

**IN THE NAME OF THE PEOPLE**

**THE SUPREME COURT OF KOSOVO** in the panel composed by EULEX Judge Elka Filcheva-Ermenkova presiding, EULEX Judge Willem Brouwer and the Supreme Court Judge Avdi Dinaj, members of the panel, with participation of EULEX Legal advisor Adnan Isufi, acting as recording officer, in the criminal proceeding against the defendants:

**B.G.**, father's name B., mother's name P.S., born on \*\*\*\*\* in \*\*\*\*\* , Former Yugoslav Republic of Macedonia (FYROM), male, residing in \*\*\*\*, main \*\*\*\*\* , former politician, widower and father of two children, university degree, Kosovo Serbian, sentenced in the first instance to four (4) years of imprisonment and accessory punishment of Prohibition from Exercising Public Administration or Public Service Functions for a period of two (2) years *as per* Judgment nr. P-200/10 of the Basic Court of Prishtinë/Priština dated 28 February 2013 for committing the criminal offences of Abuse of Official Position or Authority pursuant to Article 339 par 3 of the Criminal Code of Kosovo (CCK), as foreseen in Article 442 (1) of the Criminal Code of the Republic of Kosovo (CCRK-Law nr 04/L-082), Fraud in Office pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as foreseen in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK, (count 6), which was modified by the Judgment of the Court of Appeals PAKR 943/13, dated 25 August 2014, sentencing the defendant Branislav Grbič to three (3) years of imprisonment for criminal offence of Fraud in Office pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as foreseen in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK.

**N.V.**, father's name N., mother's name R.P., born on \*\*\*\*\* in Prishtinë/Priština, residing in Prishtinë/Priština, \*\*\*\*\* , former deputy Minister of Health until \*\*\*\*, having finished secondary school, married and father of one child, Kosovo Serbian,

sentenced to three (3) years and six (6) months of imprisonment and imposed accessory punishment of Prohibition from Exercising Public Administration or Public Services Functions for a period of two (2) years *as per* the Judgment nr P-200/2010 of the Basic Court of Prishtinë/Priština dated 28 February 2010 for committing the criminal offences of Abuse of Official Position or Authority pursuant to Article 339 par 3 of the CCK, as foreseen in Article 442 (1) of the CCRK, Fraud in Office pursuant to Article 341 (1) and (3) as read in conjunction with

Article 23 and Article 107 par 1 of the CCK, as foreseen in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK, (count 6), which was modified by the Judgment of the Court of Appeals PAKR 943/13, dated 25 August 2014, sentencing the defendant N.V. to three (3) years of imprisonment for criminal offence of Fraud in Office pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as foreseen in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK.

Acting upon the Request for Protection of Legality of the defence counsel B.T. on behalf of the defendant B.G., dated 21 October 2014, received by the Supreme Court of Kosovo on 11 October 2014, the Request for Protection of Legality of the defence counsel R.G. on behalf of the defendant N.V., dated 27 October 2014, received by the Supreme Court of Kosovo on 27 October 2014, and the Request for Protection of Legality filed by the defendant B.G., received by the Supreme Court of Kosovo on 3 March 2015, against the Judgment of the Basic Court of Prishtinë/Priština, P nr 200/2010 dated 28 February 2013 and the Judgment of the Court of Appeals PAKR nr 943/13 dated 25 August 2014,

After reviewing the Opinions of the Office of the State Prosecutor of Kosovo submitted on 6 February 2015 and 25 March 2015 respectively,

Having deliberated and voted on 2 June 2015, pursuant to Article 432, 433, 434 and 437 of the Criminal Procedure Code of Kosovo (CPC), the Supreme Court of Kosovo issues the following:

## **JUDGMENT**

**The Request for Protection of legality of defence counsel B.T. on behalf of the defendant B.G., the Request/Supplement filed by the defendant B.G. and the Request for Protection of Legality of the defence counsel R.G. on behalf of the defendant N.V., against the judgment of the Basic Court of Prishtinë/Priština, P nr 200/2010 dated 28 February 2013 and the Judgment of the Court of Appeals PAKR nr 943/13 dated 25 August 2014, are hereby rejected as ungrounded.**

## **REASONING**

### **I. Procedural background:**

1. In 2006, the Auditor General's Office of Kosovo (AGO) conducted an audit for the year 2005 in the Ministry of Communities and Returns of Kosovo. The auditing revealed numerous irregularities and widespread non-compliance with the relevant legal and regulatory requirements, especially those specified in the Law on Public Procurement. When the Principle Deputy Special

Representative to the Secretary General (UNMIK-PDSRSG), asked the transfer of sum 1.1 million euros from the Ministry to the Kosovo Protection Corps (KPC), it came out that this sum, which on paper was in the Ministry's budget, was missing. The Ministry reported that the 1.1 million euros were used to build and renovate homes of minority refugees returning to Kosovo. However, the Police Economic Crime and Corruption Investigation Section found no renovations or constructions listed in the numerous contracts completed by the contractors hired by the Ministry.

2. On 6 August 2010, after conclusion of the investigation, the Special Prosecution Office of the Republic of Kosovo (SPRK) filed an indictment nr PP-58/2010 with the (then) District Court of Prishtinë/Priština against eleven individuals, including the defendants subject of this criminal proceedings of extraordinary legal remedy.
3. The prosecutor charged the defendants in this case of having allegedly committed criminal offences of:
  - a. Abuse of Official Position, in violation of Article 339 paragraph 2 of the CCK, currently penalized by Article 422 of the CCRK (count 2, in co-perpetration against the defendant B.G. and count 3 against the defendant N.V.);
  - b. Misappropriation in Office, in violation of Article 23, Article 107 and Article 340 paragraphs 1 and 3 of the CCK, currently penalized by Article 425 of the CCRK ( count 4 in co-perpetration against all the defendants) ;
  - c. Misappropriation, in violation of Article 23, Article 257 paragraphs 1 and 3 of the CCK, currently penalized by Article 330 of the CCRK ( count 5, in co-perpetration against all the defendants);
  - d. Fraud in Office in violation of Article 23, Article 107 paragraph 1 and Article 341 paragraphs 1 and 3 of the CCK, currently penalized by Article 31, 120 paragraph 1 and Article 426 paragraphs 1 and 2 of the CCRK (count 6, in co-perpetration against all the defendants);
  - e. Accepting Bribes, in violation of Article 343 paragraph 1 of the CCK, currently penalized by Article 428 of the CCRK (count 7 against N.V.);
  - f. Falsifying Official Documents, in violation of Article 23 and Article 348 paragraph 2 of the CCK, currently penalized by Article 434 of the CCRK ( count 9 in co-perpetration against all the defendants);
  - g. Falsifying Documents, in violation of Article 23 and Article 332 paragraph 3 of the CCK, currently penalized by Article 398 of the CCRK (count 10, in co-perpetration against all the defendants).

4. The indictment was confirmed in its entirety by the Ruling of the Confirmation Judge of the District Court of Prishtinë/Priština on 7 February 2011<sup>1</sup>.
5. The trial commenced on 18 November 2011 and continued in 39 trial sessions throughout the year 2012 and the beginning of 2013.
6. The SPRK Prosecutor amended the indictment several times, namely on 9 December 2011, 13 April 2012 and finally on 21 November 2012. In its final speech the prosecutor withdrew the charge of Giving Bribes against a defendant R.P (count 8), and the charges of co-perpetration in Falsifying Official Documents and co-perpetration in Falsifying Documents against all the eleven accused (count 9 and 10) due to expiry of the period of statutory limitation and the charge of Accepting Bribes against N.V. (count 7).
7. On 28 February 2013, the first instance court announced the Judgment. The first instance court rejected the charges of counts 7, 8, 9 and 10 because (which were withdrawn by the prosecutor) and acquitted all the defendants for the charges under counts 4 and 5 of the Indictment.
8. In regards to the defendant B.G., the first instance court found him guilty in count 2, *i.e.* Abusing of Official Position or Authority under Article 422 paragraph 1 of the CCRK and in count 6, *i.e.* co-perpetration in Fraud in Office under Article 23, 107 and 341 paragraphs 1 and 3 of the CCK. The defendant B.G. was sentenced to two (2) years of imprisonment for count 2 and three (3) years of imprisonment for court 6. Consequently, the court sentenced the defendant B.G. to an aggregated punishment of four (4) years of imprisonment. As an accessory punishment, B.G. was prohibited from Exercising Public Administration or Public Service Functions for two (2) years.
9. Concerning the defendant N.V., the first instance court found him guilty in count 3, *i.e.* Abusing Official Position or Authority under Article 442 paragraph 1 of the CCRK and count 6, *i.e.* co-perpetration in Fraud in Office under Articles 23, 107 and 341 paragraphs 1 and 3 of the CCK. The defendant N.V. was sentenced to two (2) years of imprisonment for count 3 and three (3) years of imprisonment for count 6. Consequently, the court sentenced the defendant N.V. to an aggregated punishment of three (3) years and six (6) months of imprisonment. As an

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<sup>1</sup> Ruling KA nr 185/2010.

accessory punishment N.V. was prohibited from Exercising Public Administration or Public Service Functions for two (2) years.

10. All the accused were obliged to reimburse the costs of proceedings at the amount determined of 3.000 Euro.
11. On 25 August 2014, the Court of Appeals decided on the appeal filed by the SPRK and also defence appeals, including the appeals filed on behalf of the defendants subject of this current criminal proceeding.
12. The CoA dismissed the appeal filed by the SPRK as inadmissible based on Article 400 paragraph (2) of the CPC.<sup>2</sup>
13. Concerning the defendant B.G., the Court of Appeals amended the appealed Judgment of the first instance court with regard to the charge of Abusing Official Position or Authority (count 2). The Court of Appeals held that the charge of Abuse of Official Position or Authority pursuant to Article 339 par 3 of the CCK, as penalized in Article 442 (1) of the CCRK, was consumed by the criminal offences of Fraud in Office committed in co-perpetration, pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as penalized in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK, (count 6). The sentence imposed by the first instance court against the defendant B.G. was modified to three (3) years of imprisonment for the criminal offences of Fraud in Office committed in co-perpetration, pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as penalized in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK.
14. Concerning the defendant N.V., the Court of Appeals amended the appealed Judgment of the first instance court with regard to the charge of Abusing Official Position or Authority (count 2). The Court of Appeals held that the charge of Abuse of Official Position or Authority pursuant to Article 339 par 3 of the CCK, as penalized in Article 442 (1) of the CCRK, was consumed by the criminal offences of Fraud in Office committed in co-perpetration, pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as penalized in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK, (count 6). The sentence imposed by the first instance court against the defendant N.V. was modified to three (3) years of imprisonment for the criminal offences of Fraud in Office committed in co-perpetration,

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<sup>2</sup> In effect from 6 April 2004 until 31 December 2012.

pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as penalized in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK.

15. The CoA lifted the obligation to pay the cost of proceedings for all the accused.
16. The Judgment of the CoA was served on the defendant B.G. on 7 November 2014 and on the defendant N.V. on 30 October 2014.
17. On 11 November 2014, the defence counsel B.T., on behalf of the defendant Branislav Brbić filed a request for protection of legality against the Judgment of the Basic Court of Prishtinë/Priština and the Judgment of the Court of Appeals.
18. On 27 October 2014, the defence counsel R.G., on behalf of the defendant N.V. filed a request for protection of legality against the Judgment of the Basic Court of Prishtinë/Priština and the Judgment of the Court of Appeals.
19. On 11 February 2015, the Office of the State Prosecutor filed its response to the defense counsels' requests for protection of legality moving the court to reject them as ungrounded.
20. On 3 March 2015, the Supreme Court of Kosovo received an additional/extended request filed by the defendant B.G. against the Judgment of the Basic Court of Prishtinë/Priština and the Judgment of the Court of Appeals.
21. On 25 March 2015, the Office of the State Prosecutor filed its response to the additional/extended request filed by the defendant B.G. moving the court to dismiss it as belated or in alternative to reject it as ungrounded.

## **II. Submissions from the parties**

22. The defence counsel B.T. invokes essential violation of the provisions of the criminal procedure (Article 384 paragraph 2 subparagraphs 2.1 and 2.2 of the CPC) and violation of the criminal law (Article 385 paragraph 1 subparagraph 1.5 of the CCRK). The defence counsel B.T. proposed modification of the Judgment of the first instance Court and release of the defendant from charges or in the alternative to annul both appealed Judgments and return the case for retrial to the Basic Court of Prishtinë/Priština.
23. The defence counsel B.T. argues that the enacting clause of the Judgment of the Court of Appeals relating to the conviction of the

defendant B.G. for the criminal offence of Fraud in Office committed in co-perpetration is incomprehensible. The defence counsel B.T. claims that first instance Court erroneously concluded that the defendant B.G. committed alleged criminal acts in co-perpetration. The commission of this crime in co-perpetration requires a preliminary plan, that the planned crime is committed by the defendants and the crime must be accepted by each of the co-perpetrators. According to the defence counsel, the first instance Court relied on Article 107 of the CCK redundantly. In addition, defence counsel submits that the enacting clause of the Judgment of the first instance Court contradicts the testimonies of Z. M. R. B. and M. V. Defence counsel avers that no evidence supported the conviction of B.G.. Defence counsel argues that also the Judgment of the Court of Appeals is incomprehensible since it on one hand rejects the charge of Abusing Official Position or Authority and based on same acts convicts the defendant for the criminal offence of Fraud in Office committed in co-perpetration.

24. The defence counsel R.G., in the request for protection of legality argues essential violation of the provisions of the criminal procedure (Article 432 paragraph 1 subparagraph 1.2 of the CCP), and violation of the criminal law (Article 432 paragraph 1 subparagraph 1.1 of the CCRK). The defence counsel R.G. proposed modification of both impugned Judgments and release the defendant N.V. from the punishment or to remand the case for retrial.
25. The Defence counsel R.G. argues that the defendant N.V. had no connections with the Department of Finance within the Ministry. The defence counsel refers to the testimony of M.A., the director of Budget and Finance Department who allegedly stated that all the payment went through his office while contracts were drafted by the Legal Office. According to the defence, once the Commission for returns decided on the beneficiary, the case proceeded from the administration to the procurement office and then to the finance office. The same witness explained that the law in effect at the material time allowed payments in advance. The contracts whose value did not exceed 10.000 Euros went through a simpler procedure. The contract fulfilments were followed by a committee of the Ministry. The Defence counsel R.G. also recalls the evidence of T.G., a budget official. Defence counsel argues that the defendant N.V. was not authorized to make payments, therefore, the charge of Fraud in Office is ungrounded and uncorroborated. Defence counsel submits that no material evidence supports that the defendant N.V. unlawfully received money, benefited from his acts or damaged the Ministry. The Defence counsel R.G. reiterates that N.V. was not involved in the process before and following the signing of the contract as a

result of the procurement procedure. According to the defence counsel, even if he wanted he couldn't have had access to actions outside the procurement office. In any case, his intent is not proven by evidence and therefore the appealed Judgments violated the criminal law. Similarly, he cannot be held responsible for the actions of the verification commission which was under the supervision of the Permanent Secretary. Finally, the defence counsel argues that co-perpetration was not established.

26. The State Prosecutor argues that both defence counsels did only re-submit to the Supreme Court their arguments which were examined and rejected by the Basic Court in the trial and by the Court of Appeals in the appeals procedure. The Prosecutor stated that beyond disagreeing with the findings of the Basic Court and the Court of Appeals, neither of the defence counsels demonstrated that the evidence relied upon by the Court could not have been accepted by any reasonable tribunal of fact or that the evaluation of the evidence is illogical and erroneous. Prosecutor also submitted that the request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation as per Article 432 paragraph 2 of the CPC.
27. The defendant B.G. in his request argues that the case was based on false documents and testimonies of witnesses and proposes to remand the case for retrial. The defendant B. G. submits his objections against the indictment, against the Special Prosecutor prosecuting the case and against the acquittal of the defendant S. P. and reiterates his defence presenting his views on the facts of the case.
28. On 25 March 2015, the State Prosecutor of Kosovo submitted its opinion in relation to the request of the defendant B.G. stating that the request is inadmissible because it is belated and does not meet the legal requirements of Article 376 paragraph 1 subparagraph 1.5 and 1.7 of the CPC as it does not specify legal grounds for the request for protection of legality as per Article 432 paragraph 1 of the CPC or the description of the legal basis for the remedy. The Prosecutor further submits that even if the request was timely filed it is not substantiated.

### **III. Proceedings before the Supreme Court of Kosovo:**

29. The Supreme Court of Kosovo is the competent court to decide on the requests [Art. 432 (1) CPC].



30. The Supreme Court of Kosovo decided in a session on deliberation and voting. The parties' notification of this session was not required.

#### **IV. Findings of the Supreme Court of Kosovo**

31. The Court first examines whether the Applicants are authorized parties to submit the Requests for Protection of Legality to the Court, in accordance with requirements of the CPC.

In this respect, Article 432 of the CPC provides:

1. *A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:*
  - 1.1. *on the ground of a violation of the criminal law;*
  - 1.2. *on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384, paragraph 1, of the present Code; or*
  - 1.3. *on the ground of another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision.*
2. *A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation, nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.*
3. *Notwithstanding the provisions under paragraph 1 of the present Article, the Chief State Prosecutor may file a request for protection of legality on the grounds of any violation of law.*

Further, Article 433 of the CPC provides:

1. *A request for protection of legality may be filed by the Chief State Prosecutor, the defendant or his or her defence counsel. Upon the death of the defendant, such request may be filed on behalf of the defendant by the persons listed in the final sentence of Article 424, paragraph 1 of the present Code.*

2. *The Chief State Prosecutor, the defendant and his or her defence counsel and the persons listed in the final sentence of Article 424 paragraph 1 of the present Code may file a request for protection of legality within three (3) months of the service of the final judicial decision on the defendant. If no appeal has been filed against the decision of the Basic Court, the time shall be counted from the day when that decision becomes final.*
  3. *If a decision of the European Court of Human Rights establishes that a final judicial decision against the defendant violates human rights, the prescribed period of time for filing the request for protection of legality shall be counted from the day the decision of the European Court of Human Rights was served on the defendant.*
  4. *Notwithstanding the provision under Article 432 paragraph 2 of the present Code, a request for protection of legality based on a decision under paragraph 3 of the present Article shall also be possible against a decision of the Supreme Court of Kosovo.*
32. Concerning the Request for Protection of Legality of the defendant B.G., the panel notes that based on the case file, the defendant evidently was served with the appealed Judgment of the Court of Appeals on 7 November 2014. The defendant B.G. filed his Additional Request for Protection of Legality on 3 March 2015. Thus, the request of B.G. is filed after the stipulated period of three months pursuant to Article 433 par 2, of the CPC. However, the Panel notes that the defence counsel B.T. representing him filed the Request for Protection of Legality on 11 October 2014, which is within the stipulated deadline. Therefore, the panel considers the request filed by the B.G. as an addendum to the initial Request for Protection of Legality filed by his defence counsel, and as such, it will be considered admissible.
33. Concerning the Request for Protection of Legality filed by the defence counsel B.T. on behalf of the defendant B.G. and the Request for Protection of Legality of the defence counsel R.G. on behalf of the defendant N.V., the Panel finds them both were filed within time period, as prescribed by Art. 435 of the CPC. The Panel also finds that both above Requests for Protection of Legality were filed by an authorized person, as indicated in Art. 433 *ibid*, and against a final judgment, pursuant to Art. 434 *ibid*. Consequently, they are admissible.

#### **IV. Merits of the requests**

34. First, the court shall elaborate the Request of the defence counsel B.T. and of the defendant B.G. and then the Request for Protection of Legality of the defence counsel R.G. on behalf of the defendant N.V..
35. The Supreme Court of Kosovo finds no procedural errors in the challenged judgments that would have to be taken into account *ex officio*. Therefore, pursuant to the provisions of the CPC, the Supreme Court of Kosovo shall confine itself to examining those violations of law which the requesting parties alleged in their request.
36. The Supreme Court of Kosovo finds all the Requests for Protection of Legality ungrounded.
37. Referring to the allegation of Defence counsel B.T. that the enacting clause of the CoA Judgment relating to the conviction of the defendant B.G. for the criminal offence of Fraud in Office committed in co-perpetration is incomprehensible; the panel finds the defence argument without merit. The panel agrees with the defence that the Court of Appeals when amending the enacting clause of the first instance court incorrectly used the term “dismiss”. This however is a linguistic mistake not affecting the validity of the Judgment. The Panel finds that there is no doubt whatsoever that the Court of Appeals did not acquit the defendants for the criminal offence of Abuse of the Official Duties or Authorisation from Article 339 par 3 of the CCK, as penalized in Article 442 (1) of the CCRK, as alleged by the defence. As explained in the statement of grounds of the CoA Judgment, the Court of Appeals held, with which this panel fully agrees, that the criminal offence of Abuse of the Official Duties or Authorisation from Article 339 par 3 of the CCK, as penalized in Article 442 (1) of the CCRK was consumed by the criminal offence of Fraud in Office committed in co-perpetration pursuant to Article 341 (1) and (3) as read in conjunction with Article 23 and Article 107 par 1 of the CCK, as penalized in Article 426 par 1 and 2, as read in conjunction with Article 31, Article 120 par 2 subpar 1 of the CCRK, (count 6). The Panel is satisfied that the Court of Appeals provided appropriate and sufficient reasons to this regard. Further, the Panel also notes that not only the enacting clause is clear that the one of the criminal offences consumed the other, thus considered as subject of a single charge but most importantly this holding goes to the favour of the defendants, which in turn, makes the defence counsel’ argument pointless. As already notes, the mere incorrect use of term “dismiss” by the CoA on this regard may be considered a *lingua* error which does not render in any way the appealed Judgment incomprehensible.

38. Concerning defence' allegations that the conclusions of the Court are in contradiction to various witnesses' statements, the panel notes that these arguments are not substantiated. The panel notes that, in principle, the review of the Supreme Court at this stage of the procedure acting upon extraordinary legal remedy is limited to the evaluation of the legality. The establishment of factual situation may only exceptionally be contested *i.e* if and when relevant evidence are presented showing that the established factual situation and evidence relied upon by the Court are wholly or to large extend erroneous. In the case at hand, defence counsel only states that there is a contradiction. The Panel stresses that, when contradiction of the judgment or of its enacting clause is alleged, it is not sufficient to repeat in a formulaic and mechanic way the respective provisions of the CPC. The defence counsel should not merely indicate that there is a contradiction, for example between the enacting clause and the judgment or between the reasoning and the facts as established in the trial, but should also explain what the alleged contradiction consists of or why there is no congruence between facts and their description in the decision. A simple statement as is the case here that there is contradiction does not constitute a sufficient ground nor does it help the Court to understand the argument of the defence lawyer. Therefore, the panel finds defence argument in that regard without merit.
39. The Panel also does not agree with the defence counsel B.T. that existence of a plan is a prerequisite for fulfillment of the figure of the criminal offence of Fraud in Office committed in co-perpetration. On this point, the panel suffices to say that insofar it is proven by relevant evidence appropriately administered by the court that each of the defendants contributed in some way and intended the commission of the criminal offence that is sufficient for purpose of co-perpetration.
40. Concerning the allegation of defence counsel R. G. that the defendant N.V. had no connections with the Department of Finance within the Ministry, that witness M.A., confirmed that all the payment went through his office and the contracts were drafted by the Legal Office and that the defendant N.V. was not authorized to make payments etc., the Supreme Court of Kosovo finds that although defence counsel does not expressly state it, these arguments indirectly relate to establishment of the factual situation. As stated above, the Panel reiterates that it is not its task under the CPC to act as a court of third instance in respect of the decisions taken by the courts of facts. It is the role of the courts of facts to primarily interpret and apply the pertinent rules of procedural and substantive law. The Supreme Court in the procedure with extraordinary legal remedies should only

consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the party had a fair trial. Therefore, the panel considers that the defence has not substantiated his allegations nor has he submitted any *prima facie* evidence indicating a violation of his rights under the law. Consequently, the panel considers that the arguments presented by the defence counsel do not in any way justify his allegation of a violation of the provisions of the criminal and procedural codes.

41. Concerning the arguments that defendant N.V. was not authorized to make payments, that there are no evidence showing that defendant N.V. unlawfully received money and/or damaged the Ministry, the Panel finds the arguments ungrounded. On this context, the Panel is satisfied that the first instance court clearly and exhaustively stated the facts it considered proven or not proven, as well the grounds for this, and specifically indicated the evidence relied upon by the court when rendering the judgment. The reasoning part of the first instance Judgment contains all the details and sufficiently provides explanation of the factual situation based on the evidences which were properly obtained, administered and evaluated by the court. Therefore allegation of the defense counsel about the inconsistency of the Judgment is ungrounded.
42. The panel also finds ungrounded the arguments that the enacting clause of the judgement of the Basic Court contradicts the testimonies of Z. M., R. B. and M. V., that the intent was not proven by evidence, that the defendant could not be held responsible for the actions of the verification commission which was under the supervision of the Permanent Secretary. The panel finds that defence counsel failed to provide any elaboration to what aspect the enacting clause is contradicting the said statements. The Panel is satisfied that the court of first instance, in the reasoning of the challenged judgment, presented the facts which were correctly established and gave clear and convincing reasons for the establishment of the facts of the case. Therefore, there are no contradictions in the enacting clause of the judgment, nor any contradictions between enacting clause and the reasoning.
43. As far as it concerns the alleged violation of the provision of the Criminal Code, the Panel notes that in this case provisions of two criminal codes were applicable. As such, in the event of a change in the law applicable to a given case prior to a final decision, as is the case here, the law more favorable to the perpetrator shall apply. Comparing the respective provisions of the two Criminal Codes relevant to this case, the Panel finds no

particular differences between the two codes that would be more favorable to the defendants. Therefore, the Panel finds no violation of the provisions of the Criminal Code.

For reasons above, it is decided as in the enacting clause of this Judgment.

**SUPREME COURT OF KOSOVO**  
**PML-KZZ-34/2015**  
**2 June 2015**

Presiding Judge:

Recording Officer:

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Elka Filcheva-Ermenkova  
EULEX Presiding Judge

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Adnan Isufi  
EULEX Legal Adviser

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Willem Brouwer  
EULEX Reporting Judge

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Avdi Dinaj  
Supreme Court Judge