendant committed the acts as indicated in count 5 of the enacting clause of the Indictment and therefore acquitted the Defendant according to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC.

## **F. Count 6**

121. Under Count 6 the Defendant was indicted that in \_\_\_\_\_ of \_\_\_\_\_ around \_\_\_\_\_ hrs at his house in the \_\_\_\_\_ located at " \_\_\_\_\_ " neighbourhood, he forced the injured party N.T. to have sexual intercourse with him without her consent, by getting her drunk with some suspicious substances, in the manner so he made a previous verbal agreement for an amount of 20 euros so she would clean his house located in the \_\_\_\_\_ so the Defendant took her to his house and initially he prepares a coffee for her and the injured party who as soon as she started to drink it felt dizzy and then lost consciousness and the Defendant by taking advantage of her infirm state committed the sexual act with her, and recorded her with camera; thus committed criminal offense of Rape, contrary to Article 193, Paragraph (3) Subparagraph (4) of the CCK.

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<sup>86</sup> Minutes of Main Trial hearing on 17 October 2014, page 25.

<sup>87</sup> List of evidence no. 13; copies from the CD.

<sup>88</sup> Transcription of phone call, page 315.

122. It was N.T. evidence during the Main Trial hearing on 17 October 2014 that she met the Defendant at a place where she used to work at, around \_\_\_\_\_ years ago; she didn't remember exactly but that time she was 22 years old.<sup>89</sup> She worked at \_\_\_\_\_ in R. A. who used to work for \_\_\_\_\_ and the Defendant was his \_\_\_\_\_. The witness stated they met almost every day when he came to pick up R..
123. N. testified that the Defendant asked her one day, "can you come and clean my house?"<sup>90</sup> He called her by phone and they agreed for the next day. N. agreed because she needed to work.<sup>91</sup>
124. The next day during the break time, after \_\_\_\_\_ hrs the Defendant and N. met in front of building called "J.." The Defendant picked her up with an official car and took her to his house in the \_\_\_\_\_. It is two store house; the Defendant's flat is on the second floor. They entered into one room, where one couch, one TV-table and a TV over it were, and a wardrobe; she sat on the couch. She entered only that room, she hasn't seen other rooms.<sup>92</sup> The Defendant served her with a coffee<sup>93</sup> saying "first, I will serve you with the coffee as a guest in my house."<sup>94</sup>
125. After N. drunk the coffee entirely, she felt dizzy and she lay down on the couch. It was her evidence that after that she didn't remember anything.<sup>95</sup> In a moment when she came to her consciousness she realized that she was lying on her back, she was naked and the Defendant was lying near her on the same couch and he was also naked.<sup>96</sup> Her clothes were on the floor, next to couch. She said to the Defendant "are you normal, are you crazy?" and "are you psychopath?"<sup>97</sup>
126. The Defendant answered her "okay nothing happened"; he gave her money and told her to go home. The witness stated she was feeling dizzy; she started crying and went home.<sup>98</sup>

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<sup>89</sup> Minutes of Main Trial hearing on 17 October 2014, page 19.

<sup>90</sup> Minutes of Main Trial hearing on 17 October 2014, page 22.

<sup>91</sup> Minutes of Main Trial hearing on 17 October 2014, page 29.

<sup>92</sup> Minutes of Main Trial hearing on 17 October 2014, pages 30 and 37.

<sup>93</sup> Minutes of Main Trial hearing on 17 October 2014, page 30.

<sup>94</sup> Minutes of Main Trial hearing on 17 October 2014, page 35.

<sup>95</sup> Minutes of Main Trial hearing on 17 October 2014, page 31.

<sup>96</sup> Minutes of Main Trial hearing on 17 October 2014, page 32.

<sup>97</sup> Minutes of Main Trial hearing on 17 October 2014, page 38.

<sup>98</sup> Minutes of Main Trial hearing on 17 October 2014, page 38.

127. On specific question if she that time realised that they had a sexual intercourse the witness stated she didn't. She found out this a day after when the Defendant called her and showed her the recordings. They met in the park; he showed her recordings on the phone and he had also a tape at home.<sup>99</sup>
128. While watching the recordings she saw herself having sex with the Defendant; N. stated it's looked horrible, she couldn't watch; she felt bad. She saw herself lying on the couch, undressed, the Defendant was over her.<sup>100</sup>
129. The witness was called back on 10 November 2014. She answered to questions, which were prepared by the Defendant after he has been provided with the minutes, and which were allowed by the Trial Panel. She was also confronted with her previous statement given on 17 October 2014. Initially she stated that she was in the Defendant's house in the only once when he invited her there to clean the house and when the Defendant served her coffee and she lost her consciousness. Then she stated that she was in house 2 to 3 times and although they were in a relationship for two years, they didn't have sex.<sup>101</sup> After a break she explained that she had given such a statement since there had been a court recorder in the courtroom who lives in the same place as she and she was feeling ashamed and bad when she saw him.<sup>102</sup> When the court recorder was removed from the court room, N. explained discrepancies in her statement and confirmed that she had sex with the Defendant in his house in the for several times in period of two years. It was also her evidence that the Defendant had a recording of the event when she was for the first time in his house and that she was forced to have sex with him since he blackmailed her.<sup>103</sup>
130. On the photo no. 10 on the page 204 she recognized the room where they stayed in.
131. N.'s evidence on a fact that she was in the Defendant's house more than once is corroborated by the statement of A.F. , who stated that she saw once on Defendant's computer two sisters S. and N. having sex with the Defendant.<sup>104</sup>
132. N.T. gave the statement to the Prosecutor on 6 February 2014 and 26 March 2014.

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<sup>99</sup> Minutes of Main Trial hearing on 17 October 2014, pages 32, 33 and 34.

<sup>100</sup> Minutes of Main Trial hearing on 17 October 2014, pages 33 and 34.

<sup>101</sup> Minutes of Main Trial hearing on 8 December 2014, pages 6 and 7.

<sup>102</sup> Minutes of Main Trial hearing on 8 December 2014, page 9.

<sup>103</sup> Minutes of Main Trial hearing on 8 December 2014, pages 7 and 8.

<sup>104</sup> Minutes of Main Trial hearing on 16 October 2014, page 7.

133. When she was interviewed by the Prosecutor on 6 February 2014 she stated that she used to work as a cleaning lady for R. A., employee, and the Defendant was his . She didn't know the Defendant from before. She met him since she drove R. to the flat; sometimes happened that the Defendant would come to the flat and then R. would ask her to serve a drink or coffee to him. He used to come very often there for a lunch time and N. never noticed any bad behaviour at the Defendant. He invited her for coffee many times; one day she accepted and went with him for coffee. He invited her almost every day but at that time N. was going through deep crises and was not in good mood to go out. Then the Defendant asked her if she would want to come and clean his house for 10 to 20 euros and she accepted this offer. The Defendant picked her up around or hrs and took her to his house in the . The house was two stored; first floor was rented to a family, they entered into one room where bed, TV and heater were. He served her with coffee and juice; as soon as she started to drink a coffee, she felt dizzy; she fainted and when she woke up, she saw the Defendant and herself naked. When she asked him "what are you doing" the Defendant said "does not matter, nobody will know this" and gave her 20 euros. After 3 to 4 days he called her, and invited her for coffee. When she refused, he said to her "OK, but I have video recording when we had sex in that day and I will release this in internet." Next day she went to the Defendant's house, he inserted the tape in video recorder and he played it. N. saw herself naked, sleeping and the Defendant was above her having sex. After that, she went twice with him to have coffee thinking he would change his mind and gave her videotape.<sup>105</sup>

134. N.T. gave the second statement to the Prosecutor on 26 March 2014. She testified that she had sex with the Defendant only once and they didn't continue; he called her but she didn't go. When she drank coffee, she tasted no changes in the coffee; she did not notice any symptoms besides the ones mentioned in her first statement; she felt dizzy and she lay down and went unconscious. She stated she was not in better mood and her humour did not change; she did not feel sick. This happened in Defendant's house between to hrs in the afternoon; when she left the house it was already dark.<sup>106</sup>

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<sup>105</sup> Record of the injured-Victim Interview, binder 1, pages 174 and 175.

<sup>106</sup> Record of the injured-Victim Interview, binder 1, page 184.



135. On the hearing which held on 17 October 2014 the witness stated that she was in relation with the Defendant for 3 to 4 years and that she had sex more than once with the Defendant.<sup>107</sup> She had no choice as he was blackmailing her, he said “I have recordings” and he told her he was going to show them to her family. He also had bitten her; when he showed her the recordings in the park, he punched her in her stomach and she felt on the ground.<sup>108</sup> The witness repeated she had to go whenever he wanted.<sup>109</sup>
136. The witness was upset, not only while she was giving the statements in front of the court, this can be seen also from her second interview in front of the Prosecutor. On the hearing which held on 17 October 2014 the witness expressed her nervousness with words “that person made very bad things to me, he lost four years of my life, he took advantage of me and did evil things to me, [...] as long as he is alive I have no life, neither to get married or create my family [...] I want to create my family and live my life. I want to be left alone and to be destroyed with such things again.”<sup>110</sup>
137. The Defendant stated during the Main Trial hearing on 27 January 2015 that he met N. in second half of in when she came to a French man with Turkish origin to agree on providing cleaning services.<sup>111</sup>
138. The Defendant stated that later on she started working for R. A. and they met almost every day since the Defendant was his driver.<sup>112</sup>
139. He had sexual intercourse with N. sometime at the of , of in his two room apartment in . She had to do her internship for her education in and when she finished, she came to his place and they had sexual intercourse. It was his evidence that they agreed in advance they would go to and spent the night together.<sup>113</sup>
140. The Defendant stated that the intimate relation with N. lasted for around six years, until . Within these six years they had sexual intercourse for some hundreds of time. For first two years, when the Defendant had apartment in , they used to go to and

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<sup>107</sup> Minutes of Main Trial hearing on 17 October 2014, page 26.

<sup>108</sup> Minutes of Main Trial hearing on 17 October 2014, page 27.

<sup>109</sup> Minutes of Main Trial hearing on 17 October 2014, page 34.

<sup>110</sup> Minutes of Main Trial hearing on 17 October 2014, page 39.

<sup>111</sup> Minutes of Main Trial hearing on 27 January 2015, page 39.

<sup>112</sup> Minutes of Main Trial hearing on 27 January 2015, page 40.

<sup>113</sup> Minutes of Main Trial hearing on 27 January 2015, page 41.

had sexual intercourse only there. Then they continued in his house in . They went often also to and two times they were in . They had all sexual intercourses with their mutual will, with his and N.'s consent.<sup>114</sup>

141. The Defendant stated that during this period of six years, they had made joint pictures; amongst them also with erotic content; and N. was aware of this and she gave her consent.<sup>115</sup>

142. When they stopped the relationship, they still called each other on the phone, and saw each other but did not have sexual relations.<sup>116</sup>

143. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. He stated that he met N. when she was 20 years old. She used to work as a cleaner and cooked for R. A. and he was his and .<sup>117</sup>

144. Based on all afore presented evidence the Court finds many discrepancies in N.'s statement that cannot find as proven a fact that the Defendant in of forced her to have sexual intercourse by getting her drunk with some suspicious substances.

145. First of all, in front of the Prosecution the witness stated that the Defendant picked her up around or hrs and took her to his house in the . In the court she stated this happened during the , at around hrs.<sup>118</sup>

146. In her statement to the Prosecutor she stated she had sexual intercourse with the Defendant only once. On 17 October 2014 the witness testified she was in Defendant's house only once.<sup>119</sup> While heard again, on the hearing which held on 8 December 2014, N. stated she had sex with him several times within 2 years; every time they were in the Defendant's house.<sup>120</sup>

147. Furthermore, in her statement in front of the Prosecution she mentioned only the tape and that he inserted the tape in video recorder and played it, when she went to his house next day. While in the court she testified that the Defendant called her next day, they

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<sup>114</sup> Minutes of Main Trial hearing on 27 January 2015, pages 42 and 43.

<sup>115</sup> Minutes of Main Trial hearing on 27 January 2015, pages 45 and 46.

<sup>116</sup> Minutes of Main Trial hearing on 27 January 2015, page 46.

<sup>117</sup> Record of the Defendant hearing, binder 1, page 52.

<sup>118</sup> Minutes of Main Trial hearing on 17 October 2014, page 28.

<sup>119</sup> Minutes of Main Trial hearing on 17 October 2014, page 19.

<sup>120</sup> Minutes of Main Trial hearing on 8 December 2014, pages 8 and 9.

met in the park where he showed her the recordings;<sup>121</sup> and later on she saw the recordings also on the tape in his house.<sup>122</sup>

148. The witness denied she had ever been in the Defendant's flat in .<sup>123</sup>

149. The Trial Panel got an impression that the relationship between the Defendant and N. was not as ideal as presented by the Defendant; that N. would like to forget that period of time and to create a new life. Therefore, she was unwilling to testify in front of the Court.

150. There was no other corroborative evidence that could prove the facts as presented by the Prosecution in factual description under count 6 of the indictment.

151. Based on everything, the Court considers it is not proven beyond reasonable doubt that the Defendant committed the specific acts as charged with under count 6 and has to acquit him pursuant to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC.

## **G. Count 7**

152. Under Count 7 the Defendant is indicted that at the of at unknown time in village – , by using the force he touched the injured party A.L. with sexual intention and without her consent by using her state as the juvenile was unprotected and her safety was at risk and the fact that she was suffering from skin illness – acne on her face with pretensions that the Defendant will find a cure for her so by deceiving her he send the injured party with his vehicle, , in colour to a specialist doctor in the (J. I.) who specified the diagnosis and the therapy, but the prescription was taken by the Defendant and immediately after his arrival in the village of , close to the petrol station, he requested that in exchange for buying the medication, she should have sexual intercourse with him and he began to touch her on the chest and to kiss her. The injured party refused this and then the Defendant locked the doors of the vehicle so as to prevent the injured party from exiting the vehicle. The latter began screaming and crying and this was noted by the employee of the petrol station, who at the

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<sup>121</sup> Minutes of Main Trial hearing on 17 October 2014, pages 32 and 39.

<sup>122</sup> Minutes of Main Trial hearing on 17 October 2014, page 34.

<sup>123</sup> Minutes of Main Trial hearing on 8 December 2014, page 3.

time was outside of the petrol station and then went inside the petrol station and the Defendant became scared and unlocked the door of the vehicle, from which the injured party fled and attempted to \_\_\_\_\_; thus committed criminal offense of Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraphs (2) and (3) in conjunction with Article 20 of the CCK.

153. It was A.'s evidence during the Main Trial hearing on 20 October 2014 that she met the Defendant through her friend L.. The two of them and her friend H.P. were in \_\_\_\_\_. Since they had no means to come home, L. called the Defendant; he addressed him as "uncle." The Defendant came and collected them, and on way home they didn't talk, they just listened to music.<sup>124</sup>

154. A.L. stated she was fifteen or sixteen years old; H.P. was her friend and when she visited her at her house, H. said "let's go out for a walk and let's call D.." H. called the Defendant and they went to \_\_\_\_\_ where they had a lunch. They talked and the Defendant looked to be a nice man. A. had some acne on her face and the Defendant asked her if she would like to remove them and he recommended her visiting a doctor in the \_\_\_\_\_. A. didn't remember if she gave him her phone number that time or later. A few days later, he called her to go and see that doctor.<sup>125</sup>

155. A. asked her friend H. to accompany her, as she didn't know the Defendant; despite the fact he seemed to be a nice person, he could be their grandfather. When they met with the Defendant, he said that H. mustn't come because "we have to go through the \_\_\_\_\_ and there shouldn't be many people in the car." So A. hugged H. and told her that she would be back soon; and asked her if she would be late, to call her family.<sup>126</sup>

156. When the witness and the Defendant came to the doctor, [her name was J.], the doctor made some questions related to A.'s acne, send the Defendant out of the room; and since the witness didn't understand \_\_\_\_\_, the doctor called him back. The doctor prescribed medication but the Defendant got the receipt for medication and did not give it to her.<sup>127</sup>

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<sup>124</sup> Minutes of Main Trial hearing on 20 October 2014, page 14.

<sup>125</sup> Minutes of Main Trial hearing on 20 October 2014, page 15.

<sup>126</sup> Minutes of Main Trial hearing on 20 October 2014, page 15.

<sup>127</sup> Minutes of Main Trial hearing on 20 October 2014, pages 15 and 16.

157. It was A.'s evidence that the Defendant knew her age. First of all, he knew H.'s age so he knew also the age of A.. And he was also in the room when A. told her age to the doctor.<sup>128</sup>

158. A. stated that on the way back from the doctor, the Defendant first stopped at a house. He invited her for a coffee, but she said "no, next time. I need to go back home as it is late." The Defendant entered the house while the witness waited in a car. Then they continued, the road was with a lot of mountains, there was not much traffic, and it was a road where only one car could drive. They stopped at the fuel station. The Defendant told A. "I had sex with S. and I am in relationship with R., and you have to do this as well. I will buy you the medicine and I will help you with the problem on your face if you do this for me."<sup>129</sup> The Defendant put his hand on her shoulder, wanted to get closer and attempted to kiss her.<sup>130</sup> She turned her head and she screamed. The Defendant said "I will get a driving license for you," and tried to cheat her, "you will have a good life." She did not accept, she went on screaming and told him to get off his hands of her. There was a guy at a fuel station, he was going in and out, and perhaps he noticed something. The Defendant locked the car doors, and suddenly when the doors were unlocked, she started running and crying. The network of the phone was not working and when she reached the she wanted to . She was afraid to go to the fuel station, afraid that a guy might learn she was . Then the Defendant came with his car, opened the door window, and told her "do you want to kill yourself for nothing?" She did not want to get in the car, and then he promised he wouldn't touch her again saying "just get in the car and don't tell anyone anything and I will take you home."<sup>131</sup>

159. Then A. got in the car and the Defendant drove her back. She told about this event her friend H.P. who was her close friend at that time.<sup>132</sup>

160. The statement of A.L. is corroborated by testimony of the witness H.P. which gave her evidence on the hearing held on 17 October 2014. H. stated that she was introduced to the

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<sup>128</sup> Minutes of Main Trial hearing on 20 October 2014, page 16.

<sup>129</sup> Minutes of Main Trial hearing on 20 October 2014, pages 23 and 24.

<sup>130</sup> Minutes of Main Trial hearing on 20 October 2014, pages 20 and 23 and Minutes of Main Trial hearing on 8 December 2014, page 17.

<sup>131</sup> Minutes of Main Trial hearing on 20 October 2014, page 16.

<sup>132</sup> Minutes of Main Trial hearing on 20 October 2014, page 173

Defendant by her friend L. who said “let’s go out” and he took the Defendant along. It was in \_\_\_\_\_ or \_\_\_\_\_. For the first time S. joined them and for the second A..<sup>133</sup>

161. H.P. stated that A. was around 14 to 15 years old when they met the Defendant.<sup>134</sup>

162. H.P. stated that A. was her close friend that time and that the Defendant told A. “I know the doctor on the \_\_\_\_\_ and I can take you there to remove your acnes.” The witness stated she didn’t want to leave her alone and said to A. “I will accompany you” and they went together to meet the Defendant. But when H. entered the car, the Defendant told her “I cannot go on the \_\_\_\_\_ with two girls.”<sup>135</sup> They replied to the Defendant “nothing will happen if we come both of us” but the Defendant said “there is no way to \_\_\_\_\_ with both of you because of the police.”<sup>136</sup> So H. went out of the car and went home.

163. H. testified that A. called her on the same day when she was backing home and she told H. what happened. A. told her that she underwent the medical examination and the doctor prescribed medicine that needed to be taken, and on their way back the Defendant refused to give the medicine to A.. He said “you should go out with me if you want the medicine.” A. went out of the car. A. told her she wanted to kill herself at \_\_\_\_\_; that the Defendant left her on the street, she didn’t want to get inside anymore and he moved on with his vehicle leaving her behind; and then he came back to pick her. Since she didn’t have any other choice, she had to enter his vehicle. H. stated also that the Defendant told to A. “if you want the medicine, you have to have sex with me.” A. also told H. that the Defendant tried to grab her and tried to kiss her.<sup>137</sup>

164. A. gave the statement to the Police on 29 May 2013 and that time she denied she knew the Defendant; she also denied that he took her to the doctor in the \_\_\_\_\_.<sup>138</sup>

165. A. gave the statement to the Prosecutor on 15 August 2013. She stated that she met the Defendant when she was in \_\_\_\_\_ with L. and H.. Since it was late and did not have the transports back home, L. called the Defendant who came and pick them up; and L. called him ‘uncle.’ Once, when she went to H., H. said that she would call the Defendant. He

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<sup>133</sup> Minutes of Main Trial hearing on 7 October 2014, page 4.

<sup>134</sup> Minutes of Main Trial hearing on 17 October 2014, page 5.

<sup>135</sup> Minutes of Main Trial hearing on 17 October 2014, pages 6 and 7.

<sup>136</sup> Minutes of Main Trial hearing on 17 October 2014, page 13.

<sup>137</sup> Minutes of Main Trial hearing on 17 October 2014, pages 7 and 8.

<sup>138</sup> Record of the injured-Victim Interview, binder 1, pages 110 and 111.

came somewhere in the afternoon and they went to \_\_\_\_\_ for a coffee. While they were having a coffee, the Defendant started to talk about acnes on her face and he mentioned a dermatologist who lived in the \_\_\_\_\_, she was a very successful doctor and he also said “we can go whenever you want.” A. stated she didn’t refuse the offer, since during the discussion she got an impression he is a nice man; he was not looking at her provocatively or with any intentional looking. A. didn’t remember if she called him or vice versa; but didn’t pass a long time when they agreed he would take her to that doctor. She was with H. near the house, near the bakery, when the Defendant picked them up with his car. A. told also H. to go along with them. But when H. got in the car the Defendant said that could not go a lot of people in the car because the \_\_\_\_\_ might stop them and cause a problem to them. And because of this H. got out of the car.<sup>139</sup>

166. A. stated that the Defendant took her to the doctor; the doctor told him to go out but since she didn’t understand \_\_\_\_\_, the doctor called the Defendant back. The doctor prescribed her a therapy and receipts for medications to be bought in the pharmacy. A. didn’t see what kind of medications the doctor prescribed since the Defendant was keeping the receipt in his pocket. On the way back they went toward a house and the Defendant begged her to go inside and have a coffee. A. didn’t want to go inside since it was late; she waited in the car. After less than 5 minutes, the Defendant got into the car and he drove in the direction of a fuel station \_\_\_\_\_. It was a very bad and narrow road. The Defendant stopped at fuel station and told A. if she wanted to get the medicines she had to have sex with him. He also said “I will pay for you to get driving license; I will give my car to drive and we will continue the therapy” and that everything would be covered by him. When A. told him “no,” he attempted to touch her in her arm but she returned her head in the other side. Then he blocked the doors of the vehicle; she started to cry. He also tried to convince her that this is nothing because he had sex with S., H., even though she was convinced he didn’t have sex with H., and that R. was his girlfriend. Somehow the doors opened and she got out of the car and walked on the street crying. She started to go to the direction of the \_\_\_\_\_; she wanted to \_\_\_\_\_. Then the

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<sup>139</sup> Record of the injured-Victim Interview, binder 1, page 117.

Defendant came by his car, he begged her to get inside and then she went since he promised he would not do anything to her.<sup>140</sup>

167. A. stated that she was afraid of Defendant because she didn't know him very well, she was much older than she; he could be her grandfather. And she was also afraid of [redacted] since as an [redacted] she was in the [redacted], she was aware about conditions between [redacted] and [redacted]; she was afraid of [redacted] and therefore she was not able to ask for help.<sup>141</sup>

168. The Court finds the statements given by A.L. during the Main Trial hearings on 10 November 2014 and 9 December 2014 as credible since they are corroborated by other evidence. She gave a detailed account of the events, her testimonies have been consistent and thus accepted as accurate by the Trial Panel.

169. The Defendant stated during the Main Trial hearing on 28 January 2015 that he met A. through her friend, called L.. L. called him to go to [redacted] together with A., H. and the third friend. After this meeting he didn't meet A. for a long time. Then H. called him in order to go and walk around after working hours. They went to [redacted] for a dinner.<sup>142</sup>

170. The Defendant stated that the key conversation in a restaurant in Istog was in relation to the acne that A. had on her face. He proposed her a specialist doctor that treated the skin in [redacted], J. I..<sup>143</sup>

171. It was Defendant's evidence that this happened in [redacted]; at that time was the end of school year and when A. was in the first grade. It was some time at noon when they went to the doctor. First the doctor asked for a report by a general practitioner and for a medical booklet but they didn't have them. Then the doctor said that in such case they had to pay. A. didn't have money with her, so the Defendant asked the doctor how much they had to pay. The doctor answered "for this time about [redacted]," what was equal to 30 euros. The doctor said also that she needed to come for another check-up after seven days and that would cost [redacted], what was equal 25 euros. Since the Defendant knew the doctor he asked her if they could pay both amounts when they would come for second check-up. The doctor agreed; she checked A., prescribed 3 to 4 types of medication and the manner in which she had to apply that medication. After that they looked for

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<sup>140</sup> Record of the injured-Victim Interview, binder 1, page 118.

<sup>141</sup> Minutes of Main Trial hearing on 20 October 2014, pages 12 and 22.

<sup>142</sup> Minutes of Main Trial hearing on 28 January 2015, pages 2 and 3.

<sup>143</sup> Minutes of Main Trial hearing on 28 January 2015, page 3.



medication in \_\_\_\_\_ at least at four places; and only one medication was available, two others were needed to be ordered, the others were not available. They looked for them also in \_\_\_\_\_.<sup>144</sup>

172. Since they didn't find the medication they went to \_\_\_\_\_ to have the coffee. The Defendant stated they didn't have coffee. He parked in front of the restaurant and A. asked him if any \_\_\_\_\_ were there. When he answered that the owner is a \_\_\_\_\_, she refused to go out of the car and to have a coffee. The Defendant asked her "how come that you came in a hospital full of \_\_\_\_\_ but you are declining to go here?" After this conversation A. got annoyed, she turned her head to the other side and said "I want to go home." The Defendant responded "I want to have coffee." And then A. said "I will walk on foot;" she got out of the vehicle and started walking. The Defendant started the vehicle, went there and picked her up again.<sup>145</sup>

173. The Defendant stated he didn't touch her neither attempted to touch. He stated also that he never asked her to have sexual relation. She was very sick on her face which was with a lot of scars, and the idea of touching her in her face it could have caused bleeding. He stated he didn't blocked the doors of the vehicle while they were in front of the restaurant, she didn't scream, she didn't cry. She also didn't try to \_\_\_\_\_.<sup>146</sup>

174. The Defendant stated that he called her next day and he told her that in relation to that medication there were none to be found in \_\_\_\_\_. A. said to him "I don't want to buy them." The Defendant said to her "but you need to go for a check-up in a week time and also to pay 30 euros that we owe." A. switched off the phone and didn't open it after. The Defendant tried to call her on the phone but it was not working. He called her close friend H. and she told him that A. lost her phone with the number as well. From that time he never heard from her again.<sup>147</sup>

175. When the Defendant asked by the Prosecutor, he stated that H. didn't come with them because he was afraid for the reason she could not speak \_\_\_\_\_. And when he and A. would enter to the doctor, H. would have to wait outside the clinic. Considering that H.

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<sup>144</sup> Minutes of Main Trial hearing on 28 January 2015, page 4.

<sup>145</sup> Minutes of Main Trial hearing on 28 January 2015, page 5.

<sup>146</sup> Minutes of Main Trial hearing on 28 January 2015, pages 5, 6 and 7.

<sup>147</sup> Minutes of Main Trial hearing on 28 January 2015, page 7.

didn't know \_\_\_\_\_ and because the hospital as such was crowded with people, he was afraid that something might encounter there.<sup>148</sup>

176. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. He stated he knew A.; she was in the first year of secondary school; studying economy or medicine.<sup>149</sup> He never took her to his house. He picked her up and took her to a skin specialist who prescribed 4 to 5 kinds of drugs which he didn't find in \_\_\_\_\_ and so they went to \_\_\_\_\_ and looked for them. They didn't find them there either, so they returned and had coffee in \_\_\_\_\_ in the main street. He asked her to go out and have coffee but she refused; she thought that he wanted to have coffee on his own and she just got out of the car; and then he told her not to get out; and that they were going to go back. This took place at the \_\_\_\_\_ of \_\_\_\_\_ in \_\_\_\_\_; and it was at noon.

177. Based on all afore factual findings and presented evidence the Court considers as proven the fact that the A. was born on \_\_\_\_\_; that she met the Defendant for the first time through her friend L.; and when she 15 or 16 years old her friend H.P. \_\_\_\_\_ called the Defendant and they went to \_\_\_\_\_ for a lunch. Those circumstances regarding the first meeting were confirmed also by H. and the Defendant; although H. stated that A. was 14 or 15 years old when they had that lunch.

178. The following facts: that the Defendant proposed and took A. to the skin doctor in \_\_\_\_\_; that the doctor examined A. and prescribed medicine for her and that A. and the Defendant were looking for the medicine in pharmacies in \_\_\_\_\_ are also not disputable.

179. A., her friend H. and the Defendant stated that H. was supposed to join them when visited the skin doctor in \_\_\_\_\_. She was with A. when they met the Defendant. But then she didn't accompany her since the Defendant told her not to. The Court finds as proven the fact that it was the Defendant who prevented H. to join A.. The reason why the Defendant didn't want to take H. with was presented differently by the Defendant and by A. and H.. The Court finds the reason presented by A. and H. as accurate since their statements were consistent and credible. The reason that was given by the Defendant was too vague.

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<sup>148</sup> Minutes of Main Trial hearing on 28 January 2015, page 9.

<sup>149</sup> Record of the Defendant hearing, binder 1, page 52.

180. Since there were no discrepancies in the testimonies of the Defendant and A. the Trial Panel finds as proven also the fact that after consultation with the doctor the Defendant took A. back to the .
181. A. stated that on the way back the Defendant stopped first “at the house.” It was A.’s statement that the Defendant had coffee while she waited in the vehicle since she didn’t want to have it and when he came back, they continued driving; and that the Defendant stopped again in front of a fuel station. And at that place the Defendant requested from her sexual intercourse with him in exchange for buying the medication and began to touch her and tried to kiss her.
182. The Defendant stated that they parked “in front of the restaurant” where the Defendant wanted to have coffee. When A. asked him if there were in a restaurant and the Defendant replied that the owner is , she refused to go to the restaurant and turned her head to the other side. When she stated she wanted to go home, the Defendant replied he wanted to have coffee; she got out of the car and started walking. He picked her and brought her back.
183. For the Court it’s not the most crucial fact where exactly they stopped on their way back when the event as described in enacting clause happened; in front of a restaurant or in front of a fuel station. Since A. has not been in , it’s possible that her description is not accurate; but the fact that they stopped on their way back is considered as proven.
184. The Court finds as proven the fact that the Defendant, when stopped on their way back, proposed A. to have sexual intercourse with him in exchange for buying the medicine, that he began to touch her on the chest and that he tried to kiss her. For the Court is important the fact that the statements of A.L. during the investigation stage, in their most essential points, don’t contradict her statement given during the main trial session. And it is also important that her statement is entirely corroborated with H.’s evidence.
185. It is true that in front of the Prosecution,<sup>150</sup> A. didn’t mention that the Defendant tried to kiss her, while on the hearing on 20 October 2014<sup>151</sup> she stated he attempted do kiss

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<sup>150</sup> Record of the injured-Victim Interview, binder 1, page 118.

<sup>151</sup> Minutes of Main Trial hearing on 20 October 2014, page 20.

her. She explained the discrepancy on the hearing which held on 8 December 2014 and confirmed that “he [the Defendant] approached me, he touched me on my shoulder and I reacted in this way, screaming and crying.” She stated also “he made efforts and that’s why he touched my shoulder but he didn’t kiss me.”<sup>152</sup>

186. The description of the event is in essential points corroborated by the statement given by H.P. . She was A.’s close friend that time and A. called her the same day when she came back and told her what had happened to her. There are no discrepancies in their statements regarding the fact that the Defendant proposed A. to have sex with him if she wanted the medicine and that he tried to grab her and tried to kiss her. H. didn’t witness the incident but she was the one who A. called immediately after the incident had happened and to whom A. told all details. H.’s statement is credible, she was A.’s close friend that time; later on they split and when heard as a witness they didn’t have contacts. So H. didn’t have any interest to give a statement in favor of A. and may be trusted.

187. And the Court finds as proven the fact that A. as was scared to be alone in the , between . Although the Defendant tried to present such fear in different meaning, the Trial Panel didn’t follow his argumentation. It was the Defendant’s explanation that he didn’t want to take also H. to the doctor because he was afraid for the reason she would not speak ; and she should wait outside the clinic when he and A. would visit the doctor. It was his statement that he was afraid that something might encounter her. With such a fear the Defendant also confirmed a fact that A. had reasons to be afraid when she was in the , between .

188. The fact that A. suffered from skin illness – acne on her face was not disputable.

189. The Court cannot find as proven the fact that the Defendant locked the vehicle’s door when started to touch A.. Even he did, the Trial Panel opines that this didn’t prevent A. to open the door since she was sitting in the front sit. Nevertheless, the Trial Panel considers that this circumstance is not crucial for establishing the facts regarding the event that happened.

190. The Trial Panel didn’t devote special attention also to the Defendant when alleged how really unbelievable is to consider that his intend was to have sexual intercourse with A. in the car; in front of the motel entrance; at noon time. It was not included in factual

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<sup>152</sup> Minutes of Main Trial hearing on 8 December 2014, page 17.

allegations that the Defendant intended to have sexual intercourse in the car when they stopped in front of the restaurant, so this fact does not have to be proved.

191. By telling A. that he had sex with S.; that he was in relationship with R., that he would get a driving license for her; that she would have a good life; he tried to cheat and convinced her to get involved with him.

192. Based on above conclusions the Court finds as proven beyond reasonable doubt that at the of at unknown time in village – Municipality, the Defendant proposed and took the injured party A.L. , born on , a student, ethnicity, who never been alone in and suffering from skin illness – acne on her face, with his vehicle to a skin specialist, a doctor in (J. I.) who specified the diagnosis and the therapy. After the consultation at the doctor, the prescription was taken by the Defendant. After looking for the medicine in and , on the way to the village of , the Defendant stopped the vehicle close to a petrol station, and requested from injured party that in exchange for buying the medication, she should have sexual intercourse with him and he began to touch her on the chest and tried to kiss her. The injured party refused this and began screaming and crying, fled from the vehicle and intended to .

193. Therefore, the Trial Panel re-qualified the original charge of Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraphs (2) and (3) of the CCK and convicted the Defendant of committing the criminal offense of Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraph (3) of the CCK.

194. The Defendant took actions toward the commission of an offense as quoted in previous point. Since A.L. refused to have sexual intercourse with him and escaped from the car when the Defendant touched her and tried to kiss her, the criminal offense was not completed and the Trial Panel convicted the Defendant of committing as attempted criminal offense pursuant to Article 20 of the CCK.

## **H. Count 8**

195. Under Count 8 the Defendant is indicted that from the \_\_\_\_\_ of \_\_\_\_\_ until \_\_\_\_\_ at his located at \_\_\_\_\_ in the \_\_\_\_\_ he forced the injured party A.F. to have a sexual intercourse without her consent in the manner so the Defendant asked from her to have sexual intercourse and at the moment she would refuse to do it, the Defendant threatened her that in case she would refuse to have sexual intercourse with him, he will spread out the words that she had sexual intercourse with him so her family would find out this so the injured party was forced to submit to his sexual lust until the moment of his arrest; thus committed criminal offense of Rape, contrary to Article 193, Paragraph (2) Sub-Paragraph (3) of the CCK.

196. It was A.F. 's evidence during the Main Trial hearing on 16 October 2014 that she met the Defendant through S.T.. S. asked A. "do you want to have coffee with a very good friend of mine?" and then the Defendant took S., A. and her sister B. with his car to where they had coffee.<sup>153</sup>

197. They stayed in Restaurant " \_\_\_\_\_ " in \_\_\_\_\_ for three hours, they talked, the Defendant asked her about the school, if she was married, if she had a boyfriend, did she often hang out with S..<sup>154</sup> The Defendant didn't give her his phone number but he asked her for her phone number and A. gave him her sister's number because she had a boyfriend at that time. Then the Defendant drove them back to \_\_\_\_\_.<sup>155</sup>

198. Three to four days later the Defendant called her on her sister's phone and asked her to go out with S.. A. didn't want to go out that day.<sup>156</sup>

199. Next time when the Defendant called A. again; she didn't want to go out but then the Defendant said he would call S.. When S. called A., they met with the Defendant in Restaurant " \_\_\_\_\_ ", the Defendant gave money to S., they split and A. had coffee with S. alone.<sup>157</sup>

200. A. stated that the next meeting took place in Restaurant " \_\_\_\_\_ ". The Defendant called her on her sister's phone asking her to go out; A. went out with him and from that day he was forcing her to out with him saying "as of this moment you will be with me," "you will be with me because I like you." And when A. asked him "how can I be with

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<sup>153</sup> Minutes of Main Trial hearing on 16 October 2014, pages 4, 22 and 41.

<sup>154</sup> Minutes of Main Trial hearing on 16 October 2014, page 22.

<sup>155</sup> Minutes of Main Trial hearing on 16 October 2014, page 23.

<sup>156</sup> Minutes of Main Trial hearing on 16 October 2014, page 25.

<sup>157</sup> Minutes of Main Trial hearing on 16 October 2014, page 26.

you when I can be your daughter,” the Defendant said “don’t say that.” The Defendant told her he wanted to marry her, that he loved her with his heart and when A. asked him “how can I be your wife, I could be your daughter,” he answered “I don’t care. I don’t look at such things.” The Defendant also said to her “you will be with me until the time you get married, you will be mine.” A. stated that she felt he was a dangerous person and as of that moment she was afraid of him.<sup>158</sup>

201. The next time when A. met the Defendant, was summer; it was very hot and she went out with S.. They split; S. left with another person and A. remained with the Defendant. They drove to \_\_\_\_\_ and back, the Defendant was telling her about his life, about his job, his family.<sup>159</sup>

202. After this meeting, the Defendant called A. again on her sister’s phone telling her she has to go out. Next time when they met, he picked her up around 40 meters near her house; he came with his car, \_\_\_\_\_ in colour and took her to his house in the \_\_\_\_\_.<sup>160</sup> A. described it as two-storey house, the first floor was rented by a family and his apartment was in second floor. There were three rooms, a kitchen, a bathroom and a corridor. A. and the Defendant stayed in kitchen; she had a juice, they were talking and then the Defendant said to her “come to the room.” A. said “no, I don’t want to” and the Defendant answered “I don’t care.” A. stated she was afraid and she was looking at him; he would frown, he was strange, and she was alone there.<sup>161</sup>

203. A. went to the room where only one bed, one table and two or three mattresses were. The Defendant told her to take her clothes off; she took off her clothes and lay down on the bed. The Defendant was touching her, she didn’t allow him to kiss her in the mouth, and she felt disgusting; she only stayed there lying. Then they had sexual intercourse, the Defendant was above her, he penetrated, the witness tried to push him away, she held his upper part of the body, and saying “go away.” He didn’t stop until he finished. Everything lasted for fifteen minutes. Then she took shower and the Defendant did the same, she put her clothes on and then the Defendant drove her home.<sup>162</sup>

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<sup>158</sup> Minutes of Main Trial hearing on 16 October 2014, pages 27 and 28.

<sup>159</sup> Minutes of Main Trial hearing on 16 October 2014, page 29.

<sup>160</sup> Minutes of Main Trial hearing on 16 October 2014, page 29.

<sup>161</sup> Minutes of Main Trial hearing on 16 October 2014, pages 29 and 30.

<sup>162</sup> Minutes of Main Trial hearing on 16 October 2014, pages 31 and 32.

204. Before he drove her home he gave her 50 euros. A. stated she didn't want to take the money but he forced her and put the money in her pocket.<sup>163</sup>
205. After this event they didn't meet for some time because her family would not allow her to go out, they would ask her where she was going. The Defendant called her next day but she didn't answer. Then the Defendant said "why didn't you answer my call" and "you must answer whenever I call you".
206. They met after a week later; they had coffee at cafeteria next to the building for about 30 minutes, it was during his break time.
207. From that time they met only in his house in the north. He usually picked her up at the same location as before and took her to his house in the . The witness told him she didn't want to go out with him; she didn't want to be seen with him. And the Defendant told her "okay, I have a house" and when the witness said "people will see me with you" he answered "just bow your head." And the witness stated that until they crossed the her head would be lowered down.<sup>164</sup> She was in his house many times; four times per week. Most of the times they had sex, sometimes when A. didn't want to have it; they just stayed in the house for a while and then he drove her back home.<sup>165</sup> The relationship between them lasted for one year. When she was in his house, the Defendant gave her small amounts of 10, 20 euros, but not every time.<sup>166</sup>
208. A. stated that in the beginning she had sex with the Defendant with her own will.<sup>167</sup> Six months later,<sup>168</sup> when she told the Defendant she wanted to separate with him, the Defendant said "okay, just return me the money I gave you." She couldn't afford to give him the money and he was saying "okay, if you can't give me the money then you will come when I tell you to come and when you are done with returning this money you will come three times a day."<sup>169</sup> The Defendant frightened her by saying he would come to her house to disgrace her and kill her family members, brothers.<sup>170</sup> When A. told him "I don't want to be with you any longer" the Defendant said "you don't understand. From

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<sup>163</sup> Minutes of Main Trial hearing on 16 October 2014, page 33.

<sup>164</sup> Minutes of Main Trial hearing on 16 October 2014, page 35.

<sup>165</sup> Minutes of Main Trial hearing on 16 October 2014, pages 35 and 36.

<sup>166</sup> Minutes of Main Trial hearing on 16 October 2014, pages 19 and 36.

<sup>167</sup> Minutes of Main Trial hearing on 16 October 2014, pages 7 and 12.

<sup>168</sup> Minutes of Main Trial hearing on 16 October 2014, page 38

<sup>169</sup> Minutes of Main Trial hearing on 16 October 2014, page 8.

<sup>170</sup> Minutes of Main Trial hearing on 16 October 2014, pages 10 and 17.



the day I first saw you, I will never leave you. I will think twice when you get married if I will let you go or not.” And when A. told him “maybe I will not get married in ten years,” he said “you will be with me for ten years.”<sup>171</sup>

209. He called her every day and when she didn’t answer, he asked her why she didn’t answer. She told him “I cannot answer all the time. Even if you are my husband I cannot answer the phone all the time.” When she said this, the Defendant said “from now on I will behave differently with you” and also “if I ever ask you to go out and you refuse, you will have problems with me.” He said he would speak with her boyfriend and tell him about their relation. He said “I will disgrace you” and “I will come to your house inside, I am not afraid.”<sup>172</sup> He would also say “I want to see you sharp at o’clock and if you don’t show up I will come to collect you.”<sup>173</sup>

210. The statement of A.F. is corroborated by testimony of her sister, B.F.. On the hearing which held on 2 December 2014 she stated she was together with A. and S. and S. said “I have a friend, he is a good man and if you want, we can go out with him.” B. was 17 years old at that time and her sister A. 20 years old.<sup>174</sup> The Defendant took them to and this was the first time she gave her phone number to Defendant.<sup>175</sup>

211. She also stated that her sister A. had a relationship with the Defendant for a year; she was not with him by her will; after they had their first date, he would not let her go. She was together with A. in the Defendant’s house twice a week. The Defendant gave her sister money; its purpose was for sexual relations.<sup>176</sup>

212. When she heard that A. was in love affair with the Defendant, she discussed with A. and A. told her she was not able to break up with him because he was saying to her “either bring back the money to me or else...”<sup>177</sup> B. asked A. to break up with the Defendant but she said “I don’t dare.”<sup>178</sup>

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<sup>171</sup> Minutes of Main Trial hearing on 16 October 2014, page 38.

<sup>172</sup> Minutes of Main Trial hearing on 16 October 2014, pages 33 and 34.

<sup>173</sup> Minutes of Main Trial hearing on 16 October 2014, page 20.

<sup>174</sup> Minutes of Main Trial hearing on 2 December 2014, page 4.

<sup>175</sup> Minutes of Main Trial hearing on 2 December 2014, page 9.

<sup>176</sup> Minutes of Main Trial hearing on 2 December 2014, page 5.

<sup>177</sup> Minutes of Main Trial hearing on 2 December 2014, page 9.

<sup>178</sup> Minutes of Main Trial hearing on 2 December 2014, page 10.

213. It was B.'s testimony that the Defendant contacted her sister through her phone. He would call B. and asked her to pass her sister on the phone.<sup>179</sup>
214. B. stated that A. wanted to stop her relation with the Defendant approximately after 6 months; B. was 17 years old at that time.<sup>180</sup> And A. couldn't stop because the Defendant threatened her by saying "either you come, or I will come to your family and I am going to put you in shame and kill your brothers."<sup>181</sup>
215. B. witnessed when A. and the Defendant went to another room, and A. told the Defendant "I want to split with you," while she was staying in the kitchen And the Defendant said "No. You should never split up with me or you should give me the 900 euros back, or I will come to your house. I will tell your family." And it was A. who told also her that the Defendant said to her "if you don't go out with me, I will come to your house; I will kill your brothers."<sup>182</sup>
216. B. stated also that A. had sex with the Defendant for the first time with her consent. She testified her sister didn't know anything and she was deceived.<sup>183</sup>
217. For the Court is important the fact that the statements given by A.F. during the investigation stage, in their most essential points, don't contradict her statement given during the main trial session. She gave the statement to the Police on 4 June 2013. She stated she met the Defendant through S., they went to the restaurant in and the witness gave him her sister's phone number. She started sexual relation with him and the Defendant gave her money. She wanted to stop the relation but the Defendant told her that she had to return the money he had given to her; that he would tell to everyone and he would also come in her house.<sup>184</sup>
218. A.F. gave the statement to the Prosecutor on 13 August 2013. She stated that she met the Defendant through S. and that she gave him her sister's phone number. She also stated that they started sexual relation and the Defendant gave her money. She used to continue with him in order to return him the money, and when she wanted to stop he said "only under my terms, to return me 900 euros." He calculated on his own that she owes

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<sup>179</sup> Minutes of Main Trial hearing on 2 December 2014, page 7.

<sup>180</sup> Minutes of Main Trial hearing on 2 December 2014, page 15.

<sup>181</sup> Minutes of Main Trial hearing on 2 December 2014, page 6.

<sup>182</sup> Minutes of Main Trial hearing on 2 December 2014, page 16.

<sup>183</sup> Minutes of Main Trial hearing on 2 December 2014, page 12.

<sup>184</sup> Record of the injured-Victim Interview, binder 1, pages 126 and 127.

him 900 euros and when she didn't want to go with him, he said that he would come to her house, that he would tell everyone, everywhere at Facebook. And when the witness said to him that she would be cleaning toilets, but she would return the money, he said "if you want to work come to me and I will give you 5 euros for a night. And you will do as I say." He also said to her "either you pay me all the money in cash or I will never let you free."<sup>185</sup>

219. The Defendant stated during the Main Trial hearing on 28 January 2015 that A. was introduced to him through S. on . S. called him and then he met with S., A. and her younger sister B.. They went together to .<sup>186</sup>

220. After this meeting he met with A. every day. They had sexual intercourse for the first time three days later. They were in his house in the and they had sexual intercourse always in his house. The Defendant stated he never had sex with her without her will. Sometimes she refused and the Defendant deemed this as normal since they were together for a long time. They were very close; they were like husband and wife without being married.<sup>187</sup>

221. At the beginning for first three months nobody was present when they had sexual intercourse. Then A. reconciled with her lover and she would take her younger sister B. with her in order not to get exposed and for others not to find out that she was with someone else. When they were together, B. would stay in another room watching TV.<sup>188</sup>

222. The Defendant had A.'s phone number since she gave it to him. He had also her sister B.'s phone number.<sup>189</sup>

223. The Defendant stated that A. never asked him to end the relationship. They were together until . She was with him willingly. They talked over the phone and they would agree to go out. A. usually called him around o'clock when she would wake up, she would give him a ring and he would call her.<sup>190</sup>

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<sup>185</sup> Record of the injured-Victim Interview, binder 1, pages 133 and 134.

<sup>186</sup> Minutes of Main Trial hearing on 28 January 2015, page 15.

<sup>187</sup> Minutes of Main Trial hearing on 28 January 2015, page 16.

<sup>188</sup> Minutes of Main Trial hearing on 28 January 2015, page 17.

<sup>189</sup> Minutes of Main Trial hearing on 28 January 2015, page 16.

<sup>190</sup> Minutes of Main Trial hearing on 28 January 2015, pages 17 and 18.

224. The Defendant stated that he gave A. for the first time 50 euros for safekeeping. He doesn't know for what she spent this money but after two or three days later she brought three shirts to him as a present. He stated he had never asked A. to return the money.<sup>191</sup>
225. When asked by Prosecutor the Defendant stated that he gave A. 50 euros on every first day in the month, when he would receive a salary. He gave her the money because she liked to eat at the Restaurant “ ” near the high school her sister attended. He stated he gave money her, so both of them could go and have coffee.<sup>192</sup>
226. During the investigation stage the Defendant gave statement to the Prosecutor on 3 June 2013. Regarding the events that relates to A. he stated that S. told him to go and meet her friend who was divorced and broke up with her boyfriend. He stated he dated A. from to . They met almost every day; then she got back with her boyfriend and then they rarely dated. He gave her money, 10 – 20 euros but not for having sex. He never threatened her; he didn't ask to return the money he had given to her. She took B. with her so that her boyfriend would not suspect anything. He stated he was with A. before and they met always with the consent of both of them.<sup>193</sup>
227. Based on all afore factual findings and presented evidence the Court considers as proven the fact that A. met the Defendant through S.T.. This was confirmed by A. and the Defendant.
228. Initially the witness stated she was 20 years old when she first met him.<sup>194</sup> Later on, she stated that she became 21 when she was in the relationship with the Defendant and that the relationship lasted for one year and stopped when the Defendant was arrested. According to this and the fact she was born on , she was 21, almost 22 years old when she started the relationship with the Defendant.<sup>195</sup> The Court does not consider the discrepancy in A.'s statement on how old she was when she met or when she started the relationship with the Defendant, as very decisive. In any case the witness was not minor when she met the Defendant for the first time. However, it's normal that some people can recall the exact dates of events that happened; the others cannot.

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<sup>191</sup> Minutes of Main Trial hearing on 28 January 2015, pages 17 and 18.

<sup>192</sup> Minutes of Main Trial hearing on 28 January 2015, page 19.

<sup>193</sup> Record of the Defendant hearing, binder 1, pages 54 and 55.

<sup>194</sup> Minutes of Main Trial hearing on 16 October 2014, page 9.

<sup>195</sup> Minutes of Main Trial hearing on 16 October 2014, page 37.

229. According to A.'s statement the relationship in total lasted one year. According to the Defendant's statement they met for the first time on \_\_\_\_\_ and they were together until \_\_\_\_\_. The Trial Panel does not consider this discrepancy as decisive since it's not crucial for the matter.
230. The Court finds as proven the fact that in the beginning A. had sexual intercourse with the Defendant with her own will. It was A.'s statement and the Defendant's, who stated that he never had sexual intercourse with A. against her will.
231. The fact that the Defendant gave money to A. is not disputable. A. stated that when she was in his house, the Defendant gave her small amounts of 10, 20 euros, but not every time. It was the Defendant's statement that he gave her 50 euros for the first time and then each month 50 euros when he received the salary.
232. A. stated in the court that the Defendant gave her 50 euros when she was at his house and they had sex for the first time. In her statement to the Police<sup>196</sup> she stated that he gave her 50 euros when they met for the first time in restaurant in \_\_\_\_\_, where they were together with S.. On the hearing on 8 December 2014 she explained this discrepancy and confirmed that the Defendant gave her 50 euros for the first time in his house not in \_\_\_\_\_.<sup>197</sup>
233. After six months A. wanted to stop the relationship with the Defendant. It was A.'s evidence that she told the Defendant she wanted to separate with him. The Defendant denied that, by explaining that she could stop the relationship whenever she wanted as she left her husband after 3 months and 1 week of marriage. The Trial Panel finds as proven that fact since B., A.'s sister was present most of the occasions when A. was in his house. B. also witnessed when A. told the Defendant that she wanted to split with him and the Defendant replied by saying "No. You should never split up with me or you should give me the 900 euros back, or I will come to your house. I will tell your family."<sup>198</sup>
234. Finally, the Trial Panel finds as proven also the fact that after A. told the Defendant she wanted to split with him she was forced to continue to have sexual intercourse with him. Although the Defendant denied such allegations, the Court considers the statement

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<sup>196</sup> Record of the injured-Victim Interview, binder 1, page 126.

<sup>197</sup> Minutes of Main Trial hearing on 8 December 2014, page 12.

<sup>198</sup> See point 215.

given by A.F. during the Main Trial hearings on 10 November 2014 and 8 December 2014 as credible. She gave a detailed account of the events how the Defendant threatened her and forced her to continue with the relationship; her testimonies regarding the threats are consistent.

235. The existence of those threats were confirmed also by B. who witnessed what the Defendant replied when A. told him she would split with him. B. was many times with A. when A. was together with the Defendant in his house; this was also the Defendant's statement. B. knew that A. had sexual intercourse with the Defendant; she asked A. to break up with him and A. answered her "I don't dare." B. testified also what A. told her about the Defendant's response when she wanted to split with him.

236. Regarding the phone number that belongs to B., A. stated she didn't give her sister the Sim Card neither is not true that the Defendant gave her this Sim Card. A. explained that her sister B. bought it by herself and it's not true that it used to be K. Sim Card.<sup>199</sup>

237. Regarding the discrepancies in the statements of witness B. and A. when they were together with the Defendant in \_\_\_\_\_, A. stated that this meeting happened after she has already been in the Defendant's house in the \_\_\_\_\_.<sup>200</sup> The Court considers A.'s statement as correct since she stated that B. in the beginning was not always present when she met with the Defendant.

238. Based on all above facts the Court finds as proven beyond reasonable doubt that from the \_\_\_\_\_ of \_\_\_\_\_ until \_\_\_\_\_ at his house located at \_\_\_\_\_ in the \_\_\_\_\_ the Defendant forced the injured party A.F. to continue to have for several times sexual intercourse without her consent in the manner, when she told the Defendant she wanted to stop having sexual intercourse with him, the Defendant threatened her to spread out the word that she had had sexual intercourse with him so her family would find out this, he would come to her house, disgrace her, tells her brothers about their relationship. Although both, A. and her sister B. stated so, the Trial Panel considers as not proven that the Defendant threatened A. by telling her that he would kill her brothers.

239. Therefore, the Trial Panel re-qualified the original charge of Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (3) of the CCK and

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<sup>199</sup> Minutes of Main Trial hearing on 8 December 2014, page 13.

<sup>200</sup> Minutes of Main Trial hearing on 8 December 2014, page 13.

convicted the Defendant of committing the criminal offense of Rape, contrary to Article 193, Paragraph (1) of the CCK.

## **I. Count 9**

240. Under Count 9 the Defendant is indicted that at unknown time since until at the location as in the count 1 of the enacting clause with the purpose of unlawful financial benefit for himself, he threatened injured party A.F. to commit an action, so initially, after he gave the injured party time after time money in amount of 20 – 50 euros and when the injured party told him that she wanted to stop the contact with him, the Defendant seriously threatened her and forced her to commit sexual act with him or return 900 euros, when the injured party asked from him to give her some two months until she finds a job, he tells her “one night of sex with me and 5 euros will be deducted from your debt”, thus committed criminal offense of Facilitating or compelling prostitution contrary to Article 241, Paragraph (3) with reference to Article 228, Paragraph (8) of the CCRK.

241. It was the A.’s evidence during the Main Trial hearing that the Defendant gave her 50 euros when they had sexual intercourse for the first time. Later on he gave her small amounts of 10, 20 euros when she was in his house, but not every time.<sup>201</sup>

242. The statement by A. is corroborated by B.’s statement.<sup>202</sup>

243. It was the Defendant’s testimony that he gave her 50 euros when they had sexual intercourse for the first time and later on he gave her each month 50 euros when he received a salary.<sup>203</sup>

244. The Defendant stated during the Main Trial hearing on 28 January 2015 that he never used any violence against anyone. He never asked from A. the amount of 900 euros and he never said to her that one night of sex with him for 5 euros will be deduced from the

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<sup>201</sup> See point 207.

<sup>202</sup> See point 211.

<sup>203</sup> See point 225.

debt. He stated also that he never forced A. to accept the money; he gave the money to her for her own needs.<sup>204</sup>

245. The Trial Panel considers that the threats, when the Defendant asked from A. to return 900 euros were used by him to force A. to continue with their sexual relations and as such were already considered under previous count.

246. It could be a question of concurrences of two criminal offences, when a perpetrator with one or more acts commits several criminal offences.

247. However, the Trial Panel based on all afore factual findings, presented evidence and factual description as presented in enacting clause of the Indictment cannot find as proven that the Defendant with such acts committed also the act with which he has been charged under count 9. Therefore, the Trial Panel acquitted him pursuant to Article 364, Paragraph (1) Sub-Paragraph (1.3) of the CPC.

## VII. Legal Reasoning

### A. Count 1

248. The Defendant committed the criminal offence of *Sexual Abuse of Persons under the age of 16 years*, contrary to Article 198, Paragraph (1) of CCK. This Article reads:

*(1) Whoever subjects a person under the age of sixteen years to a sexual act shall be punished by imprisonment of one to ten years [...]*

249. The objective elements of the criminal offense are met. The Defendant had several times sexual intercourse with S.N. in his house in \_\_\_\_\_ when S.N. was less than sixteen years old.

250. Although the Defendant gave the exact date when he had sexual intercourse with S. for the first time, it has been proven based on evidence that he had sexual intercourse with her before she reached the age of 16 years.

251. S.N. was 15 years old when she met the Defendant for the first time. She was introduced to him through her friend S.T.. The Defendant knew S.T. from before; she

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<sup>204</sup> Minutes of Main Trial hearing on 28 January 2015, page 21.



was 11 years old when he saw her with her sister N. and he knew she was attending a primary school.

252. The Defendant knew that S. and S. are of the same ages and he knew that S. was 15 years old. He asked her and S. told him her age. When he found out her age, he said “that even kids know everything today.”

253. The subjective elements of the criminal offense are met. The Defendant is criminally liable for his actions; he is mentally competent and he has committed the criminal offense intentionally. He didn’t keep company with male friends or colleagues, he kept company with young women; he didn’t mind if they had boyfriends, even if they were engaged; he dated them with intention to have sexual intercourse with them; also with two of them at the same time.

254. Furthermore, the Court emphasizes that the Defendant did not need to be certain whether S. was under 16 years of age, it is sufficient that he assumed that such circumstance is possible. The facts as described in previous points, the age of the Defendant and the age difference between the Defendant and S.N. are circumstances based on which the Defendant knew or at least assumed that S.N. was under 16 of age but he decided to commit the act.

255. There are no circumstances which would exclude his criminal liability pursuant Article 25 and/or Article 26 of the CCRK.

256. The Defendant’s allegation that S. and her friend S. were the ones, who proposed to have sexual intercourse with him, is not of significance and thus does not exclude his criminal liability.

257. Finally, because of circumstances explained above, the Defendant’s criminal liability is also not excluded based on his allegation that S.N. from the looks of her breast and buttock looked like 20.

258. The Trial Panel finds that the CCK had a special provision only when defining punishment of concurrent criminal offenses and didn’t envisage special provision regarding punishment of criminal offense in continuation as the CCRK does.

259. The Trial Panel finds that the criminal offense as the Defendant is convicted of, is constituted of several same and identical acts, which were committed in period between and by the Defendant against the same person [S.N.]. He took the advantage of

the same situation and same time of relationship; all offenses were committed on the same place [his house in ]; and with the same intent [to have sexual intercourse].

260. The Trial Panel considers that in the case of repeated rape [in this case sexual abuse] of the same victim by the same perpetrator, the construction of criminal offense in continuation is possible, if the act was executed within the frame of one created state, and if existence of all conditions of more identical acts, according to life an logical value, connect in unique criminal activity.

261. According to theory and court practice, in the repetition of intercourse by the same perpetrator on the same victim, on the same occasion, and when single intercourses are performed as time separated events, there exists only one criminal act of rape [sexual abuse in this case], and not a concurrence.

262. The Trial Panel considers also that such interpretation shall be applied according to Article 3, Paragraph (2) of the CCRK since it is most favourable for the Defendant.

## **B. Count 2**

263. The Defendant committed the criminal offence of *Attempted Facilitating Prostitution*, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK. This Article reads:

*(1)Whoever knowingly recruits organizes or assists another person or provides premises to another person for the purpose of prostitution shall be punished by a fine or by imprisonment of up to three years.*

*[...] (4) When the offense provided for in paragraph 1, 2 or 3 of the present article is committed against the person between the ages of sixteen and eighteen years, the perpetrator shall be punished by imprisonment of one to ten years. [...]*

264. The objective elements of the criminal offense are met. The Defendant proposed S.N. to have sexual intercourse with his brother, with his friend from and with a Serb.

265. Although the Defendant denied that he offered S.N. to those persons, S.N. described in details the situation when he stopped a car in which his friend from

was and said to him “do you like this one?” As regards to a Serb and his brother, the Defendant was talking with them by phone and then told S. about the conversation.

266. The Defendant acted as mediator; he spoke with those persons and he was clear that ‘to go out with him’ was meant as ‘to have sex with him.’ He was also clear when said to S.N. that such person would give her 50 euros and that she would have to give him 25 euros.

267. S.N. was 16 years old when the Defendant proposed her to different persons and he knew her age. Since they split before she reached 18 years of age the time of commission the criminal act corresponds to that period.

268. The subjective elements of the criminal offense are met. The Defendant is criminally liable for his actions; he is mentally competent and he has intentionally taken actions toward the commission of criminal offense.

269. Since S.N. didn’t accept to have sexual intercourse with persons that Defendant proposed her, the act was not completed.

270. There are no circumstances which would exclude his criminal liability pursuant Article 25 and/or Article 26 of the CCRK.

### **C. Count 3**

271. The Court found the Defendant not guilty and not criminal liable for the criminal offence of *Sexual Assault*, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK.

272. The Court found it proven that the Defendant knew S.T.. He got to know her through her sister N.T..

273. Based on evidence administrated during the main trial the Court finds it proven that S. was 15 years old when the Defendant gave her a ring for birthday and that they split in the of ; this also proves they had relationship.

274. On the photos which were taken on , the Defendant and S.T. can be seen; when kissing each other; naked and in erotically poses. Those photos lead the Court to

conclusion that they had sexual intercourse earlier and not when S. was 16 years and five months old as alleged by the Defendant.

275. It was S.N. evidence that the Defendant started touching S. when they were together in the car; that the Defendant knew what age S. was and that the Defendant had sexual relations with S.. And S.'s statement was the only evidence presented during the main trial.

276. Based on such evidence the Court cannot find it proven beyond reasonable doubt, that the Defendant committed criminal offense as described in enacting clause. There were not enough evidence that the Defendant touched S. with sexual intent while she was sitting in the co-driver seat, whereas the S.N. was sitting in the back seat.

277. Therefore the elements of Article 195 are not met and the Defendant is acquitted from this charge.

#### **D. Count 4**

278. The Court found the Defendant not guilty and not criminal liable for criminal offence of *Sexual Abuse of Persons under the age of 16 years*, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK.

279. The Court found it proven that the Defendant had for several times sexual intercourse with S.T..

280. Upon the photo<sup>205</sup> the Court found it proven that S. was drinking beer, alcoholic one not non-alcoholic.

281. Upon presented evidence during the evidentiary proceeding the Court didn't find it proven beyond reasonable doubt, that on \_\_\_\_\_ in the \_\_\_\_\_ hours the Defendant committed the act as arises from factual description under count 4.

282. Therefore, the Court found that the elements of Article 198 are not met and had to acquit the Defendant from this charge.

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<sup>205</sup> List of evidence no. 13; copies from the CD, page 13

### **E. Count 5**

283. The Court found the Defendant not guilty and not criminal liable for the criminal offence of *Rape*, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK.

284. The Court found it proven that the Defendant had for several times sexual intercourse with S.T..

285. Upon the photo<sup>206</sup> the Court found it proven that S. was drinking beer, alcoholic one not non-alcoholic.

286. Based on birth certificate the Court found it proven that S.T. was 16 years old on and almost 18 years old.

287. Upon presented evidence during the evidentiary proceeding the Court didn't find it proven beyond reasonable doubt, that at unknown time and date in until the Defendant forced the S.T. to have sexual intercourse without her consent and that when she refused, the Defendant intentionally caused her intoxication with alcohol, showed her a firearm by saying her: "No one can do anything to me, neither nor the police because I have all of them in my pocket."

288. It is also not proven beyond reasonable doubt that S.T. because of this when she went to her house attempted to commit suicide drinking sedative pills and "Domestos" and as a result she was laid in the hospital. Furthermore, as it has been explained in details in this reasoning earlier, this happened in not in .

289. Therefore, the Court found that the elements of Article 193 are not met and had to acquit the Defendant from this charge.

### **F. Count 6**

290. The Court found the Defendant not guilty and not criminal liable for the criminal offence of *Rape*, contrary to Article 193, Paragraph (3) Sub-Paragraph (4) of the CCK.

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<sup>206</sup> List of evidence no. 13; copies from the CD, page 13

291. The Court found it proven that the Defendant and N. got to know each other when N. came to a French man to agree on providing cleaning services and that later on, when she started working for R. A., they saw each other almost every day since the Defendant was his driver.
292. The Court found also it proven that N. and the Defendant were in relationship at least for 3 to 4 years and that they had for several times sexual intercourse in his house.
293. Based on administrated evidence during the main trial and based on statements given by N., the Court didn't find it proven beyond reasonable doubt that the Defendant in around                    hrs at his house in the                    got her drunk with some suspicious substances, when prepared a coffee for her, and that when she started to drink it she felt dizzy and then she lost consciousness.
294. It is also not proven beyond reasonable doubt that the Defendant committed sexual act with N. while she was unconsciousness and that he recorded it with camera.
295. Therefore, the Court found that the elements of Article 193 are not met and had to acquit the Defendant from this charge.

#### **G. Count 7**

296. The Defendant committed the criminal offence of *Attempted Sexual Assault*, contrary to Article 195, Paragraph (2) Subparagraph (3) in conjunction with Article 20 of the CCK. This Article reads:
- [...] (2) Whoever touches another person for a sexual purpose or induces another person to touch the perpetrator or a third person for a sexual purpose:*
- [...] 3) By exploiting a situation in which such other person is unprotected and where his or her security is in danger; shall be punished by imprisonment of one to seven years.*
- [...]*
297. The objective elements of the criminal offense are met. The Court found it proven the following facts.
298. A.L. suffered from skin illness; she had acne on her face and the Defendant proposed and took her to a skin specialist in                    .

299. It was at the \_\_\_\_\_ of \_\_\_\_\_ when he collected her in the \_\_\_\_\_ with his vehicle and drove her to the doctor in \_\_\_\_\_.
300. The Defendant knew the age of A.; he stated himself that at that time was the end of the school and A. was in the first grade. As she didn't understand \_\_\_\_\_, the Defendant was present when the doctor asked A. about her personal data.
301. A. agreed with friend H.P. that she would come with her; they waited for the Defendant but he told H. not to accompany them. So A. went alone with the Defendant to \_\_\_\_\_.
302. A. is an \_\_\_\_\_ ethnicity; she was brought in \_\_\_\_\_; she was aware about the conditions between \_\_\_\_\_ and \_\_\_\_\_; she was afraid of \_\_\_\_\_; furthermore she was afraid also of Defendant since she didn't know him well and he was much older than she.
303. After the doctor examined A., she prescribed A. 3 to 4 types of medicine. The Defendant took A. and looked for medicines; but couldn't find all of them in one pharmacy.
304. On the way back; still in the \_\_\_\_\_; which place was unknown to A., the Defendant stopped the car near to a petrol station and proposed her to have sexual intercourse with him in exchange for buying the medicines. He began to touch her on her shoulder and tried to kiss her. A. turned her head on the other side, started to scream and cry; then fled from the vehicle, run to the nearest \_\_\_\_\_.
305. On the subjective side the Defendant was fully aware of his actions and he intended to do so. The Defendant is criminally liable for his actions; he is mentally competent and he has intentionally taken actions toward the commission of criminal offense.
306. It was Defendant's *modus operandi* meeting minors and young women, taking them to lunch or dinner, giving them different amounts of money, offering them various services, i.e. giving him or her a drive, finding a job, taking to the doctor, etc. Those women were minors or very young, still attending the school, unemployed, without money, dependent upon support of their families.
307. It was not the Defendant intention to create a mutual relationship with a woman; he didn't mind if a woman had a boyfriend or was engaged; his intention was to get a woman depended upon him and to have sexual intercourse.

308. The reason not to take H. with them to the doctor was to be alone with A.. By buying medicines his intent was to have sexual intercourse with her; not in the car but in his house which was also in the .
309. Since A. didn't accept to have sexual intercourse with the Defendant; she didn't allowed him to touch and kiss her; she fled from the vehicle, the act was not completed.
310. There are no circumstances which would exclude his criminal liability pursuant Article 25 and/or Article 26 of the CCRK.

#### **H. Count 8**

311. The Defendant committed the criminal offence of *Rape*, contrary to Article 193, Paragraph (1) of CCK. The Article reads:
- (1) Whoever subjects another person to a sexual act without such person's consent shall be punished by imprisonment of two to ten years. [...]*
312. The objective elements of the criminal offense are met. The Court found it proven the following facts as presented below.
313. A. met the Defendant through S.T. and for the first time when they met the Defendant took both of them and A.'s sister B. to restaurant in .
314. For the first time the Defendant and A. had sexual intercourse in his house; the Defendant was touching her, she didn't allowed to kiss her in the mouth as she felt disgusting; she only stayed there lying; the Defendant penetrated; A. tried to push him away by hands and saying "go away." The Defendant gave her 50 euros. Later on, they had sexual intercourse for several times; always in his house. Since A. didn't want the people to see her with the Defendant while driving her to his house the Defendant told her "just bow your head." She was in house four times per week; most of the times they had sexual intercourse, sometimes A. didn't want; so they just stayed for a while and then he drove her back. When she was in his house, the Defendant gave her small amounts of 10, 20 euros but not every time.
315. Nevertheless, A. was with the Defendant in the beginning willingly. After six months she told the Defendant she wanted to separate with him. The Defendant agreed under



condition that she would return him the money he had given to her. She didn't have money; so the Defendant told her that in such case she had to come in order to return the money, even three times per day. He called her every day and in case she didn't answer he said to her what things he would do to her.<sup>207</sup>

316. It was A.'s sister B. who knew that A. and the Defendant had sexual intercourse; she was not in the same room but A. took her when she went to his house and B. knew that A. was having sexual intercourse with the Defendant. B. asked A. to break up with him and she witnessed how A. told him that she wanted to split with him; and B. heard the Defendant when he requested 900 euros to return or he would come to their house and told her family.

317. A. was forced to have sexual intercourse with the Defendant; to continue without her consent. First of all she didn't have money that the Defendant asked to return. Secondly, she was afraid that the Defendant would realize what he was saying to her. He was telling her he would speak with her boyfriend; told him about their relation; he would come to her house to disgrace her and was saying the following "if I ever ask you to go out and you refuse, you will have problems with me"; "I will disgrace you"; "I will come to your house inside, I am not afraid"; I want to see you sharp at o'clock and if you don't show up I will come to collect you"; and "No. You should never split up with me or you should give me the 900 euros back, or I will come to your house. I will tell your family."

318. Those words represent threats based on which A. was coerced to adopt a certain behaviour; the threats were serious and because of them A. continued to have sexual intercourse with the Defendant. With such threats the Defendant clearly expressed what kind of harm would A. suffered if she wouldn't continue to have sexual intercourse with him. A. was very well aware of such threats. The realization of such threats would effect on A. herself as well on her family members.

319. All threats could be realized; A. had all grounds to believe that the Defendant would realize what he was saying to her; and thus the threats are considered as serious. It's not irrelevant whether the Defendant would actually do what he had said to her. The Panel considers that realization of such threats could be expected since in case of S.N. he had no hesitations to come to her mother and to her house.

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<sup>207</sup> See point 209.

320. And finally, the threats were serious because the threats were adequate to produce the goal of such threats in proportion to the harm that being threatened. Although nowadays, females in this society are very frequently well-educated and considered as equal members in the families with the freedom to organize and live modern westernized lifestyles, many customs and traditions are still alive. Despite legal equality and acceptance, there are many families which are still a patriarchal society based on male predominance where women are placed in subordinate roles. If the Defendant would realize the threats and would come to A.'s family the brothers would protect her since the Defendant was such an old person; brothers "would make lot of trouble out of this" and "things would turn bad" as B. stated.<sup>208</sup>
321. On the subjective side the Defendant was fully aware of his actions and he intended to do so. The Defendant is criminally liable for his actions; he is mentally competent and he has intentionally taken actions toward the commission of criminal offense.
322. The Defendant's acts completely match with his *modus operandi*. A. was young woman, divorced, unemployed without money, dependent on the support of her family. He paid her a lunch; he gave her small amounts of 10, 20 euros or even 50 euros. Although he said they were like husband and wife without being married, he didn't intend to create a serious relationship with her. His intend was to have sexual intercourse; he didn't mind if A. had a boyfriend.
323. There are no circumstances which would exclude his criminal liability pursuant Article 25 and/or Article 26 of the CCRK.
324. As already explained under count 1 the Trial Panel finds that the CCK had a special provision only when defining punishment of concurrent criminal offenses and didn't envisage special provision regarding punishment of criminal offense in continuation as the CCRK does.
325. The Trial Panel finds that the criminal offense of rape, as the Defendant is convicted of, is constituted of several same and identical acts, which were committed in period between the of until by the Defendant against the same person [A.F. ]. He took the advantage of the same situation and same time of relationship; all

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<sup>208</sup> Minutes of Main Trial hearing on 2 December 2014, page 14.

offenses were committed on the same place [his house in ]; and with the same intent [to have sexual intercourse].

326. The Trial Panel considers that in the case of repeated rape of the same victim by the same perpetrator, the construction of criminal offense in continuation is possible, if the act was executed within the frame of one created state, and if existence of all conditions of more identical acts, according to life an logical value, connect in unique criminal activity.

327. According to theory and court practice, in the repetition of intercourse by the same perpetrator on the same victim, on the same occasion, and when single intercourses are performed as time separated events, there exists only one criminal act of rape, and not a concurrence.

328. The Trial panel is aware that the criminal offense started at the of when the CCK was in forced, continued and finished on when already the CCRK was in effect. Although the criminal offense of rape was actually finished when the last act, which is included in criminal offense of rape in continuation, was performed, the Trial Panel considers that according to Article 3, Paragraph (2) of the CCRK the provisions of CCK shall be applied as the law in effect at the time a criminal offense was committed is most favourable for the Defendant.

## **I. Count 9**

329. The Court found the Defendant not guilty and not criminal liable for criminal offence of *Facilitating or compelling prostitution* contrary to Article 241, Paragraph (3) with reference to Article 228, Paragraph (8) of the CCRK.

330. The Court found it proven that the Defendant by threatening A.F. had several times sexual intercourse with her without her consent.

331. In the present case the Trial Panel finds that could arise a question of concurrence. The criminal law system in Kosovo applies the rules of theory of concurrence; real and ideal concurrence. The CPC does not have any provisions regarding this matter except when determining the rules on punishment if a perpetrator, by one or more acts, commits

several criminal offenses for which he or she is tried at the same time as stipulated in Article 80 of the CCRK.

332. The Trial Panel finds that acts as presented in factual description and evidence which establish the key facts, don't support objective elements of criminal offence Facilitating or compelling prostitution. Furthermore, the acts of threat have already been considered as objective elements of criminal offence under count 8.

333. Therefore, the Court found that the elements of Article 241 are not met and had to acquit the Defendant from this charge.

### **VIII. Determination of the Punishment**

334. According to Article 73 of the CCRK and similarly Article 64 of the CCK the Court shall determine the punishment of a criminal offense within the limits provided by law for such criminal offense, taking into consideration the purpose of the punishment, the principles set out in law and the mitigating or aggravating factors relating to the specific offense or punishment, 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, and the personal circumstances of the perpetrator and his behaviour after committing a criminal offense. The punishment shall be proportionate to the gravity of the offense and the conduct and circumstances of the offender.

335. The CCRK in Paragraphs (2) and (3) of Article 74 enumerates aggravating and mitigating circumstances which shall be considered when determining the punishment but expressly states that such set up circumstances are non-exhaustive. The CCK does not expressly restrict what can be considered as an aggravating or mitigating factor.

336. Based on this, when determining the punishment, the Trial Panel considered the following aggravating circumstances. The Defendant was a mature, adult person of nearly 60 years old, actually 57, 58 or 59, while the victims were of 15 to 21 years old when the criminal acts were committed; there was a substantial age-difference between the Defendant and victims. Some of the victims were still attending a school; they were

unemployed, poor economic status. The Defendant with premeditation chose them; his intend was to have sexual intercourse with victims; he gave them different amounts of money. The duration of crimes took more than 3 years; as                      employee he acted towards victims in inappropriate manner during more than 3 years, showing no respect to the Code of Conduct which is applied in                      . He didn't show any remorse.

337. The Court didn't find particularly mitigating circumstances in favour of the Defendant, except the fact that the Defendant has no criminal record and that the first injured party S.N. who was more than 16 years old and was experienced when the criminal offenses were committed. However, the circumstances in which the criminal offenses were committed carry such a heavy weight that the Court could not find incentives to impose a lesser punishment.

338. Pursuant to Article 3, Paragraph (1) of the CCRK and similarly pursuant to Article 2, Paragraph (1) of CCK the law in effect at the time a criminal offense was committed shall be applied to the perpetrator.

339. The Defendant was convicted for criminal offenses under count 1, count 2, count 7 and count 8. He committed the criminal offenses when the applicable law was the CCK, which entered into force on 6 April 2004 under the name of Provisional Criminal Code of Kosovo and was amended on 6 November 2008 merely by changing its name to Criminal Code of Kosovo.

340. The new CCRK entered into force on 1 January 2013, therefore prior to the final decision in this case.

341. According to Article 20, Paragraph (3) of the CCK a person who attempts to commit a criminal offense shall be punished more leniently than the perpetrator, in accordance with Article 65, Paragraph (2) which determines that the punishment imposed for attempt shall be no more than three-quarters of the maximum punishment prescribed for the criminal offense.

342. Pursuant to Article 28, Paragraph (3) of the CCRK a person who attempts to commit a criminal offense, the punishment may be reduced. The Court may also impose a punishment below the limits provided for by the law or impose a lesser type of punishment when the conditions as set up in Article 75, Paragraph (1) are met.

343. Pursuant to Article 386, Paragraph (2) of the KCCP the Trial Panel is not bound to the provisions set out by the Prosecutor. In addition, Article 3, Paragraph (2) of the CCRK, as well Article 2, Paragraph (2) of CCK states that in the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply. The Trial Panel concluded that the substantive elements of all the offences, the Defendant was convicted for, were the same in CCK as well in CCRK.
344. Thereby, for each count the Trial Panel had to consider what provisions regarding the punishment and sentencing, if any, would have been more favourable for the Defendant.
345. For *Sexual Abuse of Persons under the age of 16 years*, in violation of Article 198, Paragraph (1) of the CCK (count 1) CCK foresees imprisonment of 1 to 10 years. Pursuant to Article 65, Paragraph (1) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 5 years of imprisonment.
346. The same criminal act is encompassed in CCRK in Article 235, Paragraph (1) Sub-Paragraph (1.1) in conjunction with Articles 230, Paragraph (1) and 228, Paragraph (1) which foresees imprisonment of five to 20 years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 9 years of imprisonment.
347. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant received when CCK and when CCRK would be applied the Trial Panel finds Article 198, Paragraph (1) of the CCK more favourable than Article 235, Paragraph (1) Sub-Paragraph (1.1) of the CCRK.
348. Based on this, the Defendant is sentenced to 5 years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
349. For *Attempted Facilitating Prostitution*, in violation of Articles 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK (count 2) CCK foresees imprisonment of 1 to 10 years. The maximum sentence for an attempt is punishable at 75% of the maximum sentence prescribed by the CCK. Pursuant to Article 65, Paragraph (1) and taking into consideration above aggravating and mitigating circumstances the

Trial Panel would sentence the Defendant for attempted criminal offense of facilitating prostitution to 3 years of imprisonment.

350. The same criminal act is encompassed in CCRK in Article 241, Paragraph (4) in conjunction with Paragraph (1) and Article 28 which foresees a punishment of fine and imprisonment of 1 to 10 years. Regarding the attempt there is no mandatory reduction in the maximum sentencing range; furthermore the Trial Panel did not find any reasons to reduce the punishment pursuant to Article 28, paragraph (3) and Article 75, Paragraph (1), Sub-Paragraph (1.1). Pursuant to Articles 73 and 74, Paragraphs (2) and (3) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 3 years of imprisonment and fine of 1000 euros.
351. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant receive when CCK and when CCRK would be applied the Trial Panel finds Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK more favourable than Article 241, Paragraph (4) in conjunction with Paragraph (1) and Article 28 of the CCRK.
352. Based on this, the Defendant is sentenced to 3 years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
353. For *Attempted Sexual Assault*, in violation of Article 195, Paragraph (2) Sub-Paragraph (3) in conjunction with Article 20 of the CCK (count 7) CCK foresees imprisonment of 1 to 7 years. The maximum sentence for an attempt is punishable at 75% of the maximum sentence prescribed by the CCK. Pursuant to Article 65, Paragraph (1) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant for attempted criminal offense of sexual assault to 3 years of imprisonment.
354. The same criminal act is encompassed in CCRK in Article 232, Paragraph (2) Sub-Paragraph (2.3) in conjunction with Article 28 which foresees a punishment of imprisonment of 1 to 7 years. Regarding the attempt there is no mandatory reduction in the maximum sentencing range; furthermore the Trial Panel did not find any reasons to reduce the punishment pursuant to Article 28, paragraph (3) and Article 75, Paragraph (1), Sub-Paragraph (1.1). Pursuant to Articles 73 and 74, Paragraphs (2) and (3) and

taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 3 years of imprisonment.

355. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant received when CCK and when CCRK would be applied the Trial Panel finds Article 195, Paragraph (2) Sub-Paragraph (3) in conjunction with Article 20 of the CCK to be applied pursuant to Article 3, Paragraph (1) of the CCRK and similarly Article 2, Paragraph (1) of the CCK.

356. Based on this, the Defendant is sentenced to 3 years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.

357. For *Rape*, in violation of Article 195, Paragraph (1) of the CCK (count 8) CCK foresees imprisonment of 2 to 10 years. Pursuant to Article 65, Paragraph (1) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 6 years of imprisonment.

358. The same criminal act is encompassed in CCRK in Article 230, Paragraph (2) which foresees a punishment of imprisonment of 3 to 10 years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) and taking into consideration above aggravating and mitigating circumstances the Trial Panel would sentence the Defendant to 7 years of imprisonment.

359. Considering punishments, carefully weighing aggravating and mitigating sentencing criteria foreseen separately in CCK and in CCRK as well imposed punishments that would the Defendant received when CCK and when CCRK would be applied the Trial Panel finds Article 195, Paragraph (1) of the CCK more favourable than 230, Paragraph (2) of the CCRK.

360. Based on this, the Defendant is sentenced to 6 years of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.

361. Pursuant to Article 71, Paragraph (2) Sub-Paragraph (2.2) of the CCK the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of 20 years. Therefore the range of the aggregated punishment is 17 to 20 years.

362. Pursuant to the rules of calculation of concurrent criminal offense pursuant to Article 80, Paragraph (2) Sub-Paragraph (2.2) of the CCRK, the aggregate punishment must be



higher than each individual punishment, but not as high as the sum of the prescribed punishments nor may it exceed a period of 25 years. Therefore the range of the aggregated punishment is 17 to 25 years.

363. Taking into account above provisions regarding the rules of concurrent criminal offenses the CCK are more favourable than the CCRK.

364. Considering and carefully weighed all general and special mitigating and aggravating circumstances the Trial Panel imposes and aggregate punishment of 14 years of imprisonment.

## **IX. Costs**

365. The decision on the costs as set out in the enacting clause is made pursuant to Article 453, Paragraphs (1) and (2) of the CPC.

## **X. Calculation of the Time Spent in Detention on Remand**

366. Pursuant to Article 365, Paragraph (1) Sub-Paragraph (1.5) of the CPC the time spent in detention on remand from 3 June 2013 until the judgment becomes final shall be credited against the punishment.

## **XI. Confiscation of Assets**

367. The Court orders that vehicles \_\_\_\_\_, \_\_\_\_\_ in colour identified with the registration plates \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ in colour identified with the registration plates \_\_\_\_\_ which were temporarily confiscated by Police shall be returned immediately upon the judgment in this case becoming final.

368. The vehicles were not listed in the Indictment in compliance with Article 241, paragraph (1), Sub-Paragraph (1.9) of the CPC.

## **XII. Property claims**

369. Pursuant to Articles 458, 459, 460 and 463, Paragraphs (1) and (2) of the CPC the Court rejected the property claims filed by witnesses R.A. and H.P. .

370. Pursuant to same articles the injured parties S.N. , N.T. and A.L. were instructed that they may pursue their property claims in civil litigation.

**LEGAL REMEDY:** A Defendant, his Defence counsel, the Prosecutor or Injured Parties have 15 days from service of this judgment right 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.

**BASIC COURT OF MITROVICĚ/MITROVICA**  
**P no. 42/14**  
**12 February 2015**

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Franciska FISER  
Presiding Trial Judge

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Jana Božović  
Recording Officer

Drafted in English, as an authorized language