COURT OF APPEALS
PAKR. No. 45/2013
31 July 2015
Prishtinë/Priština

IN THE NAME OF THE PEOPLE

THE COURT OF APPEALS, in a panel composed of EULEX Judge Piotr Bojarczuk as Presiding Judge and Court of Appeals Judges Fllanza Kadiu and Fillim Skoro as members of the panel, with EULEX Legal Officer Holger Engelmann, acting in the capacity of recording clerk,

In the criminal case against:

1. **K.P.**, father's name Z., mother's maiden name M. M., born on … in XXX, Municipality of Y, residing in XXX, Kosovo, Kosovo Albanian, married, father of __ children, ___ by profession, of average financial situation,
   In detention on remand in a another case since 24 May 2012, currently serving an imprisonment sentence in another criminal case;

2. **Z.M.**, father's name N., born on … in Y, residing in XXX in Y, Kosovo, Kosovo Albanian;

3. **L.P.**, father's name P., mother's name V., born on … in G, Kosovo, currently residing in XXX, Kosovo, Kosovo Albanian, ___ by profession, of average financial situation;

By the Indictment PPS 22/2009, filed on 5 July 2011 and confirmed on 11 September 2011, charged with having committed the following criminal offences:

1. **K.P.**:

a) (Count one) **Organized Crime** in violation of Article 274 (1) of the [1] (henceforth: CCK), in conjunction with Article 339 (1) and (3) of the CCK;
b) (Count two) **Issuing Unlawful Judicial Decision** in violation of Article 346 of the CCK;
c) (Count three) **Falsifying Documents as Special Cases of Falsifying Documents** in violation of Articles 332 (1) and (3) in conjunction with Article 333 subparagraph 1 of the CCK, limited to the authorization allegedly given by the injured parties G.B., R.F., L.G. and J.N.;
d) (Count four) **Abusing Official Position or Authority**, in violation of Article 339 (1) and (3) of the CCK in conjunction with Article 23 and 25 of the CCK;
e) (Count six) **Money Laundering** in violation of Article 10 (2) a) and b) of the UNMIK regulation 2004/2;
f) (Count eight) **Money Laundering** in co-perpetration with L.P. in violation of Article 10 (2) a) and b) of the UNMIK regulation 2004/2;

[1] Issued as 'Provisional Criminal Code of Kosovo', promulgated as UNMIK Regulation 2003/25, dated 6 July 2003, renamed and amended by the Law No. 03/L-002, in force until 31 December 2012

g) (Count nine) **Tax Evasion**, in violation of Article 249 (1) and (2) of the CCK;
h) (Count eleven) **Fraud** in violation of Article 261 (2) of the CCK;

2. **Z.M.:**

a) (Count one) **Organized Crime** in violation of Article 274 (1) of the CCK in conjunction with Article 339 (1) and (3) of the CCK;
b) (Count two) **Issuing Unlawful Judicial Decision** in violation of Article 346 of the CCK in conjunction with Article 23 of the CCK;
c) (Count four) **Abusing Official Position or Authority**, in violation of Article 339 (1) and (3) of the CCK in conjunction with Article 25 of the CCK;
d) (Coutn seven) **Money Laundering**, Article 10 (2) a) of UNMIK Regulation 2004/2;
e) (Count eleven) **Fraud** in violation of Article 261 (2) of the CCK;

3. **L.P.:**

a) (Count two) **Issuing Unlawful Judicial Decision** in violation of Article 346 and 25 of the CCK;
b) (Count eight) **Money Laundering** in violation of Article 10 (2) a) and b) of the UNMIK regulation 2004/2;
c) (Count ten) **Tax Evasion** in violation of Article 249 91) and (2) of the CCK;
d) (Count eleven) **Fraud** in violation of Article 261 (2) of the CCK.

By the first instance Judgment P. No. 13/2012 of the District Court of Prishtinë/Priština, dated 19 October 2012, the defendant **K.P.** was found **Not Guilty** of the criminal offences of:

Organized Crime (Count one) in violation of Article 274 paragraph 1 read in conjunction with Article 339 paragraphs 1 and 3 of the CCK,

Falsifying Documents as Special Cases of Falsifying Documents (Count three partial) in violation of Articles 332 (1) and (3) in conjunction with Article 333 subparagraph 1 of the CCK, related to the injured party J.N.,

Money Laundering (Count eight) in co-perpetration with L.P. in violation of Article 10 (2) a) and b) of the UNMIK Regulation 2004/2 and

Tax Evasion (Count nine) in violation of Article 249 (1) and (2) of the CCK;

The charge for **Falsifying Documents as Special Cases of Falsifying Documents** (Count three partial) in violation of Articles 332 (1) and (3) in conjunction with Article 333 subparagraph 1 of the CCK, related to all injured parties except J.N. was rejected since the prosecution withdrew the charge;

The defendant K.P. was found **Guilty** of the criminal offences of:

Issuing Unlawful Judicial Decision (Count two) in violation of Article 346 of the CCK,
Abusing Official Position or Authority (Count four) in violation of Article 339 (1) and (3) of the CCK in conjunction with Article 23 and 25 of the CCK,

Money Laundering (Count six) in violation of Article 10 (2) a) and b) of the UNMIK regulation 2004/2 and

Fraud (Count eleven) in violation of Article 261 (2) of the CCK;

The defendant was sentenced to an aggregate sentence of ten (10) years of imprisonment and the accessory punishment of prohibition of exercising public administration or public service functions and the from exercising the profession of attorney at law for a period of three (3) years;

The defendants **Z.M.** and **L.P.** were acquitted of all charges;

Deciding upon the Appeal filed by the Special Prosecutor on 28 December 2012, the Appeal filed by the Defence Counsel Tahir Rrecaj on behalf of the defendant K. P. on the same date and the Appeal filed by the defendant K.P. on 4 January 2013 against the Judgment P. No. 13/2012 of the District Court of Prishtinë/Priština, dated 19 October 2012, while also taking into account the Response of the Defence Counsel Tahir Rrecaj on behalf of the defendant K.P. to the Appeal of the Special Prosecutor filed on 4 February 2013 and the Motion of the Appellate State Prosecutor filed on 12 June 2013,
After having held a public session on 10 June 2015, issues the following:

JUDGMENT

1. **Upon occasion of the Appeals filed against the Judgment P. No. 13/2012 of the District Court of Prishtinë/Priština, dated 19 October 2012, the contested Judgment is *EX OFFICIO* AMENDED as follows: The CHARGE AGAINST THE DEFENDANT K.P. for the criminal offence OF FRAUD, in violation of Article 261 paragraph 2 of the CCK IS DISMISSED.**

2. **The Appeal filed by the Defence Counsel on behalf of the defendant K.P. on 28 December 2012 and the Appeal filed by the defendant K.P. on 4 January 2013 against the aforementioned Judgment are ACCEPTED AS WELL-FOUNDED. The PART of the Judgment FINDING DEFENDANT K.P. GUILTY AND THE SENTENCING PART ARE ANNULLED.**

3. **The Appeal filed by the Special Prosecutor on 28 December 2012 against the aforementioned Judgment is PARTIALLY ACCEPTED. The PARTS of the contested Judgment RELATED TO THE ACQUITTALS OF THE DEFENDANT K.P. ARE ANNULLED. The REMAINING PART of the Appeal IS REJECTED AS UNFOUNDED.**

4. **The case against K.P. is RETURNED FOR RETRIAL AND DECISION.**

5. **The PARTS of the Judgment RELATED TO THE ACQUITTALS OF the defendants L.P. AND Z.M. ARE AFFIRMED.**

REASONING

I. Procedural Background

The case concerns a multitude of suspected separate instances of Fraud, Abuse of Official Position or Authority and Issuing of Unlawful Judicial Decisions that occurred from December 2004 to December 2007.

The defendant K.P. was a judge of the Municipal Court Y from 1 January 2000 until 1 September 2009. Z.M. worked as attorney at law in Y from 16 September 2000 until 5 July 2011. Before that time, from 1 January 1978 until 24 March 1999 he was a judge at the Municipal Court of Y. L.P. was a legal intern in the Municipal Court of Y. After being formally admitted to the bar, from 16 September 2007 until the 5 July 2011 he worked as attorney at law in Y.

On 5 July 2011 the Indictment PPS 22/2009 was filed, charging the three defendants with the criminal offences described above.

On 11 September 2011 the Indictment was confirmed.

On 22 May 2012 the main trial commenced before a panel of the District Court of Prishtinë/Priština that was composed of two EULEX judges and a local judge. On 19 October 2012 the Court issued its Judgment P. No. 13/2012, finding the defendant K.P. guilty of having committed in two instances the criminal offence of Issuing Unlawful Judicial Decision, one count of Abusing Official Position or Authority, two instances of Money Laundering and one count of Fraud. He was acquitted of the remaining charges. The defendant was sentenced to an aggregate sentence of ten (10) years of imprisonment and the accessory punishment of prohibition of exercising public administration or public service functions and the from exercising the profession of attorney at law for a period of three (3) years.
The defendants Z.M. and L.P. were acquitted of all charges.

On 28 December 2012 the Special Prosecutor filed an appeal against the aforementioned Judgment.

On the same day Defence Counsel Tahir Rrecaj filed an appeal on behalf of the defendant K.P..

On 4 January 2013 the defendant K.P. himself filed another appeal.

On 4 February 2013 a response to the Special Prosecutor's appeal was filed by the Defence Counsel Ramë Gashi on behalf of the defendant L.P..

On 12 June 2013 the Appellate State Prosecutor filed his Motion on the appeals.

II. Submissions of the Parties

1. The Appeal filed by the Special Prosecutor

The Special Prosecutor in his appeal challenges the judgment on the grounds of substantial violations of the criminal procedure, a violation of the Criminal Law, erroneous and incomplete determination of the factual situation and failure to pronounce a supplementary sentence – a fine.

He contests the Judgment on all counts that deal with the acquittal of the accused K.P., Z.M. and L.P. because during the investigation and during the main trial it was undoubtedly established that all three defendants have committed the criminal offences they have been charged with. He refers to the reasoning of the Indictment and his final speech when he claimed that the criminal activities contained the criminal offence of Organized Crime, in form of an organized and structured group that was created, organized, structured and led by K.P.. At the same time he was exercising the function of a judge in the Municipal Court of Y and the function of a private lawyer representing the injured parties, even though his license had expired he was appointed as a Municipal Judge.

In relation to the defendant Z.M., the Prosecutor submits that the first instance court acted wrongfully since it was clearly established during the investigation and the main trial that he committed the criminal offences he was charged for.

As to the defendant L.P., the court has erred since the accused L.P. has substantially helped the accused K.P. in committing the criminal offences he is charged for. He further states that L.P. at the time he assisted K.P. in the purchase of the apartment in Prishtinë/Priština, he was a private lawyer and it is considered to have a solid knowledge of all legal procedures related to the sale of immovable property. Prosecutor submits that the court has erred in all cases when it acquitted the accused of the criminal responsibility. He asserts that the court was supposed to pronounce a supplementary sentence in the form of a fine for the defendant K.P. in accordance with Article 10.2 of the UNMIK Regulation 2004/2.

The Prosecutor proposes to the second instance court to amend the acquitting part of the Judgment so that the accused K.P., Z.M. and L.P. be pronounced guilty for the criminal offences they have been acquitted of and consequently be punished with the sentence in accordance with the law, or quash the impugned Judgment in the acquitting part and return the case for re-trial.

2. The Appeal filed by the Defence Counsel Tahir Rrecaj on behalf of K.P.

The Defence Counsel in his Appeal on behalf of the defendant K.P. challenges the impugned Judgment because of substantial violations of the criminal procedure, pursuant to Article 403 paragraph 1 items 10, 12 and paragraph 2 of the Kosovo Code of Criminal Procedure[2] (henceforth: KCCP), violations of the criminal law, erroneous and incomplete determination of the factual situation and the decision on penal sanctions.

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[2] Issued as 'Provisional Criminal Procedure Code of Kosovo', promulgated as UNMIK Regulation 2003/26, dated 6 July 2003, renamed and amended by the Law No. 03/L-003, in force until 31 December 2012

He states that the impugned Judgment is incomprehensible, internally inconsistent and inconsistent with the grounds for the Judgment.

In relation to the criminal offence of Issuing Unlawful Judicial Decisions, the Judgment is in contradiction to the evidence administered in the main trial. The factual description is entirely in contradiction with the findings. It was not established through any material evidence that the judgment in question was issued by K.P. because otherwise the judgment would have been registered in the court registry. The offence of Issuing Unlawful Judicial Decisions can be committed only by the judge while discharging an official duty, as a judge in proceedings that are conducted within the framework of his legal duties and competences. In the court case C. No. 54/2000, in which the in-court settlement was reached to the amount of 56,000 Euro, he did neither fill out the template with the name of L.P. nor did he sign it or stamp it. Due to the absence of a graphology expert analysis, the first instance court has not established that he did perform such actions. In this case, the lawyer L.P. represented the claimants with authorization by the party and was not appointed *ex officio*.

In relation to the sum of 53,000 Euro allegedly received by the defendant K.P. from L.P., the court was biased because it has lend its complete trust to L.P.. The court finding is entirely based on the statement of L.P. and not corroborated by any other evidence.

In relation to the criminal offence of Abusing Official Position or Authority, the enacting clause of the Judgment is unclear. The factual description is in complete contradiction with the legal qualification of the offences. While the offence is qualified as co-perpetration (Article 23 of the CCK) and assistance (Article 25 of the CCK), from the factual description it does not appear that K.P. has committed this criminal offence in cooperation with or assisted by someone else.

The court of the first instance has exceeded the Indictment, as K.P. had not been charged for the criminal offence of Fraud nor did the public prosecutor expand the Indictment during the trial sessions regarding the criminal offence of Fraud. By exceeding the Indictment, the first instance court has violated the Article 386 paragraph 1 of the KCCP.

The other violation is the Article 33 of the KCCP in relation to the joint criminal proceeding. The separation of the case into several criminal proceedings presents an essential violation of the provision of Article 403 paragraph 2 items 1) and 2) of the KCCP. The implementation of the joint procedure for all the cases would be completely in accordance with the legal provisions because in all four cases against him, the Insurance Company "Kosova" in liquidation is presented as party.

The first instance court erroneously evaluated the evidence and facts in relation to the criminal offence of Issuing Unlawful Judicial Decision pursuant to Article 346 of the CCK. This criminal offence requires the perpetrator's direct intent to acquire an unlawful material benefit for him or other persons or to cause damage to another person. The court of the first instance has failed to confirm the existence of that intent. From the administered evidence it results that the defendant, in the capacity as judge in the Y Municipal Court was assigned to the case C.nr. 54/2000 by the president of the court and that he had taken the case over as any other case. Therefore the court has violated the Article 404 of the KCCP.

In relation to the judgment C.nr. 282/2005, the Appeal claims that such judgment never existed and neither was registered at the registry of the Municipal Court of Y. The defendant claims that he heard about this case for the first time through the Indictment in the current case. This judgment was never subject to the expertise of a graphology expert.

In relation to the criminal offence of Abuse of Official Position or Authority, the defendant claims that in order for this criminal offence to be committed direct intent is required. The court has failed to establish intent and has not confirmed that the signature and the stamp were put on the document by the defendant K.P. nor did it establish the misuse of the stamp by the defendant. Provided that the authorizations were used by the late H.M., the court should have given credit to K.P.'s statement that the latter one was responsible for the forgeries.

The court never established that any possible falsification had happened within the defendant's official position or authority as a judge of the Municipal Court. The court should have requalified the charges in question as Fraud.

The court of the first instance has erroneously determined that K.P. has confessed to have participated at Frauds committed against the Insurance Company "Kosova".

Concerning the criminal offence of Money Laundering, the court erroneously established that defendant K.P. gave L.P. 65,000 Euro for the purchase of a flat by Albert Jakaj. The testimony of the witness T.P. proved that the money in question was T.P.'s, not the defendant's.

Also the finding of the court that the defendant K.P. bought the properties listed under point six (6) of the Indictment with the intent to conceal the origin of proceeds of criminal acts is unfounded since the properties were bought either prior to the time covered by the Indictment or by members of the defendant's family with their own money and with the sole intend to improve the well-being of the defendant's family.

Regarding the factual situation, the first instance court has erroneously evaluated the pieces of evidence. The court does not acknowledge the fact that the defendant K.P. might have been deceived by H.M..

The court should have considered Article 60 paragraph 2 of the CCK in relation to the confiscation. The house in Klinë/Klina, which was temporarily impounded (page eleven [11] of the Judgment) is owned by the defendant's brother, T.P. and cannot be subject to a confiscation since it was not proven that it was derived from the commission of a criminal offence.

On page twelve (12) of the contested Judgment the court erroneously found that the business unit in Klinë/Klina was purchased in 2005. In that year only the sales contract previously concluded in 1997 was validated since prior to the conflict in Kosovo a law restricted the transfer of real estate between persons of different nationalities.

As to the criminal sanctions, he submits that the court of first instance did not consider all mitigating and aggravating circumstances. It overemphasized the aggravated circumstances and did not sufficiently consider all the mitigating ones. The court should have considered as mitigating circumstances that the defendant sought forgiveness and was cooperative to the court.

The court erroneously considered the amount of damage as aggravating circumstance. A high amount of damage is a qualified form of the criminal offences of Abuse of Official Position of Authority (Article 339 paragraph 2 of the CCK) and Fraud (Article 261 paragraph 2 of the CCK) and may not be again considered as aggravating circumstance.

In the accessory punishment the court should not have imposed the prohibition to exercise functions in the public administration or public service but should have limited the restriction specifically to the exercise of the profession of judge.

He proposes to approve the Appeal as grounded and, in accordance with Article 426 of the KCCP, to amend the impugned Judgment and acquit the defendant from all charges or, alternatively, pursuant to Article 424 paragraph 1 of the KCCP, to annul the impugned Judgment and return the case to the first instance court for re-trial.

3. The Appeal filed by the defendant K.P.

The defendant in his Appeal alleges essential violations from Article 403 of the KCCP stating that enacting clause of the impugned Judgement is incomprehensible, contradictory in its content and its reasoning. The Judgment does not provide reasons regarding decisive facts, whereas the reasoning presented is completely unclear and contradictory.

To a large degree the Appeal repeats the arguments presented in the Appeal of the Defence Counsel Tahir Rrecaj on behalf of the defendant.

In relation to the criminal offence of Issuing Unlawful Judicial Decisions the reasoning is unclear and contradictory in itself. The factual description is in complete contradiction with the findings. It was not confirmed that K.P. issued the judgment in question.

The enacting clause in relation to the criminal offence of Abusing the Official Position or Authority is unclear. The factual description is in full contradiction with the legal qualification of the offence. The first instance court has violated the Article 403 paragraph 1 item 12 and Article 396 paragraphs 6 and 7 of the KCCP by not evaluating the accuracy of contradictory evidence.

The first instance court exceeded the indictment by finding the defendant K.P. guilty for the criminal act of Fraud. In this way, the court has violated Article 403 paragraph 1 item 10 of the KCCP.

The assessment of the court in relation to the criminal offence of Issuing the Unlawful Judicial Decision is not accurate. The court has erroneously assessed the evidence and facts and as a consequence the Article 346 of the CCK was erroneously applied. The court has not proven the intent as the core element of this criminal act. The defendant K.P. is not aware of the judgment C. No. 282/2005, neither of the fact that he has participated in a court proceeding in relation to this case. Regarding the case C. No. 54/2000, the first instance court has erroneously assessed that K.P. issued this decision unlawfully.

In relation to the criminal offence of Abusing Official Position or Authority, the Defence Counsel states that in order for this criminal offence to exist, the intent must be established as well, as this act must be undertaken within the official position or authority. The first

instance court has erroneously assessed that defendant K.P. has forged an authorization within his rights as an authority as a judge.

With regard to the confiscation, the Defence Counsel states that the court of the first instance erroneously found that the properties listed in point six of the Indictment originated from the criminal offence of Money Laundering.

As to the criminal sanctions, he submits that the court of first instance did not consider all mitigating and aggravating circumstances. It overemphasized the aggravated circumstances and did not sufficiently consider all the mitigating ones.

He should have credited the defendant's cooperation with the court as well as the fact that he has been sentenced to five (5) years of imprisonment for the same offence and there are also two similar ongoing cases against him.

He proposes to the second instance court to approve the Appeal and modify the appealed Judgment and acquit him from all charges.

4. Response of the Defence Counsel Ramë Gashi on behalf of the defendant L.P. to the Appeal of the Special Prosecutor

The Defence Counsel submits that during the main trial the court correctly established the factual situation, as reflected correctly in the challenged Judgment. There are no circumstances that incriminate the defendant L.P.. He did not commit any criminal offence or assist the accused K.P. in any criminal offence. L.P. was deceived by others and not aware about any criminal acts. He had nothing to do with forgery of the authorizations for representing the injured parties; that was done by accused K.P.. He also selected the cases and kept for himself all the money paid as compensation. L.P. was not party in the transaction of purchase of the apartment. K.P. was the buyer; he paid the purchase price and drafted all the necessary papers while L.P. was not aware about any criminal acts.

The Counsel proposes to reject the prosecution Appeal PPS. No. 22/2009, dated 28 December 2012, as ungrounded and summon the defendant L.P. and the Defence Counsel Ramë Gashi for the session of the Court of Appeals.

5. The Motion of the Appellate Prosecutor

The Appellate Prosecutor claims that the Appeal of the Special Prosecutor is well-founded while the Appeal of the Defence Counsel Tahir Rrecaj and the Response of the lawyer Ramë Gashi to the prosecution Appeal are unfounded.

The evidence administered during the main trial contains indisputable facts incriminating the defendant K.P. with the commission of the offence of Organized Crime. Also the defendant Z.M. participated in the criminal activities of the organized group by enabling K.P. to utilize his bank account. Documents found in his office prove that he had withdrawn money from the account and he was aware that K.P. had the authorization to use his account.

L.P. assisted K.P. in the offence of Issuing Unlawful Judicial Decisions. To his account payments for the defendant K.P. were transferred and he was involved in the purchase of a flat for K.P..

K.P. also had close links with the deceased H.M., who was Head of the Committee for awarding damage compensation. The defendant gave to H.M. an envelope containing money.

The first instance court should have also imposed the accessory punishment of a fine.

The Motion proposes (1.) to approve as well-founded the Appeal of the Special Prosecutor and modify the challenged Judgment related to the acquittal part by finding the defendants K.P., Z.M. and L.P. guilty as well as punish them as provided by the law or, alternatively, to annul the acquitting part of the Judgment and return the matter to the court of first instance for retrial and reconsideration; and
(2.) to reject the Appeal filed by the Defence Counsel Tahir Rrecaj on behalf of the defendant K.P. and the Response to the Appeal of the prosecution filed on behalf of the defendant L.P..

III. Supreme Court Findings

1. Admissibility of the appeals

The Court of Appeals finds that the Appeal filed by the prosecution and the appeals filed on behalf and by the defendant K.P. were timely filed and are admissible.

2. The merits of the Appeals filed by and on behalf of the defendant K.P.

The appeals filed on behalf of and by the defendant K.P. are well-founded.

In respect to the conviction of K.P. for the criminal offence of Fraud (Article 261 paragraph 2 of the CCK) there was no such charge filed by an authorized prosecutor. The Confirmation Judge had in the confirmation ruling KA. No. 552/2011, dated 15 September 2011, added this charges *ex officio* as additional count to the Indictment. Pursuant to Article 403 paragraph 1 subparagraph 5 of the KCCP this represents a substantial violation of the provisions of criminal procedure.

Since these charges were not filed by an authorized prosecutor, *mutatis mutandis* to Article 316 paragraph 2 of the KCCP, the Court of Appeals had to dismiss the charges of Fraud (Article 261 paragraph 2 of the CCK).

Due to the fact that the Fraud charge is closely interlinked with the remaining charges it is unavoidable that the dismissal of this charge influences the evaluation of the remaining counts against the defendant. Therefore the convicting part of the challenged Judgments had to be annulled entirely and returned to the court of first instance for retrial.

a) The charges for the criminal offence of Fraud

The indictment filed by the Prosecutor in this case did not contain a charge of Fraud in relation to any of the defendants. At the confirmation hearing the Judge, after reviewing all of the facts alleged by the prosecution in support of the charges alleged in the indictment determined that those facts would (in addition to the charges already alleged in the indictment) also support a charge of Fraud against each of the defendants. The Confirmation Judge then added the following language to the indictment:

> *"6. **Additional count – Fraud.** The factual description provided for by the public prosecutor makes it clear that the defendants used the falsified documents which were created through the abuse of K.P.'s official position in order to commit the further offences of Fraud to the detriment of the insurance company. In fact, the falsified acts were used by the now deceased H.M. in order to deceive the other members of the committee which awarded the reimbursements, thus defrauding the insurance company.*
>
> *It ensues that, pursuant to art. 316 para 6 CPCK, the facts described in the indictment need being re-qualified, as to include also the criminal offence of Fraud contrary to art. 261 para 2 CCK. The count can be outlined as follows:*
>
>> *'Fraud, contrary to art. 261 para 2 CCK, because, by the commission of the offences described in counts 3 and 5, with the intent to obtain material benefit, they created the false documents (better described in the indictment) which were subsequently submitted to the insurance company 'Kosova' in liquidation and thus deceived the officials of the same insurance company in charge of rewarding the reimbursements, who as a consequence paid to the defendants the amounts better described in the factual explanation contained in pages 17 and following of the English version of the indictment.'*
>
> *It remains clear that this is not a new incrimination, but merely a re-qualification of the facts which are clearly contained in the indictment of the prosecutor. The Public Prosecutor is obviously free to amend and specify, if deemed necessary, this new count of the indictment."*

As can be seen from the above quoted language, the Confirmation Judge made an *ex officio* determination that the facts alleged in the indictment would support a charge of Fraud against all of the defendants; drafted the language for that charge; and added this charge to the indictment. In addition, the Judge then stated the legal obvious by saying that the Prosecutor could amend this new count of the indictment he had drafted, if the Prosecutor thought it necessary.

However, the Prosecutor did not "amend" or "specify" any new count of the indictment. This matter went to trial on the Indictment as amended by the Confirmation Judge, over the objections of at least the defendant P. to the trial panel. Defendant P. has raised this issue again in his Appeal and the Appeal filed by his Defence Counsel.

As justification for his actions referred to above, the Confirmation Judge cited Article 316 subparagraph 6 of the KCCP to support his finding that the facts in the Indictment, "*...need being re-qualified, as to include also the criminal offense of Fraud...*".

The Panel notes that the language regarding the facts being "re-qualified" does not appear anywhere in the KCCP. More particularly, that language does not appear in Article 316 subparagraph 6 of the KCCP. The language in this subparagraph regarding the competence of the confirmation judge is:

> *"(6) In rendering a ruling under the present article , the judge shall not be bound by the legal designation of the criminal offence as set forth by the prosecutor in the indictment…"*

As can be seen above, the language of this subsection only provides that the Confirmation Judge is not bound by the "*legal designation*" of the criminal offence. The language refers only to changing the "*legal designation*" of a specific offence charged in the indictment. Thus, this language only permits the Confirmation Judge to evaluate the facts related to a particular charge and change the legal designation of that charge if he or she thinks this is necessary. For example, if the prosecution had alleged the commission of a Fraud by several persons "in co-perpetration" but the facts alleged appeared to the confirmation judge to only support "assisting" in Fraud, the judge could change the legal designation of the offence in the indictment to reflect this.

It should be noted that the language quoted above is almost identical to the language in Article 386 paragraph 2 of the KCCP regarding the authority of the trial judge or panel when rendering a judgment in a case. There, the language is,

> *"(2) The court shall not be bound by the motions of the prosecutor regarding the legal classification of the act."*

It appears clear that the language in Article 386 paragraph 2 of the KCCP regarding the authority of the trial judge is intended to serve the same purpose as the language in Article 313 paragraph 6 of the KCCP determining the authority of the confirmation judge - that is to allow the court to make the appropriate designation of the alleged offence if it believes it has not been properly designated by the prosecutor. In neither instance is the court permitted to add an additional charge not already alleged by the prosecutor.

The Article 6 of the KCCP sets out the basic role and authority of the prosecutor. The opening sentence of paragraph 1 of that provision reads as follows:

> *"Criminal proceedings shall only be initiated upon the request of the authorized prosecutor."*

Here, it was the Confirmation Judge who purported to initiate the criminal proceedings for the charge of Fraud. He clearly had no authority to do so and the Prosecutor did not, on his own, initiate a Fraud charge.

Article 402 paragraph 1 subparagraph 1 of the KCCP provides that a judgment may be challenged,

> *"On the grounds of a substantial violation of the provisions of criminal procedure."*

Article 403 paragraph 1 subparagraph 5 of the KCCP provides that there is a substantial violation of the provisions of the criminal procedure if,

“The court violated the provisions of the criminal procedure relating to the issue of whether there exists a charge by an authorized prosecutor…”

Further, Article 403 paragraph 2 of the KCCP provides that,

“There is also a substantial violation of the provisions of criminal procedure if in the course of the criminal proceedings, including the pre-trial proceedings, the court…

(1) Omitted to apply a provision of the present Code or applied it incorrectly
…
and this influenced or might have influenced the rendering of a lawful and proper judgment.”

Here, the Confirmation Judge clearly incorrectly applied Article 316 paragraph 6 of the KCCP by adding a new charge of Fraud to the indictment without authority to do so. The trial panel then substantially violated the provision of Article 403 paragraph 1 subparagraph 5 of the KCCP by failing to dismiss the charge of Fraud that had not been brought by the authorized prosecutor.

b) The remaining charges

The error by the Confirmation Judge interjected into this case an invalid criminal charge against all of the defendants, which the trial panel erroneously adjudicated and for which defendant P. was found guilty and sentenced to imprisonment. The Judgment in this case as it relates to the charge of Fraud is unlawful and improper. Because this charge was so closely interwoven with the other charges in this case simply reversing the conviction of the defendant P. concerning this charge is not a sufficient remedy. It is impossible to ascertain the impact the presence and trial of this charge had on the overall decisions regarding guilt or innocence on the other charges, as well as any impact it may have had on sentencing. The Panel therefore did not have the option of simply modifying the challenged Judgment. There was no other option than to annul the entire case against K.P. and remand it again to the court of first instance for retrial.

3. The merits of the Appeal filed by the Special Prosecutor

a) The charge of Tax Evasion against defendant P.

The Appeal filed by the Special Prosecutor against the contested Judgment is partially well-founded with regard to the part acquitting the defendant K.P.. This part of the Judgment is annulled and returned to the court of first instance for retrial. The remaining part of the Appeal is rejected as unfounded.

Each of the defendants were charged in the Indictment with Tax Evasion for failing to report and pay tax on various amounts each defendant was alleged to have derived from the criminal scheme as alleged by the prosecutor. Defendants L.P. and Z.M. were acquitted of this charge by the trial panel based on Article 390 subparagraph 3) upon a finding by the panel that the prosecution had failed to prove this charge. The panel took a very different course with defendant P. in ruling on this charge.

In the enacting clause of the Judgment in regard to defendant P., the trial panel acquitted him of this charge, stating,

> *"Because, pursuant to Article 390, paragraph 2, KCCP, there are circumstances that exclude criminal liability in connection with the defendant's failure to provide information regarding his illegal income from defrauding the Kosovo Insurance Company."*

Later in the Judgment, under the section heading, CRIMINAL LIABILITY OF THE DEFENDANTS, at page 65 of the English language version of the Judgment, the trial panel, in a purely neutral way sets out the allegations of the Indictment regarding Tax Evasion and defendant P.'s position in regard to these allegations, including the statement,

> *"He (P.) does not deny that he failed to report his fees and expenses he received in those cases he claims were H.M.'s."*

Having completely failed to analyse the evidence in regard to this charge and in spite of the admission by defendant P. that he failed to report his fees and expenses on some matters, the court went on to say,

> *"…(T)he trial panel has determined that requiring P. to disclose his ill-gotten gains for tax purposes, or even his fees and expenses, would violate his fundamental right against self-incrimination, and has therefore found him not guilty of this offence."*

The trial panel provided no legal analysis or evaluation whatsoever to support this legal finding.

The prosecution in its Appeal in relation to this charge only argues about the sufficiency of the evidence to support the charge and completely ignores the legal issue that is at the core of the decision of the trial panel.

The finding of the trial panel that requiring the reporting of defendant P.'s "ill-gotten gains" would "*violate his fundamental right against self-incrimination*" raises three basic legal questions:

1.) Were "ill-gotten gains" taxable under the applicable law in Kosovo;
2.) At the relevant times regarding reporting of income, did Kosovo recognize a general "fundamental right against self-incrimination"; and
3.) If Kosovo did recognize such a right, would the required reporting of such income on a tax form violate defendant P.'s basic right against self-incrimination?

The Court of Appeals concludes that the answer to the 1.) question is: "Yes"; to the 2.) question "No", and that consequently, 3.) the defendant's legal obligation to report all his income did not violate any of his rights.

The Indictment in this case covers a period of 2002 through 2010. There were three different tax regimens in force in Kosovo at different times during that period.

aa) <u>Illegal gains as taxable income</u>

In the year 2000 UNMIK promulgated Regulation 2000/29, imposing the first income tax in Kosovo following the conflict. This law only taxed wage earners. In 2002 UNMIK promulgated Regulation 2002/4 which introduced a presumptive flat fee by job category as a tax on income from sources other than wages. In 2004 UNMIK promulgated Regulation 2004/52, the first law requiring the reporting of actual income by other than wage earners, and payment of income tax based on the amount of the income reported. This regulation became effective on 1 January 2005. UNMIK then adopted Administrative Instruction 02/2005 implementing Regulation 2004/52. In 2008 the Kosovo government adopted its own personal income tax legislation found in Law No. 03/L-115. It became effective 1 January 2009. This law was later amended by Kosovo Law Nr.03/L-161 which took effect 1 January 2010.

In the tax year 2005 for the first time after the conflict the duty to report the actual income was introduced for others than wage earners. Section 4 of UNMIK Regulation 2004/52 defined "taxable income" as follows:

> *"Taxable income for a tax period shall mean the difference between gross income receive or accrued during the tax period and the deductions allowable under the present Regulation with respect to such gross income."*

"Gross Income" is then defined in in Section 6. After a long list of specific types of income it includes the general clause definition:

> *"J. Any other income that increases the taxpayer's net worth."*

"Other Income" is defined in Section 15 of the regulation as follows:

"Gross income includes any other income, from whatever source derived, such as income from lottery or other game of chance winnings or income from debt forgiveness."

In Administrative Instruction 02/2005 in Section 16 "other income" is again defined as follows:

"'Other income' as referred to in section 15 of the Regulation includes any other income not specifically quoted in section 6 of the regulation and which includes non-cash lottery prices e.g. cars, debt forgiveness, etc., which increase the tax payer's net worth."

Finally, Article 27 of Administrative Instruction 02/2005 sets out the form to be used by taxpayers to report personal income. At line 19 under the heading of "Gross Income" there is a place to report "Other Income" with the instruction to, "Specify".

Given the broad definition of "other income" included in the UNMIK regulations and the fact that there is nothing in the regulations that exempts illegal income from taxation, it is logical to conclude that under UNMIK regulations, illegal income was required to be reported as taxable income.

In Kosovo Law No. 03/L-115 which became effective on 1 January 2009, a very similar pattern regarding the definition of what is taxable income can be seen. Article 4 of the Law provides the definition of Taxable Income:

"Taxable income for a tax period shall mean the difference between gross incomes received or accrued during the tax period and the deductions allowable under this Law with respect to such gross income."

Article 6 then defines "Gross Income" as follows:

"1. ... (G)ross income means all income received or accrued from all sources including:
...
1.10. any other income that increases the taxpayer's net worth."

Article 15 more or less restates the provisions of Article 6 by again stating as follows in regard to "other income":

"Gross income includes any other income, from whatever source derived..."
Under this Law there is no exemption from taxation for illegal income either.

Finally, in Kosovo Law Nr.03/L-161, effective from 1 January 2010, "Taxable Income" is defined as follows:

> *"Taxable income for a tax period shall mean the difference between gross income received or accrued during the tax period and the deductions allowable under the present law with respect to such gross income."*

Gross Income is then defined as follows:

> *"Except for income that is exempted under the present law, gross income means all income actually or constructively received from the following sources:*
> *...*
> *2.3. Any other income not described in the sub-law act issued by the Minister."*

Once again, there is no exemption from taxation for illegal income in the law.

From all elaborated above, it is clear that for all of the relevant time period, under the provisions of all tax laws imposing the duty of reporting of personal income in Kosovo, it was required that all income from whatever source - legal or illegal - had to be reported and was subject to taxation.

ab) Existence of a Fundamental Right Against Self-incrimination in Kosovo

The Panel notes that defendant P. was charged with Tax Evasion based on an allegation that over a series of years he had income that he intentionally did not report for taxation. The charge has nothing to do with the nature of the activities that may have generated this income. Other charges for which he had been found guilty have dealt with those activities. This is a charge related to enforcement of the tax laws and the sanctioning for their violation.

If defendant P. had reported the amount and source of the alleged income, what would have happened subsequently is a matter of pure speculation. Would this information have been given to the police? Would the police have investigated? Would they have discovered the activities that were the source of the income? Would he have been indicted for criminal offenses arising out of these activities? And, most importantly, could his revelations in his tax returns have been used as statements against him at trial? There are no answers to these questions because P. never reported.

The question that the trial panel has raised by its ruling, is: What, if any, right against self-incrimination did Defendant P. have under the criminal law of Kosovo, to refuse to truthfully answer purely administrative questions regarding his income on a form used in the process of collecting taxes? Can such a right be based upon the pure speculation that whatever answers he may have provided might, at some time in the future, be used at a trial to implicate him in some then unknown criminal activity?

UNMIK Regulation 2001/9, promulgated on 15 May 2001, entitled, "ON A CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT IN KOSOVO" is the starting point for this inquiry. This regulation has no explicit reference to

any right against self-incrimination. However, Articles 3.2 and 3.3 read in the relevant part:

"3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in:
(a) The Universal Declaration on Human Rights;
(b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
(c) The International Covenant on Civil and Political Rights and the Protocols thereto;"

"3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework."

As pointed out above, during the period the UNMIK Regulation 2001/9 was applied in Kosovo from 15 May 2001 to 15 June 2008, there was no direct recognition of a fundamental right against self-incrimination. Given that, it is necessary to analyse the applicable international agreements to determine if such a right was recognized which would apply in Kosovo.

The **Universal Declaration of Human Rights** does not provide a basis for the recognition of such a right. There is no explicit or implicit indication of a right against self-incrimination in any of its thirty articles. Thus this agreement provides no support for the finding of the trial panel.

The **European Convention for the Protection of Human Rights and Fundamental Freedoms** (ECHR) and its Protocols does not articulate such a right against self-incrimination in the Convention document. However, in 1993 the European Court of Human Rights (ECtHR) engrafted such a right onto Article 6 of the Convention in the case of Funk vs. France (256 ECtHR [ser. A] 1993). Thereafter, in a number of cases the parameters of this right were outlined in various legal circumstances.

In the year 2000 the Strasbourg Court, in the case of IJL, GMR and AKP vs. United Kingdom (2000-IX ECtHR 323) rejected the contention that,

"…a legal requirement for an individual to give information demanded by an administrative body necessarily infringes Article 6 of the Convention".

In 2003 the ECtHR decided the case of King vs. United Kingdom (37 ECtHR Rep. 1, 2003). This case is the seminal case for the discussion of the application of the right against self-incrimination under the European Convention as regards Defendant P. in this case.

In the King case, the defendant was being investigated for underpayment of taxes. As part of the investigation he was compelled by the tax authority to answer questions about income, the answers to which lead to the imposition of a penalty for under-reporting. The defendant appealed to the ECtHR claiming that his compelled answers violated his right against self-incrimination. The court rejected this claim.

In rejecting King's claim the ECtHR established three important findings. First, the court found that King was being penalized for making an incomplete tax return and not any potential criminal activity that might have preceded this under-reporting. Second, King was not being prosecuted for failure to provide information that might have incriminated him in some criminal offense, but rather for his failure to report. Finally, the court held that, "The privilege against self-incrimination cannot be interpreted as giving a general immunity to actions motivated by the desire to evade investigation by the revenue authorities." This finding in this case has not been limited or overruled.

The ECHR and its Protocols provides no basis for the assertion by the trial panel that requiring defendant P. to report his ill-gotten gains would have violated his basic human right against self-incrimination.

The **International Covenant on Civil and Political Rights** and its Protocols in Article 14 Section 3 provides:

> *"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
> ...
> *(g) Not to be compelled to testify against himself or to confess guilt".*

From the language of this Article it can be seen that the right against self-incrimination only arises in relation to the, "*...determination of any criminal charge...*" A review of the jurisprudence of the Human Rights Committee of the Office of the High Commissioner for Human Rights of the United Nation, the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights, reveals no instance where such right has been extended to support the right of a person to refuse to give required information regarding income in the process of tax collection. If such information might be said to be self-incriminating, then, if and when some criminal proceeding is instituted it might be that this evidence could not be used at trial. However this sort of speculation has no relevance for the current criminal proceedings against defendant P. because, as has been pointed out above, defendant P. gave no such answers on his tax form; he failed to report at all.

The International Covenant on Civil and Political Rights and its Protocols provides no basis for the assertion by the trial panel that requiring defendant P. to report his ill-gotten gains would have violated his basic human right against self-incrimination.

The **Constitution of Kosovo** which came into effect on 15 June 2008 has no direct reference to the right against self-incrimination either, except in Article 30 paragraph 6, which says that anyone charged with a criminal offence has the right, "*...to not be forced*

to testify against oneself or admit one's guilt." Since at the time the Indictment alleges that he failed to report his taxable income, defendant P. was not charged with any criminal offence this provision clearly has no application.

Like the UNMIK Regulation which preceded it, the Kosovo Constitution does have a reference to fundamental human rights and the applicability of certain international agreements. This reference is found in Section 22 and reads in relevant part:

> *"Article 22 [Direct Applicability of International Agreements and Instruments]*
>
> *Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:*
>
> *(1) Universal Declaration of Human Rights;*
> *(2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
> *(3) International Covenant on Civil and Political Rights and its Protocols;"*

While Article 22 seems to unequivocally adopt the international agreements listed there and in fact give them precedent over laws adopted in Kosovo, there is an apparent - and major - limitation on the application of these agreements found in Article 55 of the Constitution. It reads in relevant part:

> *"Article 55 [Limitations on Fundamental Rights and Freedoms]*
>
> *1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.*
> *2. Fundamental rights and freedoms guaranteed by this Constitution may be limited to the extent necessary for the fulfilment of the purpose of the limitation in an open and democratic society.*
> *3. Fundamental rights and freedoms guaranteed by this Constitution may not be limited for purposes other than those for which they were provided.*
> *4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.*
> *5. The limitation of fundamental rights and freedoms guaranteed by this Constitution shall in no way deny the essence of the guaranteed right."*

Section 2 allows for the limitation of fundamental rights and freedoms guaranteed by the Constitution "to the extent necessary for the fulfilment of the purpose of the limitation in an open and democratic society."

In addition, Section 4 sets out a specific set of criteria to be taken into consideration by, "*…all public authorities, and in particular courts…*" (emphasis added) when dealing with the potential, "*…limitation of human rights or the interpretation of those limitations…*".

By a comparing UNMIK Regulation 2001/9 and the current Kosovo Constitution it is clear that what was, under the UNMIK Regulations, essentially the unlimited and overriding application of rights under international agreements has been changed by the Constitution so that fundamental human rights, including those set forth in international agreements, may be limited through a careful analytical process based on the criteria set forth in Article 55 paragraph 4.

However, since the Kosovo Constitution adopts the same relevant international agreements as the earlier UNMIK Resolution 2001/9, the analysis above need not be repeated. The conclusion is the same. In fact, the provision in the Kosovo Constitution allowing for the potential limitation of human rights under some circumstances actually further weakens the case of a fundamental right against self-incrimination under the facts relevant to defendant P..

ac) Conclusion

Consequently the Panel comes to the above mentioned conclusion that at all times relevant to this Indictment there was no fundamental human right against self-incrimination applicable that would affect defendant P.'s legal obligation to fully and accurately report the amount and source of all his income - legal or illegal - on his Kosovo income tax report.

b) The charge of Organized Crime

The Panel does rejects the arguments raised in the Special Prosecutor's Appeal in regard to the criminal charge against defendant P. for the offence of Organized Crime. The criminal offence requires the existence of "*an organized criminal group*". Article 274 paragraph 7 subparagraph 2 of the CCK defines this term as:

> *"…structured group existing for a period of time and acting in concert…"*

Subparagraph 4 of the same provision determines "structured group" as meaning

> *"…a group of three or more persons that is not randomly formed for the immediate commission of an offence…"*

In the current case, since the defendants Z.M. and L.P. were found not guilty of having committed the said criminal offence and – as will be reasoned below – the Panel finds no grounds for reversing the findings of the court of first instance in that regard, there could have a maximum of only two persons participated in an organized criminal group: the

defendant P. and the deceased H.M.. This number does not satisfy the requirement of Article 274 paragraph 1 of the CCK.

c) The remaining charges against the defendant K.P.

The Court finds that the remaining charges against the defendant are closely intertwined with the Fraud charge that had to be dismissed. They cannot be assessed separately by the Court of Appeals without a new evaluation of all the evidence in its entirety. Therefore, on grounds of substantial violations of the provisions of criminal procedure and an erroneous and incomplete determination of facts the part of the challenged Judgment related to the acquittal of defendant P. had to be annulled and returned to the court of first instance for retrial.

d) The charges against the defendants Z.M. and L.P.

The Panel finds the challenges in the Special Prosecutor's Appeal against the acquittals of the defendants Z.M. and L.P. without base.

The Prosecution Appeal regarding each of these defendants is simply based on a disagreement with the fact findings by the trial panel.

The two defendants were alleged in the Indictment to have assisted defendant P. in the falsification of various claims for compensation for a number of people. The trial panel found that the only evidence of direct involvement of defendant Z.M. was that he had opened a bank account for which P. was an authorized user. The panel in fact found that the purported signatures of defendant Z.M. on various documents were all forgeries. From a reading of the opinion of the trial panel it is clear that they did a careful analysis of the evidence with a particularly sceptical attitude but found that the objective evidence simply did not support a finding of his participation in any criminal activity.

In relation to defendant L.P. the situation is much the same. In examining his participation in this matter the panel again found his conduct highly suspect but could not prove beyond reasonable doubt for his involvement in any of the criminal activity alleged. The trial panel found that defendant L.P. was deceived by defendant P. in one case in which he did actually participate. They also found that while he certainly should have known that defendant P. was up to no good in a property transaction that defendant L.P. carried out for him, there was no evidence that he knew the funds for the transaction were originating from criminal activities of P..

The Court of Appeals of Kosovo has often applied the general principle that it is required to give some substantial degree of deference to the finding of fact of the trial panel as it has heard the evidence and is in the best position to assess its weight and value[3]. In addition, the Supreme Court of Kosovo has held that it must,

> "*...defer to the assessment by the Trial Panel of the credibility of the trial witnesses who appeared in person before them and who testified in person before them. It is*

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

not appropriate for the Supreme Court of Kosovo to override the Trial Panel assessment of credibility of those witnesses unless there is a sound basis for doing so."

The Court went on to say that the standard to be applied was:

"*...to not disturb the trial court's findings unless the evidence relied upon by the trial court could not have been accepted by any reasonable tribunal of fact, or where its evaluation has been wholly erroneous.*"[4]

Applying the above general principle, this Court finds no grounds upon which to disturb the findings, reasoning or decisions of the trial panel regarding the defendants Z.M. and L.P..

Based on the aforementioned arguments and in accordance with Articles 420 paragraph 1 subparagraphs 2 and 3, 423 and 424 paragraphs 1 and 5 of the CPC the Court of Appeals decides as in the enacting clause.

Original drawn up in English, as one authorized language.

Members of the panel:

____________________	____________________
Fllanza Kadiu	**Fillim Skoro**
Court of Appeals Judge	Court of Appeals Judge

Presiding Judge:

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Piotr Bojarczuk
EULEX Judge

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

Recording Clerk:

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Holger Engelmann
EULEX Legal Officer

COURT OF APPEALS
PAKR. No. 45/2013
Prishtinë/Priština
31 July 2015