**COURT OF APPEALS**
PRISTINA

IN THE NAME OF THE PEOPLE

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**Case number:** **PAKR 52/14**
**Date:** **6 November 2015**

**Basic Court:** **Pristina, P 309/10 & 340/10**

Original: **English**

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The Court of Appeals, in a Panel composed of EULEX Court of Appeals judge Radostin Petrov, as presiding and reporting judge, Kosovo Court of Appeals judge Mejreme Memaj and EULEX Court of Appeals judge Dariusz Sielicki as panel members, assisted by Dr. Bernd Franke and Alan Vasak, EULEX legal officers, acting in the capacity of recording officers,

in the case concerning the defendants:

| | |
|---|---|
| L. D. | |
| Name of father: | H. D. |
| Mother's maiden name: | E. M. |
| Personal ID number: | [] |
| Nationality: | Kosovo Albanian |
| Citizenship: | Kosovar |
| Date of birth: | [] |
| Place of birth: | [] |
| Place of residence: | Pristina |
| Family status | [] |
| Occupation: | [] |
| Educational level: | [] |
| Income per year: | [] |
| Financial status: | [] |
| Other criminal proceedings: | None |
| Detention status: | Not detained |

A. D.

| | |
|---|---|
| Name of father: | L. D. |
| Mother's maiden name: | V. S. |
| Personal ID number: | [] |
| Nationality: | Kosovo Albanian |
| Citizenship: | Kosovar |
| Date of birth: | [] |
| Place of birth: | [] |
| Place of residence: | Pristina |
| Family status: | [] |
| Occupation: | [] |
| Educational level: | [] |
| Income per year: | [] |
| Financial status: | [] |
| Other criminal proceedings: | None |
| Detention status: | Not detained |

S. H.

| | |
|---|---|
| Name of father: | R. H. |
| Mother’s maiden name: | S. S. |
| Personal ID Number: | [] |
| Nationality: | Kosovo Albanian |
| Citizenship: | Kosovar |
| Date of birth: | [] |
| Place of birth: | [] |
| Place of residence: | Pristina |
| Family status: | [] |
| Occupation: | [] |
| Education level: | [] |
| Income per year: | [] |
| Financial status: | [] |
| Other criminal proceedings: | None |
| Detention status: | Not detained |

I. B.

| | |
|---|---|
| Name of father: | I. B. |
| Personal ID number: | [] |
| Nationality: | Kosovo Albanian |
| Citizenship: | Kosovar |
| Date of birth: | [] |

| | |
|---|---|
| Place of birth: | [] |
| Place of residence: | [] |
| Family Status: | [] |
| Occupation: | [] |
| Education level: | [] |
| Other criminal proceedings: | None |
| Detention status: | Not detained |

S. D.

| | |
|---|---|
| Name of father: | B. S. |
| Personal ID number: | [] |
| Nationality: | Kosovo Albanian |
| Citizenship: | Kosovar |
| Date of birth: | [] |
| Place of birth: | [] |
| Place of residence: | Pristina |
| Family Status: | [] |
| Occupation: | [] |
| Education level: | [] |
| Other criminal Proceedings: | None |
| Detention status: | Not detained; |

charged under the Special Prosecution Office of the Republic of Kosovo's (SPRK) amended indictment PPS 02/09 dated 22 March 2013 with the following remaining criminal offences:

*Count 1*
Trafficking in Persons, in violation of Article 139 of the Provisional Criminal Code of Kosovo (PCCK), punishable by imprisonment of two years to twelve years, committed in Co-perpetration, Article 23 of the PCCK, against L. D., A. D. and S. H..

*Count 2*
Organized Crime, in violation of Article 274, paragraph 3, of the PCCK, punishable by a fine of up to 500 000 EUR and by imprisonment of seven years to twenty years, committed in Co-perpetration, Article 23 of the PCCK, against L. D..

*Count 3*
Organized Crime, in violation of Article 274, paragraph 1, of the PCCK, punishable by a fine of up to 250 000 EUR and by imprisonment of at least 7 years, against A. D. and S. H..

*Count 7*

Grievous Bodily Harm, in violation of Article 154 of the PCCK, punishable by imprisonment of 1 year to 10 years or in the alternative section 5 punishable by imprisonment of 6 months to 3 years or in the alternative sections 1 (4) punishable by imprisonment of 6 months to 5 years committed in Co-perpetration, Article 23 of the PCCK, against L. D., S. H., I. B. and S. D..

adjudicated in first instance by the Basic Court of Pristina with judgment P 309/10 and 340/10, dated 29 April 2013, by which:

The defendants L. D. and A. D. were found guilty of Count 1, committing the criminal offence of Trafficking in Persons, in violation of Article 139 CCK, committed in co-perpetration (Article 23 CCK), by – briefly put – in the case against L. D., being personally involved in many of the illegal transplant operations at the Medicus Clinic. As the owner of the clinic, he was responsible for its overall development and functioning with regard to illegal kidney transplants; in the case against A. D., as the manager of the clinic he had a central role and was responsible for the numerous activities related to the illegal kidney transplant operations.

Count 1, the criminal offence of Trafficking in Persons, in violation of Article 139 CCK, committed in co-perpetration (Article 23 CCK), against the defendant S. H. was requalified as per Negligent Facilitation of the criminal offence of Trafficking in violation of Article 139, paragraph 4, CCK and was rejected.

The defendant L. D. was further found guilty of Count 2, committing the criminal offence of Organised Crime, in violation of Article 274, paragraph 3, CCK, by – briefly put – organizing, establishing, supervising and managing the overall illegal activity of Count 1, in concert with Dr. Y. S., M. H., A. D., Dr. K. D. and others, in order to obtain financial/material benefits.

The defendant A. D. was found guilty of Count 3, committing the criminal offence of Organised Crime, in violation of Article 274, paragraph 1, CCK, by – briefly put – being the manager of the Medicus Clinic and committing the illegal activity of Count 1, in order to obtain financial/material benefits.

The defendant S. H. was acquitted from Count 3, the criminal charge of Organised Crime, in violation of Article 274, paragraph 1, CCK.

Count 4, the criminal offence of Unlawful Exercise of Medical Activity, in violation of Article 221, paragraph 1, CCK, committed in co-perpetration (Article 23 CCK), against the defendants L. D., D. J., I. B., S. D. and S. H. was rejected.

Count 5, the criminal offence of Abusing Official Position or Authority, in violation of Article 339, paragraph 1, CCK, against the defendant D. J. was requalified as per

Abusing Official Position or Authority, in violation of Article 339, paragraph 3, CCK and was rejected.

The defendant I. R. was acquitted from Count 6, the criminal charge of Abusing Official Position or Authority, in violation of Article 339, paragraph 1, CCK.

Count 7, the criminal offence of Grievous Bodily Harm, in violation of Article 154, paragraph 4, CCK, against the defendant L. D. was rejected. The defendant A. D. was acquitted from Count 7, the criminal charge of Grievous Bodily Harm, in violation of Article 154, paragraph 1, subparagraph 2, CCK, committed in co-perpetration (Article 23 CCK). Count 7, the criminal offence of Grievous Bodily Harm committed in co-perpetration against the defendants S. H., I. B. and S. D. was requalified as per Article 154, paragraph 1, subparagraph 2, CCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person and the defendants were found guilty of this criminal offence, by – briefly put – knowingly participating in medical procedures which were unlawful under the laws of Kosovo, namely the removal of kidneys for transplantation and thereby permanently and substantially weakening a vital organ.

Count 8, the criminal offence of Fraud, in violation of Article 261 CCK, against the defendants L. D. and A. D. was rejected.

Count 9, the criminal offence of Falsifying Documents, in violation of Article 332, paragraph 1, CCK, against the defendants L. D. and A. D. was rejected.

Count 10, the criminal offence of Falsifying Official Documents, in violation of Article 348 CCK, against I. R. was rejected.

The defendant L. D. was sentenced to 8 (eight) years of imprisonment and a fine in the amount of EUR 10.000 (ten thousand) Euro. In addition the defendant L. D. was prohibited from exercising the profession of urologist for the period of 2 (two) years starting from the day the judgment becomes final.

The defendant A. D. was sentenced to 7 (seven) years and 3 (three) months of imprisonment and a fine in the amount of EUR 10.000 (ten thousand) Euro.
The defendant S. H. was sentenced to 3 (three) years of imprisonment. In addition the defendant S. H. was prohibited from exercising the profession of anesthesiologist for the period of 1 (one) year starting from the day the judgment becomes final.

The defendants S. D. and I. B. were sentenced to 1 (one) year of imprisonment, with the execution of the punishment not to be executed if the defendants do not commit another criminal offence for the period of 2 years.

The injured parties W1, W2, W3, PM, DS, AK and Y. A. were each awarded partial compensation for the psychological and physical damages sustained during kidney

removal in the amount of 15,000 (fifteen thousand) Euro from L. D. and A. D. to be paid no more than 6 (six) months starting from the day the judgment becomes final.

A separate ruling was issued regarding the confiscation of the Medicus Clinic premise;

seized of the appeals filed by the SPRK (only regarding the confiscation ruling), defence counsel Linn Slattengren for the defendant L. D., defence counsel Petrit Dushi for the defendant A. D., defence counsel Ramë Gashi for the defendant S. H., defence counsel Ahmet Ahmeti for the defendant I. B. and defence counsel Hilmi Zhitia for the defendant S. D.,

having considered the responses of the SPRK, defence counsel Petrit Dushi for the defendant A. D., defence counsel Ramë Gashi for the defendant S. H. and defence counsel Ahmet Ahmeti for the defendant I. B.,

having considered the motion of the appellate state prosecutor,

after having held a public session of the Court of Appeals on 4 and 5 November 2015,

having deliberated and voted on 6 November 2015,

acting pursuant to Articles 409, 410, 411, 415, 417, 420, 421, 423, 424, 426 and 427 of the Provisional Criminal Procedure Code of Kosovo (PCPCK),

renders the following:

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**JUDGMENT**

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**I. The appeal of defence counsel Linn Slattengren for the defendant L. D. against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is partially granted with regard to the determination of the factual situation, insofar as the number of proven kidney transplants that took place at the Medicus Clinic in which the criminal organization, including the defendant L. D., was involved is to be established as seven and not twenty-four. The remainder of the appeal is rejected as unfounded.**

**II. The appeal of defence counsel Petrit Dushi for the defendant A. D. against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is partially granted with regard to the determination of the factual situation, insofar as the number of proven**

**kidney transplants that took place at the Medicus Clinic in which the criminal organization, including the defendant A. D., was involved is to be established as seven and not twenty-four. The remainder of the appeal is rejected as unfounded.**

**III. The appeal of defence counsel Ramë Gashi for the defendant S. H. against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is partially granted with regard to the determination of the factual situation, insofar as the number of proven kidney transplants that took place at the Medicus Clinic in which the criminal organization, including the defendant S. H., was involved is to be established as seven and not twenty-four. The remainder of the appeal is rejected as unfounded.**

**IV. The appeal of defence counsel Ahmet Ahmeti for the defendant I. B. against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is granted insofar as the defendant I. B. is acquitted from Count 7, namely inflicting grievous bodily harm by carrying out unlawful medical procedures in the capacity as anesthetist, including the removal of organs (kidneys) and transplantations.**

**V. The appeal of defence counsel Hilmi Zhitia for the defendant S. D. against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is granted insofar as the defendant S. D. is acquitted from Count 7, namely inflicting grievous bodily harm by carrying out unlawful medical procedures in the capacity as anesthetist, including the removal of organs (kidneys) and transplantations.**

**VI. The appeal of the Special Prosecution Office of the Republic of Kosovo against the judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is partially granted insofar as the defendant S. H. is convicted for the criminal offence of Organized Crime in connection with Trafficking in Persons, insofar as the defendant A. D. is sentenced to a higher punishment, and insofar as the accessory punishments shall start after the defendants have served the imposed sentence of imprisonment.**

**VII. The judgment of the Basic Court of Pristina P 309/10 & 340/10 dated 29 April 2013 is modified as follows:**

***Count 7***

**I. B. and S. D. are acquitted of Count 7, the charge of Grievous Bodily Harm, in violation of Article 154 of the PCCK,**
**because pursuant to Article 390, paragraph 3, PCPCK it has not been proven that the accused committed the criminal offence with which they have been charged.**

***Count 1, 2 and 3***

**L. D. is guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 3 of the PCCK in connection with Trafficking in Persons in violation of Article 139, paragraph 1, of the Criminal Code of Kosovo, committed in Co-perpetration, Article 23 of CCK.**

**A. D. is guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 1 of the PCCK in connection with Trafficking in Persons in violation of Article 139 of the Criminal Code of Kosovo, committed in Co-perpetration, Article 23 of CCK.**

**S. H. is guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 1 of the PCCK in connection with Trafficking in Persons in violation of Article 139 of the Criminal Code of Kosovo, committed in Co-perpetration, Article 23 of CCK.**

**Because the prosecutor has proved beyond a reasonable doubt that:**

**On or about 1 January 2008 through to 4 November 2008, Dr. L. D. in his capacity as transplant surgeon and owner of the Medicus clinic, A. D. in his capacity as director/manager of the Medicus clinic; Dr. S. H. in his capacity as chief anesthesiologist; a co-conspirator in the capacity as transplant surgeon; a co-conspirator in the capacity of recruiter and facilitator; together with a co-conspirator in the capacity as transplant surgeon; and others, recruited, transported, transferred, harbored and received persons from foreign countries into Kosovo for the purpose of the removal of their organs (kidneys) at the Medicus clinic and the transplantation of those organs into waiting recipients.**

**L. D., as owner of the Medicus Clinic, was responsible for the overall development and functioning of the Clinic with regard to illegal kidney transplants. He was personally involved in many of the illegal kidney transplant operations listed below.**

**A. D., in his capacity of manager of the Clinic, was responsible for numerous and indispensable activities related to the illegal kidney transplant operations at the Medicus Clinic, including the following: arranging the transfer of donors and recipients from the Pristina Airport to the Medicus Clinic and their return to the Airport, and in certain cases performing the transfer himself; managing all logistical activities for transplantation operations, such as scheduling and insuring the availability of proper medical supplies; signing and providing letters of**

**invitation to donors and recipients to facilitate their entry into Kosovo; assisting with financial arrangements, and providing receipts for payment in certain cases; maintaining close contact with a co-conspirator regarding logistical arrangements; and engaging in other related activities at the Clinic, such as accounting. All of these activities were carried out with the purpose of accomplishing illegal kidney operations at the Medicus Clinic.**

**S. H., as the lead anesthesiologist at the Medicus Clinic, personally interacted with most if not all of the donors and recipients involved in the 7 kidney transplant operations in preparation for surgery, and therefore knew that they were all foreign nationals. This striking fact should have, at the very least, aroused his suspicion that the Clinic was engaged in trafficking. He also participated in each of the surgeries, and, at the very least, should have known that kidney transplant operations were illegal in Kosovo, and that the Clinic had no license or authorization to conduct these operations.**

**Commencing in 2008, numerous persons were recruited in foreign countries, transported to Kosovo, transferred from Pristina airport to the Medicus clinic, received at the Clinic, and then harbored at the Clinic, all for the purpose of exploitation by the removal of their kidneys and the transplantation of their kidneys into waiting recipients. The donors were all victims of abuse of their position of vulnerability because of their extremely dire financial circumstances, and in certain cases also the victims of coercion, fraud and/or deception. Such conduct is contrary to Article 139 (1) and (8), subparagraphs 1 and 2, CCK.**

**Pursuant to Article 139, paragraph 8, subparagraph 3, CCK, the consent of the victim of trafficking to the intended exploitation is irrelevant for the purpose of Article 139, paragraph 1 CCK.**

**Beginning in March 2008 through to November 2008, the removal of organs from donors at the Medicus clinic, and the transplantation of those organs to waiting recipients, involved 7 separate cases, each one of which involved a donor and a recipient, as described below in chronological order.**

**The involved donors testified at the main trial, and were proven to be victims of abuse of their position of vulnerability, and in certain cases victims of coercion, fraud and/or deception, and were exploited by removal of their kidney within the meaning of article 139.**

**(1) On 15 May 2008 the group of surgeons and anesthesiologists comprising Dr. L. D., Dr. S. H. and co-conspirators performed a kidney removal operation on the donor victim Protected Witness "W2". Protected Witness "W2" had been promised 15,000 USD in exchange for her kidney but only received 12,000 USD. Protected Witness "W2" had immigrated to Israel from the former Soviet Union in 2007 and was in poor financial condition. She was the victim of the abuse of her position of financial vulnerability, and the victim of fraud. It was not established how much the recipient "S." paid for this organ transplant;**

**(2) On 19 June 2008, the group surgeons and anesthesiologists comprising Dr. L. D., Dr. S. H. and co-conspirators performed a kidney removal operation on the donor victim Protected Witness "W1", the organ (kidney) then being transplanted to a recipient. The donor victim received 12,000 USD through a contact in Israel called "A.". Protected Witness "W1" sold his kidney due to large financial difficulties he found himself in, and was the victim of the abuse of his financial vulnerability. He saw a media advertisement promising 12,000 USD payment for kidney donation. The donor victim suffered considerable physical and psychological trauma and his medical state deteriorated following the operation due to improper functioning of his remaining kidney and post operatory complications;**

**(3) On 24 July 2008, the group surgeons and anesthesiologists comprising Dr. L. D., Dr. S. H. and co-conspirators performed a kidney removal operation on the donor victim, Protected Witness "W3," her organ (kidneys) then being transplanted to a recipient. The investigation established that the kidney transplant operation took place on this date; however, the prosecutor could not pair the donor victim with the recipient. Protected Witness "W3" had been in financial distress and immigrated to Israel from the former Soviet Union. She was offered 10,000 EUR through a newspaper announcement, to 'donate' a kidney, and she was the victim of the abuse of her financial vulnerability. Co-conspirators had made the necessary arrangements for her to travel to Pristina for the kidney removal procedure. She was paid the equivalent of 10,000 USD in EUR (8,100 or 8,200 EUR);**

**(4) On 09 September 2009, the group surgeons and anesthesiologists comprising Dr. S. H. and co-conspirators performed a kidney removal operation on the donor victim "PM", his organ (kidney) being then transplanted to a recipient. The donor victim had been facing serious financial distress in 2008 due to his familial situation, and he was the victim of the abuse of his financial**

**vulnerability. Following an advertisement he had seen on a Russian website, he contacted an unknown person who promised a payment of a 30,000 USD for donating a kidney. He was persuaded to go to Istanbul for further tests, and in Istanbul he met a co-conspirator who managed the preparations for a transplant operation in Kosovo. After the operation he received 1,000 USD from the recipient's brother personally. The Protected Witness "PM" suffered significantly after the operation and he regretted he had agreed to give away his kidney. The donor victim was never provided any payment whatsoever for his organ (kidney) removed at the Medicus clinic, and was the victim of fraud.**

**(5) On 21 October 2008 the group surgeons and anesthesiologists comprising Dr. S. H. and co-conspirators conducted a kidney removal operation on the donor victim "DS," a Kazakhstani national, his organ (kidney) then being transplanted to a recipient. The donor victim underwent the procedure as he had serious familial and financial problems as a single parent, and he was the victim of the abuse of his position of financial vulnerability. He was persuaded by a person called Y., allegedly a kidney transplant donor victim himself, to have his kidney extracted in Kosovo, in exchange for 20,000 USD. After undergoing the kidney removal surgery he only received 6,000 USD and was promised more money only if he recruited other kidney 'donors'. Thus, he was also the victim of fraud. At the clinic, he was not advised of the consequences of the kidney removal and was coerced by A. D. to sign consent papers he did not understand. The inquiry could not establish the amounts paid by the recipient of the transplanted organ (kidney);**

**(6) On 26 October 2008 the group surgeons and anesthesiologists comprising Dr. S. H. and co-conspirators, conducted a kidney removal operation on the donor victim "AK", his organ (kidney) then being transplanted to a recipient. The donor victim had undertaken to have his kidney extracted in order to support his studies and help his sick father, and he was the victim of abuse of his position of financial vulnerability. He saw an advertisement on the internet and through two intermediaries, Y. and J. (Y.), he was offered 10,000 EUR in exchange for his kidney. After the operation, however, he only received 8,000 USD and was promised the rest of the money owed only after he recruited other kidney 'donors'. Finally, he was paid 500 USD for the outstanding debt and was threatened by the same intermediary J. to keep silent or suffer dire consequences. Thus, he was also the victim of fraud.**

**(7) On 31 October 2008 the group surgeons and anesthesiologists comprising Dr. L. D., Dr. S. H. and co-conspirators, conducted a kidney removal operation on**

**the donor victim Y. A., his organ (kidney) being then transplanted to the recipient B. S.. The recipient's family members, Protected Witness "A3" and Protected Witness "A4" confirmed that B. S. paid 90,000 EUR for the kidney transplant operation. The money was wired to the bank account of a co-conspirator in Turkey. The donor victim Y. A. was recruited in Istanbul by an intermediary, who had assured him he would receive 20,000 USD for his kidney, and he was the victim of the abuse of his position of financial vulnerability. His travel arrangements to the clinic in Pristina were managed by a co-conspirator. After the surgery, and at the time of the special investigative hearing, the donor victim had never received any money in exchange for his kidney, and was therefore the victim of fraud.**

**And thus**

**From on or about 1 January 2008 to 4 November 2008 at the Medicus clinic, Dr. L. D., in his capacity as transplant surgeon and the owner of the Medicus clinic with overall responsibility for the functioning of the Clinic, organized, established, supervised, managed and directed the activities of the organized criminal group which occurred at the Medicus Clinic. The organized criminal group was a structured group consisting of three or more persons, including L. D., A. D., S. H. and others. The group existed for at least several months during 2008, and was not randomly formed for the immediate commission of an offense. The group was formed with the aim of committing one or more serious crimes on an ongoing basis, specifically trafficking in persons, contrary to Article 139 CCK, in order to obtain, directly or indirectly, a financial or other material benefit, by means of the removal of organs (kidneys) and transplant to recipients who paid large sums of money for their kidney.**

**Beginning in March 2008 through to November 2008, the removal of organs at the Medicus clinic and transplantation to recipients involved 7 cases of organ removal and transplantation as specified in the above description of the trafficking charge in Count 1, which description is incorporated herein by reference. This illegal activity took place under the overall organization, establishment, supervision and management of L. D., acting in concert with others named above.**

**Dr. L. D. and the organized criminal group obtained financial or other material benefits including cash payments made directly to the Medicus clinic, and/or others from the recipients of organs (kidneys) including but not limited to the following cash payments:**

**(1) From Protected Witness "T3" in the amount of 100,000 USD**
**(2) From Protected Witness "T4" in the amount of 70,000 EUR**
**(3) From Protected Witness M2 in the amount of 108,000 USD**
**(4) From Protected Witness A1 in the amount of 79,000 EUR**
**(5) From T. S. in the amount of 25,000 EUR**
**(6) From R. F. in the amount of 80,000 EUR**
**(7) From Protected Witness "M1" in the amount of 77,000 EUR**
**(8) From Protected Witness "T2" in the amount of 90,000 EUR**

**and**

**From on or about 1 January 2008 to 4 November 2008 at the Medicus clinic, A. D., in his capacity as director/manager of the Medicus clinic, with the aim of committing one or more serious crimes, committed the offence of trafficking in persons, contrary to Article 139 CCK, in order to obtain, directly or indirectly, a financial or other material benefit, by means of the removal of organs (kidneys) and transplant to recipients.**

**A. D. and the organized criminal group obtained financial or other material benefits including the following cash payments made directly to the Medicus clinic, and/or others from the recipients of organs (kidneys):**

**(1) From Protected Witness "T3" in the amount of 100,000 USD**
**(2) From Protected Witness "T4" in the amount of 70,000 EUR**
**(3) From Protected Witness M2 in the amount of 108,000 USD**
**(4) From Protected Witness A1 in the amount of 79,000 EUR**
**(5) From T. S. in the amount of 25,000 EUR**
**(6) From R. F. in the amount of 80,000 EUR**
**(7) From Protected Witness "M1" in the amount of 77,000 EUR**
**(8) From Protected Witness "T2" in the amount of 90,000 EUR**

**And**

**From on or about 08 March 2008 to 04 November 2008 at the Medicus Clinic, Dr. S. H. in his capacity as chief anestheiologist, knowingly participated in medical procedures which were criminal and unlawful under the laws of Kosovo, namely the removal of organs (kidneys) for transplantation, and thus committed the offence of trafficking in persons, contrary to Article 139 CCK, in order to obtain, directly or indirectly, a financial or other material benefit, by means of the removal of organs (kidneys) and transplant to recipients**

**S. H. and the organized criminal group obtained financial or other material benefits including the following cash payments made directly to the Medicus clinic, and/or others from the recipients of organs (kidneys):**

**(1) From Protected Witness "T3" in the amount of 100,000 USD**
**(2) From Protected Witness "T4" in the amount of 70,000 EUR**
**(3) From Protected Witness M2 in the amount of 108,000 USD**
**(4) From Protected Witness A1 in the amount of 79,000 EUR**
**(5) From T. S. in the amount of 25,000 EUR**
**(6) From R. F. in the amount of 80,000 EUR**
**(7) From Protected Witness "M1" in the amount of 77,000 EUR**
**(8) From Protected Witness "T2" in the amount of 90,000 EUR**

***Punishments***

**Pursuant to Article 6, Article 11, Article 15, paragraph 1, Article 23, Article 274, paragraph 3 and Article 39, paragraph 1 and 2 of the CCK, L. D. is sentenced to imprisonment of 8 (eight) years and a fine of 10,000 (ten thousand) Euros that is to be paid no more than six months after the judgment is final.**

**Pursuant to Article 6, Article 11, Article 15, paragraph 1, Article 23, Article 274, paragraph 1, and Article 39, paragraph 1 and 2, of the CKK, A. D. is sentenced to imprisonment of 8 (eight) years months and a fine of 2,500 (two thousand five hundred) Euro that is to be paid no more than six months after the judgment is final.**

**Pursuant to Article 6, Article 11, Article 15, paragraph 1, Article 23, Article 274, paragraph 1, and Article 39, paragraph 1 and 2, of the CKK, S. H. is sentenced to imprisonment of 5 (five) years and a fine of 2,500 (two thousand five hundred) Euro that is to be paid no more than six months after the judgment is final.**

**Pursuant to Article 57, paragraph 1 and 2 of the CCK L. D. is prohibited from exercising the profession of urologist for the period of 2 (two) years starting from the day the prison sentence has been fully served.**

**Pursuant to Article 57, paragraph 1 and 2, of the CCK S. H. is prohibited from exercising a profession of anesthesiologist for the period of 1 (one) year starting from the day the prison sentence has been fully served.**

**VIII. The appeal of Linn Slattengren on behalf of L. D. and the companies Klinika Kardiokirkurgjike Medikus and Ordinanca Urologjike Medicus against the ruling of the Basic Court of Pristina P 309/10 & 340/10 dated 25 November 2013 is granted, insofar as there is no ground to close and confiscate the Medicus Clinic premises.**

**IX. The appeal of F. I. on behalf of the economic entity Medical Center LLC against the ruling of the Basic Court of Pristina P 309/10 & 340/10 dated 25 November 2013 is granted, insofar as there is no ground to close and confiscate the Medicus Clinic premises.**

**X. The appeal of the Special Prosecution Office of the Republic of Kosovo against the ruling of the Basic Court of Pristina P 309/10 & 340/10 dated 25 November 2013 is rejected.**

**XI. The ruling of the Basic Court of Pristina P 309/10 & 340/10 dated 25 November 2013 is modified insofar as the Prosecutor's Application for confiscation of the Medicus Clinic establishment dated 29 April 2013 is hereby rejected as unfounded.**

## REASONING

## I. RELEVANT PROCEDURAL BACKGROUND

A. Judgment

On 12 November 2008 a ruling on initiation of investigation was issued regarding the alleged criminal offences that took place in 2008 with regard to kidney transplantations in the Medicus Clinic.

On 15 October 2010 indictment PPS 41/09 was filed, charging L. D., A. D., D. J., I. R. and S. H. with certain criminal offences. On 21 October 2010 indictment PPS 107/10 was filed, charging I. B. and S. D. with certain related criminal offences. The two indictments were joined into a single indictment on 29 November 2010, and confirmed by a three judge panel on 27 April 2011. The indictment was then amended and expanded on 22 March 2013 and 17 April 2013.

The full and final indictment contains the following charges:

Count 1
Trafficking in Persons, in violation of Article 139 of the Provisional Criminal Code of Kosovo (PCCK), punishable by imprisonment of two years to twelve years, committed in Co-perpetration, Article 23 of PCCK, against L. D., A. D. and S. H..

Count 2
Organized Crime, in violation of Article 274, paragraph 3, of the PCCK, punishable by a fine of up to 500.000 EUR and by imprisonment of seven years to twenty years, committed in Co-perpetration, Article 23 of the PCCK, against L. D..

Count 3
Organized Crime, in violation of Article 274 paragraph 1 of the PCCK, punishable by a fine up to 250 000 EUR and imprisonment of at least 7 years against A. D. and S. H..

Count 4
Unlawful Exercise of Medical Activity, in violation of Article 221, paragraph 1 of the PCCK, punishable by a fine or by imprisonment of up to one year, committed in Co-perpetration, Article 23 of PCCK, against L. D., D. J., I. B., S. D. and S. H..

Count 5
Abusing Official Position or Authority, in violation of Article 339, paragraph 1 of the PCCK, punishable by imprisonment of one year to eight years against D. J..

Count 6
Abusing Official Position or Authority, in violation of Article 339, paragraph 1 of the PCCK, punishable by imprisonment of one year to eight years against I. R..

Count 7
Grievous Bodily Harm, in violation of Article 154 of the PCCK, punishable by imprisonment of 1 year to 10 years or in the alternative section 5 punishable by imprisonment of 6 months to 3 years or in the alternative sections 1 (4) punishable by imprisonment of 6 months to 5 years committed in Co-perpetration, Article 23 of the PCCK, against L. D., S. H., I. B. and S. D..

Count 8
Fraud, in violation of Article 261 of the PCCK, punishable by imprisonment of 6 months to 5 years against L. D. and A. D..

Count 9
Falsifying Documents, in violation of Article 332, paragraph 1 of the PCCK, punishable by a fine or imprisonment of up to one year against L. D. and A. D..

Count 10
Falsifying Official Documents, in violation of Article 348 of the PCCK, punishable by imprisonment of up to three months to three years against I. R..

On 4 October 2011 the main trial hearings open to the public commenced and continued on 5, 6, 11, 12, 18, 19, 20 and 25 October 2011; 9, 10, 15, 17, 22, 23, 29 and 30 November 2011; 19, 20 and 21 December 2011; 6 and 13 February 2012; 16, 22 and 23 March 2012; 4 and 5 April 2012; 10, 18 and 24 May 2012; 13, 14, 18, 19, 20 and 21 June 2012; 24 July 2012; 4, 6, 7, 11, 13 and 25 September 2012; 9 October 2012; 14, 16 and 26 November 2012; 5 December 2012; 29 January 2013; 11, 12 and 26 February 2013; 1, 8, 22, 27 and 29 March 2013; 2, 3, 5, 10, 12, 16, 17, 19, 23 and 24 April 2013. The verdict was announced on 29 April 2013 in open court.

The defendants L. D. and A. D. were found guilty of Count 1, committing the criminal offence of Trafficking in Persons, in violation of Article 139 PCCK, committed in co-perpetration (Article 23 PCCK), by – briefly put – in the case against L. D., being personally involved in many of the illegal transplant operations at the Medicus Clinic. As the owner of the clinic, he was responsible for its overall development and functioning with regard to illegal kidney transplants; in the case against A. D., as the manager of the clinic he had a central role and was responsible for the numerous activities related to the illegal kidney transplant operations;

Count 1, the criminal offence of Trafficking in Persons, in violation of Article 139 PCCK, committed in co-perpetration (Article 23 PCCK), against the defendant S. H. was requalified as per Negligent Facilitation of the criminal offence of Trafficking in violation of Article 139, paragraph 4, PCCK and was rejected;

The defendant L. D. was further found guilty of Count 2, committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 3, PCCK, by – briefly put – organizing, establishing, supervising and managing the overall illegal activity of Count 1, in concert with Dr. Y. S., M. H., A. D., Dr. K. D. and others, in order to obtain financial/material benefits;

The defendant A. D. was found guilty of Count 3, committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 1, PCCK, by – briefly put – being the manager of the Medicus Clinic and committing the illegal activity of Count 1, in order to obtain financial/material benefits;

The defendant S. H. was acquitted from Count 3, the criminal charge of Organized Crime, in violation of Article 274, paragraph 1, PCCK;

Count 4, the criminal offence of Unlawful Exercise of Medical Activity, in violation of Article 221, paragraph 1, PCCK, committed in co-perpetration (Article 23 PCCK), against the defendants L. D., D. J., I. B., S. D. and S. H. was rejected;

Count 5, the criminal offence of Abusing Official Position or Authority, in violation of Article 339, paragraph 1, PCCK, against the defendant D. J. was requalified as per Abusing Official Position or Authority, in violation of Article 339, paragraph 3, PCCK and was rejected;

The defendant I. R. was acquitted from Count 6, the criminal charge of Abusing Official Position or Authority, in violation of Article 339, paragraph 1, PCCK;

Count 7, the criminal offence of Grievous Bodily Harm, in violation of Article 154, paragraph 4, PCCK, against the defendant L. D. was rejected. The defendant A. D. was acquitted from Count 7, the criminal charge of Grievous Bodily Harm, in violation of Article 154, paragraph 1, subparagraph 2, PCCK, committed in co-perpetration (Article 23 PCCK). Count 7, the criminal offence of Grievous Bodily Harm committed in co-perpetration against the defendants S. H., I. B. and S. D. was requalified as per Article 154, paragraph 1, subparagraph 2, PCCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person and the defendants were found guilty of this criminal offence, by – briefly put – knowingly participating in medical procedures which were unlawful under the laws of Kosovo, namely the removal of kidneys for transplantation and thereby permanently and substantially weakening a vital organ;

Count 8, the criminal offence of Fraud, in violation of Article 261 PCCK, against the defendants L. D. and A. D. was rejected;

Count 9, the criminal offence of Falsifying Documents, in violation of Article 332, paragraph 1, PCCK, against the defendants L. D. and A. D. was rejected;

Count 10, the criminal offence of Falsifying Official Documents, in violation of Article 348 PCCK, against I. R. was rejected;

The defendant L. D. was sentenced to 8 (eight) years of imprisonment and a fine in the amount of EUR 10.000 (ten thousand) Euro. In addition the defendant L. D. was prohibited from exercising the profession of urologist for the period of 2 (two) years starting from the day the judgment becomes final;

The defendant A. D. was sentenced to 7 (seven) years and 3 (three) months of imprisonment and a fine in the amount of EUR 10.000 (ten thousand) Euro;

The defendant S. H. was sentenced to 3 (three) years of imprisonment. In addition the defendant S. H. was prohibited from exercising the profession of anesthesiologist for the period of 1 (one) year starting from the day the judgment becomes final;

The defendants S. D. and I. B. were sentenced to 1 (one) year of imprisonment, with the execution of the punishment not to be executed if the defendants do not commit another criminal offence for the period of 2 years;

The injured parties W1, W2, W3, PM, DS, AK and Y. A. were each awarded partial compensation for the psychological and physical damages sustained during kidney removal in the amount of 15,000 (fifteen thousand) Euro from L. D. and A. D. to be paid no more than 6 (six) months starting from the day the judgment becomes final;

A separate ruling was issued regarding the confiscation of the Medicus Clinic premise;

The written judgment was served on the defendant L. D. on 6 December 2013 and on his defence counsel Linn Slattengren on 29 November 2013. The defendant, through his defence counsel, appealed the judgment, filed on 13 December 2013.

The written judgment was served on the defendant A. D. on 6 December 2013 and on his defence counsel Petrit Dushi on 13 November 2013. The defendant, through his defence counsel, appealed the judgment, filed on 19 November 2013.

The written judgment was served on the defendant S. H. on 29 November 2013 and on his defence counsel Fazli Balaj on 13 November 2013. The defendant, through his defence counsel, appealed the judgment, filed on 26 November 2013.

The written judgment was served on the defendant D. J. on 30 November 2013 and on his defence counsels Ismet Shufta and Aqif Tuhina on 25 November 2013. The defendant did not appeal the judgment.

The written judgment was served on the defendant I. R. on 30 November 2013 and on his defence counsel Florin Vertopi on 12 November 2013. The defendant did not appeal the judgment.

The written judgment was served on the defendant I. B. on 4 December 2013 and on his defence counsel Ahmet Ahmeti on 12 November 2013. The defendant, through his defence counsel, appealed the judgment, filed on 19 November 2013.

The written judgment was served on the defendant S. D. on 4 December 2013 and on his defence counsel Hilmi Zhitia on 27 November 2013. The defendant, through his defence counsel, appealed the judgment, filed on 4 December 2013.

The written judgment was served on the prosecution on 25 November 2013. The prosecution appealed the judgment on 10 December 2013.

On 9 January 2014 defence counsel Petrit Dushi for the defendant A. D. filed a response to the SPRK appeal. On 10 January 2014 defence counsel Ramë Gashi for the defendant S. H. filed a response to the SPRK appeal. On 9 January 2014 defence counsel Ahmet Ahmeti for the defendant I. B. filed a response to the SPRK appeal.

B. Confiscation ruling

Throughout the period of 4 until 10 November 2008 the Medicus Clinic was searched and thereafter closed. On 31 December 2008 after receiving a request by Dr. T. P.'s defence counsel to return the key to the clinic or issue an appealable decision, the SPRK issued a decision affirming that the key should temporarily stay confiscated under the custody and control of the public prosecutor.

On 15 January 2009 the SPRK submitted an Application for Confiscation and closure of establishment regarding the clinic requesting the pre-trial judge to order the confiscation of the Medicus Clinic as well as to order the closure of the clinic. This submission was repeated on 10 February 2009 and on 6 March 2009 whereby the pre-trial judge ordered the closure of the clinic.

The "Notification report regarding the closing of the Clinic Medicus" dated 31 March 2009 stated that the clinic on the same day in the presence of the owner Dr. L. D. and his defence attorney was opened, inspected and then closed again with two signs being placed on the clinic reading "Clinic Medicus is closed". The entrance was sealed with evidence adhesive tape provided by the Kosovo police. Both Dr. L. D. and the defence attorney Mexhid Syla signed the report.

On 1 April 2009 defence counsels Bajram Tmava and Mexhid Syla appealed the Order requesting the court to approve their appeal, and thus allow the clinic to recommence its activities. On 3 April 2009 the pre-trial judge rejected the appeal on the basis that "an appeal is permissible only against judgments and rulings, not against orders". On 16 May 2009 the

defence counsels submitted a request for protection of legality to the Supreme Court proposing to the Supreme Court to annul the Order dated 6 March 2009 and the subsequent ruling by the pre-trial judge. On 1 June 2009 the Supreme Court of Kosovo dismissed the request for protection of legality as inadmissible.

On 18 May 2009 the defence sent a motion to the pre-trial judge requesting an order for the clinics (Klinika Kardiokirurgjike Medikus and Ordinanca Urologjike Medikus) "to open and operate as urological and cardiac surgical clinics during the pending criminal proceedings". In the motion is mentioned the names of persons who could manage the clinics' activities in the event that the court allowed the clinics to re-open. On 19 June 2009 the SPRK submitted a motion to reject this defence motion.

On 24 August 2009 defence counsel Linn Slattengren informed the SPRK that the "clinic building has now reopened" and requested the return of the seized items. On 8 September 2009 the SPRK responded to Slattengren referring to the Court's decision of 6 March 2009 and explaining that the "opening of the Medicus Clinic is not yet authorized". On 18 September 2009 Slattengren explained to SPRK that "[N]either the D.s nor I have seen the alleged decision of 6 March […]". In a letter dated 20 October 2009, registered with the District court of Pristina on 2 November 2009, defence counsels Betjush Isufi and Linn Slattengren submitted a motion stating that they have not received any order from the court ordering searches, confiscations or closures in connection with the clinic. The defence counsel assert that they gave notice to the court police and others that the building would reopen on 4 August unless they received notice not to do so. No notice was received and therefore the clinic was reopened.

On 2 December 2009 two EULEX investigators visited the clinic to check "whether the implementation of the court order regarding the closure of Medicus clinic [...] issued on 6 March 2009 was respected". The investigators noted upon arrival that the main door was opened and there was no seal on it. According to their report the lawyer of Dr. D., Mr Bajrarn Tmava stated that they "had decided to reopen the clinic and start the activity again on 7 October 2009". According to the report L. D. stated that upon the advice of Mr. Linn Slattengren who assured him on the legality of the opening he had decided to enter the premises of the clinic and to perform medical activities.

On 8 December 2009 the same investigators again visited the clinic where they met Dr. D. and gave him two copies of the letter of entrustment written in Albanian and English and issued on 4 December 2009. They notified Dr. D. that he had 48 hours to transfer patients and prepare the clinic in order to put the building at police disposal. On 10 December 2009 in the presence of Dr. D. the clinic was closed in order to continue the implementation of the court Order. On the main entrance of the clinic were placed two closure signs. By motion dated 2 February 2010 defence

counsel Bejtush Isufi requested the court to issue a ruling by which the Order dated 9 March (actually 6 March) should be overturned.

On 10 February 2010 the pre-trial judge issued a ruling according to which he rejected the request to reopen the clinics. He ordered the public prosecutor to review the closure before the expiry of the ongoing investigation. The pre-trial judge found that "the previous ruling of the pre-tria1 judge dated 6 march 2009 is still valid and enforceable in regards to the Medicus Clinic".

In an appeal dated 15 February 2010 the defence counsel Bejtusha Isufi submitted an appeal against the ruling of 10 February 2010. He requested that the "panel issue an order rejecting and rescinding the ruling of the pre-trial judge and dismissing the order of the prior pre-trial judge closing the clinics". The appeal was decided by a three-judge panel on 17 May 2010. The panel issued the ruling according to which the appeal was rejected as ungrounded.

During the final stages of the main trial, of which the judgement was pronounced on 29 April 2013, the Prosecutor on 23 April 2013 provided a report which indicated that the clinic had been reopened. According to defence counsel Slattengren, Dr. D. sold the clinic in February 2012 and provided the court with a written contract according to which the clinic was sold on 16 February 2012 for € 300.000. On 12 June 2013 a hearing in the presence of the Presiding Judge was held wherein the buyer of the property, F. I., was asked to explain the background of the purchase. During the session the buyer explained that he is paying for the building in instalments and that he had applied for a practicing license for the clinic, now called the "Medical Center", which commenced work from April 2013.

On 29 April 2013 the SPRK filed an Application for confiscation of the Medicus Clinic establishment.

On 25 November 2013 the Basic Court of Pristina issued ruling P 309/10, P340/10, ordering the closure and confiscation of the Medicus Clinic, applying to the present and future owners of the premises.

The written ruling was served on the defendant A. D. on 6 December 2013 and on his defence counsel Petrit Dushi on 27 November 2013. The written ruling was served on the defendant L. D. on 6 December 2013. The defendant L. D. and the companies Klinika Kardiokirkurgjike Medikus and Ordinanca Urologjike Medicus, through defence counsel Linn Slattengren, appealed the ruling, filed on 6 December 2013.

The written ruling was served on the buyer F. I. as on 30 November 2013. F. I. – the owner of "Graniti Com" LLC and "Medical Center" LLC appealed the ruling, filed on 2 December 2013.

The written ruling was served on the SPRK on 26 November 2013. The SPRK appealed the ruling, filed on 29 November 2013.

C. Court of Appeals

The case was transferred to the Court of Appeals for a decision on the appeals on 28 January 2014.

On 19 February 2014 the appellate state prosecutor filed a motion.

The case was re-assigned to the presiding/reporting judge on 29 September 2014 but he was not able to exercise his judicial functions until the end of March 2015, when he was officially appointed by the President of Kosovo.

The session of the Court of Appeals Panel was held on 4 November 2015 in the presence of the defendants, their defence counsel and the appellate state prosecutor Claudio Pala.

The Panel deliberated and voted on 6 November 2015.

## II. SCOPE OF THE APPEALS

The judgment of the Basic Court became final for the defendants D. J. and I. R., as neither the defendants nor the prosecutor filed an appeal in their case.

The defendants L. D., A. D., S. H., I. B. and S. D. all filed an appeal against the judgment.

The SPRK filed an appeal against the judgment regarding Counts 1 and 3 against the defendant S. H., regarding Count 7 against the defendant L. D. and regarding the imposed punishment against the defendants L. D., A. D., S. H., I. B. and S. D..

Alongside the imposed punishments, the following Counts are pending in the appeal:

Count 1, against L. D., A. D. and S. H.

Count 2, against L. D.

Count 3, against A. D. and S. H.

Count 7, against L. D., A. D., S. H., I. B. and S. D..

## III. PRELIMINARY MATTERS

A. Applicable Procedural Law in the Case

On 1 January 2013 a new procedural law entered into force in Kosovo – the Criminal Procedure Code, law no. 04/L-123. This Code repealed the previous Provisional Criminal Procedure Code of Kosovo. Article 545 of the current Criminal Procedure Code stipulates that the determination of whether or not to use the present code of criminal procedure shall be based upon the date of the filing of indictment. Acts which took place prior to the entry of force of the present code shall be subject to the current Code if the criminal proceeding investigating and prosecuting that act was initiated after the entry into force of this code.

The indictments in the case were initially filed with the District Court of Pristina on 15 and 20 October 2010 and then joined into a single indictment on 29 November 2010, before the entry into force of the current Criminal Procedure Code. Pursuant to Article 545 of the current Criminal Procedure Code the applicable procedural law would thus be the Provisional Criminal Procedure Code of Kosovo, as the trial in this case commenced prior to the entry into force of the current Code. The Court of Appeals accordingly conducted the proceedings pursuant to the Provisional Criminal Procedure Code of Kosovo.

B. Competence

Pursuant to Article 121, paragraph 1, PCPCK the Panel has reviewed its competence and since no formal objections were raised by the parties the Panel will suffice with the following. In accordance with the Law on Courts and the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo - Law no 03/L-053 as amended by the Law no. 04/L-273 and clarified through the Agreement between the Head of EULEX Kosovo and the Kosovo Judicial Council dated 18 June 2014, the Panel concludes that EULEX has jurisdiction over the case and that the Panel is competent to decide the respective case in the composition of one Kosovo judge and two EULEX judges.

C. Admissibility of the appeals

*a. The appeals filed by the SPRK and the defence counsel on behalf of the defendants*

The appeals filed by the SPRK, defence counsel Linn Slattengren for the defendant L. D., defence counsel Petrit Dushi for the defendant A. D., defence counsel Ramë Gashi for the

defendant S. H., defence counsel Ahmet Ahmeti for the defendant I. B. and defence counsel Hilmi Zhitia for the defendant S. D. are admissible. The appeals were filed within the 15-day deadline pursuant to Article 398 PCPCK. The appeals were filed by authorized persons and contain all other relevant information pursuant to 399 and 401 PCPCK.

*b. The submission filed on behalf of the defendant L. D.*

The Panel notes that the impugned judgment was served on the defendant L. D. on 6 December 2013. The impugned judgment was served on his defence counsel Linn Slattengren on 29 November 2013. The appeal filed by defence counsel Linn Slattengren on behalf of the defendant L. D. was filed on 13 December 2013. The initial appeal is thus filed within the 15-day deadline pursuant to Article 398 PCPK. However, the submission handed over during the session on 4 November 2015 by defence counsel Linn Slattengren is to be dismissed as belated with regards to the newly asserted grounds for challenging the judgment, namely the judicial bias of the presiding judge. These grounds were not included in the initial appeal and are therefore filed belated.

## IV. SUBMISSIONS OF THE PARTIES

A. <u>The appeal of defence counsel Linn Slattengren for the defendant L. D.</u>

Defence counsel Linn Slattengren on 13 December 2013 filed an appeal dated 10 December 2013 (and supplement dated 18 December 2015) with the Basic Court on behalf of the defendant L. D. and requests the Court of Appeals to reject the judgment as ungrounded and acquit the defendant from all counts.

In summary, the defence argues the following:

The Basic Court had no jurisdiction since the investigation closed on 8 May 2009 with no indictment. The investigating judge dismissed the investigation and the investigation could not be legally continued after that. The investigation may have been reinstated. However, it was done illegally by a secret court proceeding with no notice to the defendant and no opportunity to appeal. The judge correctly denied the confirmation of the indictment and dismissed the case. This was wrongly reversed on appeal. The trial panel was improperly constituted, seeing as the president of the panel previously acted as an investigating judge in the case.

Furthermore, essentially all of the evidence in the case was obtained illegally. There was no court order when conducting the search of the Medicus Clinic. Article 240 PCPCK was therefore violated and the evidence obtained during the search was thus illegally obtained and must be declared inadmissible. There were also no exigent circumstances that provided an exception to

the requirement for a court order, as per Article 245. With regard to Article 201 of the PCPCK the defence argues that Article 201 merely gives authority to the police to conduct a search and seize evidence; the manner and the specific provisions to be followed by the police during the search and seizure however are laid down in the law. These provisions were clearly violated. Also, the Health Inspectorate Law does not obviate the need for a warrant or a justified exception, nor can it overrule the constitution. All of the evidence obtained during the search in the Medicus Clinic was therefore obtained illegally.
Moreover, under the doctrine of 'Fruit of the Poisonous Tree' all the evidence obtained secondarily as a result of the illegal search and seizure must be declared inadmissible as well.
Even if the evidence had been obtained legally, it was not properly submitted in the trial proceedings. The defence has no information as to what evidence the court admitted and what it considered in its judgment. The prosecution never prepared or submitted to the court an inventory of what was seized from the clinic, nor did it provide an itemized listing of the evidence submitted to the court as evidence.
In addition, the prosecution suppressed evidence. The "Medical Operations Protocol Book", a book which holds all official records of all the medical operations, the participating personnel and the results of the operations, was deliberately suppressed by the prosecution. This is especially unacceptable since the defendant L. D. asserts that the book will show that he is not guilty of the alleged criminal offences. The 'equality of arms' principle of Article 6 of the ECHR is therefore violated.

Even if all evidence is to be admitted, it is clear that the defendant L. D. is not guilty of the alleged criminal offences.
In the present case all the donors knew that they would donate a kidney. The reason they donated their kidneys was because they wanted to help dying persons and at the same time get some money to help their financial situation. In all cases the donors approached the fixers themselves. Therefore the elements of the criminal offence of Trafficking in Persons are not met. In any case, the defendant L. D. did not speak with any of the patients and on the rare occasion he did meet a person it was simply a routine passing except when he assisted in a lifesaving surgery. The defendant L. D. was not aware of any agreements made between the donors and Dr. S.. Furthermore, the defendant L. D. has no relation with M. H., A., Z., S., Y., etc. No evidence establishes that the defendant L. D. was involved or even knew about the organ trade that was taking place outside Kosovo. So even if there was a case of Trafficking in Persons and Organized Crime, the defendant L. D. had no part in this and he is to be acquitted of all charges.
Additionally, the kidney transplants were carried out in full compliance with the Kosovo law, but even if there was a violation of Article 46 of the Kosovo Health Law, it should only have administrative repercussions and not criminal.
In the event the court, contrary to all the evidence, should conclude that the defendant L. D. did threaten, defraud or coerce any donor, he clearly did not do so for the purpose of exploitation.

There is no evidence that the defendant L. D. received any compensation for the transplants. Concluding, the defendant should be acquitted from all counts.

B. The appeal of defence counsel Petrit Dushi for the defendant A. D.

Defence Counsel Petrit Dushi on behalf of defendant A. D. filed an appeal dated 19 November 2013 on the grounds of:

- Substantial violation of the provisions of criminal proceedings;
- Violation of criminal law;
- Punishment decision and approval of the legal property claim.

The defence submits that according to Article 396 of the PCPCK the court is obliged to provide clear reasoning for each point of the judgment, to present clearly and completely which facts and for what reasons it considers them confirmed and unconfirmed, to evaluate in a special way the correctness of the opposing evidence; reasons on which the resolutions of legal matters were based, in particular on the occasion of confirmation of existence of a criminal offense, and the criminal responsibility of the accused, and to provide reasoning related to the circumstances which it has taken into account when imposing the punishment. The court has to describe the capacity of evidence, the credibility, the importance and the testimony value of the evidence on which the judgment is based.
The defence asserts that these obligations are not fulfilled. Therefore, the judgment is unlawful. From the enacting clause it cannot be understood in what way the accused has been a member of a group and in which way he has committed the criminal offense. It is unclear for what reasons the defendant has been found guilty. With regard to the defendant the judgment is in full contradiction with the other part of the enacting clause, in full contradiction with the reasoning of the judgment and in full contradiction with the content of evidence on which the judgment is based. The evidence not only does not support the guilt of the defendant, but also strongly supports his innocence.
The defence finds that the complete search in the Medicus Clinic was unlawful. Therefore, the confiscated evidence is inadmissible. The judgment is based on a violation of Article 403 paragraph 1 subparagraph 8 PCPCK. All collected so-called evidence do not have the quality of evidence due to the fact that such an action is prohibited by the provision of Article 153 paragraph 1 PCPCK of the former criminal procedural code of Kosovo. In this context the defence refers to the principle *excessus in modo* (mistake on the action form).

Furthermore, the enacting clause is not understandable and is in contradiction with itself whereas the reasons of the judgment are unclear as well as contradictory. The court has violated Article 403, paragraph 1, subparagraph 10 and 12; therefore, the defence believes that these actions are absolute violations and damage his client. He finds that the authorities which have taken part in

the enforcement procedure from its initiation up to the pronouncement of the appealed judgment have done so in substantial violation of the criminal provisions foreseen in Article 403 paragraph 2, point 1 and 2. The court is obliged to confirm precisely and entirely the facts which are important to render a lawful decision. Suspicions have to be interpreted in favor to the defendant (*in dubio pro reo*). Instead, this principle is not present at any stage of the procedure. On the contrary, the actions have been in disfavor of this principle (*in dubio contra reum*). In all court hearings, the presiding judge when examining the witnesses has intervened. The defence challenges the impartiality of the trial panel and stresses that it is unlawful to show favor to any party.
Furthermore, the defence finds that the enacting clause of the judgment is unclear with regard to the defendant. His actions are not clearly identified and there is no connection among the activities. The time period cannot be considered as incriminating period and there is no causal connection of the mutual activities; the prosecutor only alleged the grounded suspicion that the defendant has committed the criminal offence. However, the prosecution failed to prove with either the material evidence, or with the testimonies of the witnesses, that the defendant was a so called "contact person". It grounded the charges on the exchange of the mobile phone messages ("SMS") which do not contain the essence of communication. As such they have no quality as evidence and cannot be called incriminating activities. Also the witness testimonies given during the main trial are in contradiction to the objections made by the defendant during the search of the clinic.

With regard to the factual situation the defence does not dispute that transplantations were conducted at the Medicus Clinic. However, he challenges the time period of incrimination and the concrete actions of the accused. The described violations of the provisions of criminal procedure have a direct impact on the factual situation. During the search the police failed to show him the search order. Then the police threatened, assaulted and handcuffed him and pressured him to sit in a chair. At the police station he was blackmailed and threatened again in various forms. Even now, the defendant does not know for what they arrested and detained him. The defendant declared he performed his activities at the clinic pursuant to the applicable law. The clinic was the first licensed clinic in Kosovo, namely the clinic that respected the applicable law. The defendant completed all administrative duties and he did not have any problems with the Medicus staff during the time he worked in the clinic, nor with any other person outside of it.
Due to the erroneous and incomplete determination of the factual situation the court also violated the criminal code as the defendant was found guilty for two counts he never committed. There are no grounds, evidences and facts for the said offences.

Moreover, the Basic Court was supposed to stipulate the punishment for each count separately and after that, impose an aggregated punishment pursuant to provision of Article 71 paragraph 1 and 2. Referring to this, the defence claims a violation of Article 71.

Finally, the Basic Court fails to introduce and consider all mitigating circumstances and to find a proportional punishment. This failure itself makes the judgment unsustainable.

The defence proposes to adopt the appeal and to acquit the defendant from the charges or to annul the judgment and return the case for re-trial.

C. The appeal of defence counsel Ramë Gashi for the defendant S. H.

Defence Counsel Ramë Gashi on behalf of S. H. filed an appeal dated 26 November 2013 with the Basic Court of Pristina on the grounds of:

- Fundamental violation of the provisions of criminal procedure as provided for in Articles 383 and 384 of the PCPCK;
- Violation of the criminal law as provided for in Articles 383 and 385 of the PCPCK;
- Erroneous and incomplete determination of the factual situation, as provided for in Articles 383 and 386 of the PCPCK;
- Decision on punishment;
- Criminal sanction as provided for in Articles 383 and 387 of the PCPCK; and
- Accessory punishment from exercising a professional anesthesiologist for the period of one year.

The defence asserts that the judgment is not in compliance with Article 384, paragraph 1 subparagraphs 1.8 and 12.1, paragraph 2 subparagraph 2.2 of the PCPCK and therefore contains a substantial violation of the provisions of the criminal procedure. The first instance court incorrectly links the material evidence not only to the victims 3, 7, 19, 22, 23 and 24, but also to all other people listed in the enacting clause of the challenged judgment concerning S. H.. It is not proven by any form of suspicion that the indicated evidence in the judgment is related to illegal acts that could have been undertaken by the defendant. He not only had no role in people's arrival to the clinic, but also had no role regarding patient's physical admission or admission related documentation or internal procedures. There is no link between S. H. and any piece of evidence gathered whilst he was working at the Medicus Clinic.

According to the defence counsel the judgment is not in accordance with Article 370, paragraphs 6, 7 and 8 of PCPCK. The judgment does not contain a complete justification of established and unestablished facts, and fails to evaluate the exculpatory evidence and circumstances and also fails to consider whether the evidence and motions of the defence were granted or not. In this regard, the challenged judgment lacks a valid reasoning in terms of the evidence given by the defendant during the trial, and the same was not elaborated at all therein. Finally, the Kosovo Law on Health cannot be used. Being hired as an anesthesiologist, the defendant's actions did not violate any provisions. In no situation did the defendant violate any provisions of the Law on

Health. On the other hand he was not obliged to take care of registration, legal forms and the activities of the clinic and its licensing. This was not under his competency and his consent and his disapproval was not relevant.

Regarding the asserted violation of the criminal law the defence submits that a bodily injury as an element of the criminal offence has neither been inflicted by the actions of the defendant nor has he undertaken any other unlawful act. The actions the defendant is charged with do not constitute a serious bodily injury in the form as provided with the provision of Article 154 of the PCCK. The key substantial elements of the criminal offence are missing as explicitly provided by respective legal provision. Moreover, the Basic Court violated Article 385 paragraph 1 subparagraph 1.4 of the PCPCK when applying the provisions of the criminal law of Serbia to the detriment of the defendant. The defence sees a violation of Article 154 paragraph 1 subparagraph 2 of the PCCK. It has not been proven at all that the defendant intentionally has undertaken illegal actions.
With regard to the erroneous and incomplete determination of the factual situation, the defence lists and describes the duties of an anesthesiologist in detail based on the information provided by Net Online America Job Center Network Partner, Care Planer and the Canadian Anesthesiologists. Based on the description the defence finds that the first instance court has erroneously determined crucial facts as to the criminal liability and guilt of the defendant. He has not done any act which caused any serious bodily injury. He was not a surgeon and he did not assist in a kidney removal. The defendant had no competence and his task was only to attend to the patient's well-being during the surgery. Therefore, he was not aware of the illegal activities. He also could not have been aware of it. He neither had any authority nor responsibility as far as legal matters were concerned. He had nothing to do with the payment to persons and he was also not involved in the recruitment of possible persons for kidney removals or transplants. On this point neither the indictment nor the judgment provides any concrete evidence. The judgment erroneously interprets the opinion of the forensic doctor C. B., as the forensic report provides facts that do not correspondent with the legal provisions of Article 154 of the PCCK. Finally, the criminal law of Serbia is not applicable in Kosovo. Therefore, legal elements cannot be established by a legal provision from a different country.

The appealed judgment appears unsteady regarding the decision on punishment and the restriction on further performing the profession of anesthesiologist. The punishment of 3 years imprisonment appears to be drastic and vindictive and therefore unlawful against the backdrop that the defendant has not recruited, incited or deceived persons. When ordering the prohibition of performing his profession the first instance court has not respected legal conditions or prerequisites. The measure is unlawful and should not stay in force against the defendant.

The defence proposes to annul the judgment of the Basic Court of Pristina in relation to the defendant S. H. pursuant to Article 398 paragraph 1 subparagraph 1.3 and 1.4 of the PCPCK in

conjunction with Articles 402 and 403 of the PCPCK and to return the case for retrial. Alternatively, he proposes to modify the judgment of the first instance court and to acquit the defendant for the criminal offences he has been charged with. The defence proposes to terminate the accessory punishment from exercising a professional anesthesiologist for the period of one year as an unlawful measure.

D. The appeal of defence counsel Ahmet Ahmeti for the defendant I. B.

Defence Counsel Ahmet Ahmeti on behalf of defendant I. B. filed an appeal dated with 19 November 2013 on the grounds of:

- Essential violation of the PCPCK provisions;
- Erroneous and incomplete determination of the factual situation;
- Violation of the criminal law;
- Wrongful decision on the punishment.

With regard to the essential violations of the provisions of the criminal procedures the defence considers that the enacting clause of the impugned judgment is incomprehensible and contrary to the reasoning, whereas the facts presented in the reasoning are vague and contrary to the evidence found in the case files. The judgment is not based on relevant but on irrelevant facts. The Special Prosecution Office did not provide sufficient evidence. The first instance court has failed to prove that the defendant has committed the criminal offence of Grievous Bodily Harm pursuant to Article 154 par. 1, subparagraph 2 of the PCCK. It has not fully and objectively assessed the defence of the accused who has denied the criminal offence of Grievous Bodily harm which is also supported by the accused S. H.. The court should apply the principle *in dubio pro reo*, foreseen in Article 3 par. 2 of the PCPCK which was violated and ignored. Pursuant to Article 387 paragraph 1 and 2 of the PCPCK the court should base its judgment on the evidence presented and considered in the main hearing. Therefore, the defence assumes a violation of Article 3 paragraph 2, 7 paragraph 2, 8 paragraph 1 and 2 and Article 387 par. 1 and 2 of the PCPCK. Gaps in the challenged judgment itself are part of the essential violations of the provisions of criminal procedure, foreseen in Article 403 paragraph 1 item 12 of the PCPCK. As a consequence the challenged judgment, under enacting clause item VII becomes legally unsustainable and as such, the enacting clause item VII has to be quashed.

Not by a single material or formal evidence was the factual situation established completely and fairly regarding the offence of grievous bodily harm. It is out of question that the defendant himself or with someone else has contributed to the commission of this offense. Since the defendant was and remained only a professional anesthesiologist, the only premeditation is in the subjective sense, but lawful and just, was and remains the realization of his professional yearnings and objectives. It never crossed his mind if the clinic had a license or not, since

besides other things, the advertising posters with "Medicus" label were public and distinct for anyone, anytime. The defence stresses that the defendant has tried to base all his work in professionalism, constantly being dedicated to the work being carried out with honor and full professional responsibility and in the service of preserving the health of the patient and not to damage it, as is alleged by the prosecution. In fact, the defendant acted as an anesthesiologist. He did not have any physical contact with the patients since the transplantation as an action was carried out by surgeons. In accordance with one of the basic principles of criminal law, criminally responsible is that person who knowingly causes harmful and unlawful consequences to another person. Against this backdrop the actions of the defendant are not characterized by the intent nor the consequences caused to other people. Contrary to this, the alleged actions are not taken, nor have they been for the purpose of causing damages to the personality and health of others. The defence stresses that the defendant has not committed any crimes as the subjective and objective elements of the criminal acts are missing. Thus, the first instance court by substantial violation of the provisions of the PCPCK and PCCK and by erroneous and incomplete determination of the factual situation has unjustly found the accused guilty and imposed the decision on the criminal sanction.

The defence proposes to approve his appeal as grounded, to quash the impugned judgment of the Basic Court of Pristina with regard to the enacting clause of judgment, section 7, concerning the accused I. B. and to return the case to the first instance court for retrial, or to modify the judgment by acquitting the defendant from charges.

E. The appeal of defence counsel Hilmi Zhitia for the defendant S. D.

Defence Counsel Hilmi Zhitia on behalf of S. D. on 4 December 2013 filed an appeal with the Basic Court of Pristina on the grounds of:

- Fundamental violations of the provisions under Articles 403 par. 1 point 5, 10, 12 paragraph 2;
- Erroneous and incomplete determination of the factual situation - Article 405 of the PCPCK;
- Violation of the Criminal Law - Article 404 paragraph 1 point 1, 2, 3 and 4 of the PCPCK; and
- Criminal sanction - Article 406 of the PCPCK.

The defence submits that pursuant to Article 90 paragraph 1 of the former PCCK the court has rejected the part of the indictment pertaining the criminal offence under Article 221 of the former PCCK, although the representative of the prosecution in its final speech has introduced a new indictment accusing the defendant of the criminal offence of serious bodily injury pursuant to Article 154. However, the prosecution fails to give a description of the place, time, manner of

commission and against whom the crime has been committed. He only confines his remarks to the description of the criminal norm of Article 154 of the Criminal Code adding comments regarding the allegations of the defence. He asserts that the first instance Court has confirmed the indictment against the defendants I. B. and S. D.. However, such an indictment has de facto not been confirmed because the second instance court has not returned it for retrial. However, the defence had sought to reject the indictment due to the relative statutory limitation. Although the criminal offense the defendant was charged with has exceeded the statutory limitations, the defence supposes that the prosecution was keeping him under charges. The state prosecutor in its closing speech introduced a new indictment against the defendant, charging him also of the criminal offense of serious bodily injury under Article 154 of the former PCCK, although throughout the criminal proceedings nothing occurred or changed. There were no further facts or circumstances revealed that would make those charges be amended or corrected. In this regard, the prosecutor claims it is a new charge, whereas the court on some occasions does claim that it is a new indictment and on some other occasions says it is expanded.
This new indictment, filed by the prosecutor, is completely insupportable and incomprehensible and lacks the elements of an indictment as foreseen by Article 305 of the PCPCK. It is not clear what actions were undertaken by the defendant and whether he caused them intentionally or negligently. In this way, the first instance court violated Article 403 par. 1 point 5 of the PCPCK, because there was no such charge for the prosecutor. He only says that there is a serious bodily injury pursuant to Article 154 para. 5 of the former PCPCK. Therefore, the prosecutor left an alternative. The court was not allowed to find the defendant guilty. By doing so it violated the principle *in dubio pro reo*. An indictment with alternatives should always be interpreted in favor of the accused. As the court exceeded the scope of the indictment it violated the provision of Article 403 paragraph 1 item 10. Moreover, the defence refers to a violation of Article 403 paragraph 1 item 12 as the judgment is inconsistent, void and contradictory with its reasoning and the enacting clause therein and the judgment is based on an erroneous and incomplete determination of the factual situation.

Moreover, the defence raises a violation of the right to defend. Firstly, the defence requested to reject the indictment against the defendant because of the relative statutory limitation. The second instance court has instructed the first instance court to decide in this regard which it never did. Secondly, the new indictment filed by the prosecution is in contradiction to Article 305 of the PCPCK. It was not clear whether the offense was committed willfully, negligently, in co-perpetration, in accomplice and so forth. Therefore, this led to a violation of criminal law by Article 1 paragraph 3, but also of Article 3 paragraph 2 of the former PCPCK.
The defence stresses that the defendant has just performed his profession, respecting the methods and standards determined by medical regulation. In this context, the court also misunderstood the Serbian commentary. Due to the established facts and circumstances, it should give its own comment. The Court should fairly establish the factual situation and provide reasoning based on the applicable law in Kosovo.

Furthermore, the factual situation is not determined fairly and completely. Due to a letter from the permanent secretary and president of the board for licensing, the staff was convinced that a license existed. None of the controlling mechanism of the Ministry of Health made any objections nor controlled private clinics. Each individual, even the staff engaged in legal acts were certain in advance that for everything there was a license or the performed activity was based on law, otherwise the state would have interfered with its mechanism and would not have allowed such activity. The defendant as an anesthetist was not aware of any unlawful act.
The defence finds that the criminal offense of grievous bodily harm should be treated separately from the criminal offence of trafficking in human beings as the accused was not charged for this. The matter should be treated only as the commission of the criminal offence of grievous bodily harm as there is no indictment for trafficking in human beings and organized crime. Finally, the accused did not commit the grievous bodily harm because he only prepared the medications for anesthesia and filled in the list of anesthesia. He did not remove any kidney, this was done by a team of surgeons.

The defence asserts that there were no legal rules penalizing the transplantation of kidneys. From a legal perspective UNMIK regulation 2000/1 was applicable in Kosovo in default of a proper regulation. According to the commentary of criminal law of Serbia on page 147 it states that in case of the consent of the patient the unlawfulness is exempt. In the following case the patients gave their consent. They came from abroad due to their request and by an invitation. Secondly, the patients went through regular proceedings starting from reception office, medical examination, analyses of the surgical team and lastly reached the anesthesiologist. Due to their consent, the unlawfulness is excluded.
Since the actions of the accused do not contain any elements of a criminal offence, the defendant cannot be liable for that criminal offence pursuant to Article 154 paragraph 1 point 2 of the former PCCK. Therefore, no sanction can be imposed. When imposing the punishment the court violated the provisions of the former PCCK.
He proposes to approve the appeal as grounded, to annul the judgment with regard to defendant S. D. and to return the case for re-trial or to modify the judgment and to acquit the defendant on the grounds that there are circumstances that preclude the criminal liability.

F. <u>The appeal of the SPRK</u>

The SPRK on 10 December 2013 filed an appeal with the Basic Court on the grounds of:

- Substantial violation of the provisions of criminal procedure;
- Violation of the criminal law;
- Erroneous and incomplete determination of the factual situation;
- Decision on criminal sanctions.

In summary, the prosecution submits that the impugned judgment be modified in parts as follows.

The search and seizure of evidence at the Medicus Clinic should be confirmed as legal and the evidence ruled admissible under the following reasoning, rather than the reasoning used by the Basic Court. The prosecutor submits that the search and seizure of medical and business records, medical supplies and medications at the Medicus Clinic was reasonable and lawful, pursuant to Article 201 PCPCK. This article provides lawful authority for search and seizure of premises, separate and distinct from the powers and duties of the police executing searches, pursuant to an order by a pre-trial judge, or the court generally. Those powers and duties are set out in Articles 240-253 of the PCPCK. It is the prosecutor's contention that the requirements of Article 201 are met because it was imperative that the police attend at the Medicus Clinic as soon as possible after they became aware of possible crimes being committed there. Additionally, the police provided a report of the items seized, as per the requirements of Articles 201 paragraph 3 and 207 PCPCK and so complied with the procedural requirement for carrying out a search under Article 201 PCPCK.

Furthermore, there is nothing in Article 36 paragraph 2 of the Kosovo Constitution which suggests that a court must always give prior consent to the police for a search. In fact, the final sentence of Article 36 paragraph 2 merely states that "a court must retroactively approach such actions." This does not mean that a court order must be obtained retroactively to ensure the legality of the search. As such, the prosecutor submits that the constitution does not necessarily require that a search has to be approved by a court before it is carried out or that it is subsequently approved by a court in the form of an order. The court can implicitly approve a search by relying on evidence seized during the search or actively allowing for such evidence to be examined.

Alternatively, if the Court of Appeals rejects this argument, then the prosecutor contends that the search at the clinic was carried out lawfully under Article 245 PCPCK. In this case, it was clearly necessary for the police to enter the premises at Medicus and conduct a search under Article 245 paragraph 1 PCPCK to ensure the safety of potential victims and witnesses. The police only had information that a transplant had been carried out. It was imperative for them to enter the premises to ensure the safety of other potential victims. They knew that there had been a kidney "donor" and it was therefore a certainty that there would also be a recipient, who might require medical assistance.

Pursuant to Article 246 paragraph 6 PCPCK, a violation of Article 245 paragraph 2 PCPCK is not a ground for inadmissibility of the evidence. This article only excludes evidence obtained in violation of Article 245 paragraph 1, 3, 4 and 5 PCPCK. As a result the evidence obtained pursuant to the search done under Article 245 (1) PCPCK should be deemed to be admissible in light of Article 246 paragraph 6 PCPCK. Also the police complied with Article 245 paragraph 6

PCPCK because they provided a report to the prosecutor on 11 November 2008 following the conclusion of the search on 10 November 2008.

The content of the text messages received following the order of prosecutor Manoj John on 19 November 2008 should be admitted as evidence in this case and this content should be then be considered in regard to the sentences handed down to the accused.
The text messages were received through metering, not interception. In the spirit of both the Telecommunication Law and PCPCK, in force at the time, a substantial delineation is made between metering within the powers of prosecutor, and interception available through court order. Hence a court order was not required and the order of the prosecutor was sufficient.
Alternatively, the order of the prosecutor was issued in compliance with Articles 256, 257, 258 and 259 PCPCK. The prosecutor was very specific in seeking only those records which he was capable of ordering receipt of under Article 258 paragraph 1 and 4 of the PCPCK. At no point did the Prosecutor seek any material that was not within his remit under the PCPCK. Therefore it is submitted that Article 264 paragraph 1 of the KPPC under which this evidence may be excluded plainly does not apply to the matter at issue as no illegal order was issued by the Prosecutor.

Further, the defendant S. H. should be convicted of the offence of Trafficking in Persons. The contention of the Basic Court that S. H. acted only in a negligent manner is incongruent with an accurate interpretation of the factual situation. Instead, the court should determine that, in light of the factual situation, the defendant acted with direct intent, or at a minimum indirect intent, per Article 15 PCCK, in which case his actions are criminalized as trafficking in persons under both the PCCK and the Criminal Code of Kosovo currently in force.
The defendant S. H. should also be convicted of the offence of Organized Crime. The prosecution submits that the contribution of the defendant to the achievement of the unlawful aims of the organized criminal group was essential, indispensable, and in direct causality with the criminalized outcome. Although there is no evidence connecting the defendant to the recruitment or transportation or harboring of the trafficked persons, he was proven instrumental in the realization of the purpose of the group: the actual removal and transplantation of organs, which supplied the unlawful material benefit for its members.

Furthermore, the defendant L. D. should be convicted of Grievous Bodily Harm. Infliction of grievous bodily harm is not among any of the modalities or means to commit trafficking in persons, in the light of the provisions of the PCCK or of the Protocol to the UN-TOC. In light of the definition of the trafficking in persons offered by the PCCK, there is no required causality nexus between the modalities of such offence and the result of causing bodily harm. It is in practice perfectly possible that trafficking in persons be committed in any of the modalities and by any of the means provided for in Article 139 without actually inflicting physical injuries on a victim. As a result, the assertion of the Basic Court with respect to the criminal offence of

Grievous Bodily Harm committed by the defendant L. D. being absorbed into the offence of trafficking in persons committed by the same defendant, is erroneous and has no legal basis.

The prosecution further submits that the amount ordered for the psychological and physical damages sustained during kidney transplantations by the victims is too small and should be increased substantially.

The prosecution notes that the Basic Court stated that all the recipients were men, however at least one of the recipients (F. B. B.) was female. The prosecution also notes that contrary to the statement of the Basic Court, Y. K. has not been tried and convicted in the Ukraine.

The prosecutor submits that a confiscation ruling per Article 489 paragraph 3 PCPCK needs to be made in relation to the items seized from the Medicus Clinic.

With regard to the punishments the prosecutor submits the following:

The sentence imposed on L. D. is presumably an aggregate of the convictions for the two offences although this is not stated in the judgement. The punishment is on the very low end of the scale, considering the minimum sentences applicable for organized crime and trafficking. Furthermore L. D. should have been convicted of Grievous Bodily Harm as well and this criminal offence should be included in the punishment. The Basic Court failed to first pronounce the punishment for each act and then impose an aggregate punishment for all of the acts. This should be modified. The accessory punishment of the prohibition on L. D. from exercising the profession of urologist should be modified to include all practice by him and should be increased to the maximum of 5 years starting after he is released from prison.

Concerning the defendant A. D., the Basic Court failed to first pronounce the punishment for each act and then impose an aggregate punishment for all of the acts. This should be modified.

Regarding S. H. the imposed sentence is too low. Furthermore the accessory punishment of the prohibition from exercising his profession should be modified to include all practice and should also be increased starting after he is released from prison.

Lastly, the suspension of the imposed sentence on both I. B. and S. D. should be increased to five (5) years. Furthermore the accessory punishments should pertain to their entire profession, not just a specialization.

G. Response of defence counsel Ramë Gashi for the defendant of S. H.

In his response to the appeal filed by the Special Prosecutor on 10 December 2013 the defence counsel Ramë Gashi on behalf of S. H. finds that the allegations in the prosecutor's appeal are unfounded. The defendant has no connection with the evidence that was found, stored, and collected from the clinic. Both the evidence and the search related to the defendant are unacceptable and ineffective to any criminal liability. The defence stresses that S. H. never had any connection with any form of trafficking. The only duty he had was to help the patients without any interest as to who may be the patient undergoing the surgery and why. Attempts to attribute the elements of organized crime to the defendant were not supported by any evidence; the reasoning in the Special Prosecutor's appeal is unclear; therefore, the allegations are ungrounded. The assertion that the defendant had to be aware of a circumstance or something for which he had no clue is unsubstantiated by any relevant fact and represents a misinterpretation of the law. The Basic Court seriously misled the factual situation. The defence stresses that the punishment and the imposed sentence is inadequate.
The defence proposes to reject the Special Prosecutor's appeal PPS. No. 2/09 dated 10 December 2013 as ungrounded and to approve his own appeal as grounded.

H. Response of defence counsel Ahmet Ahmeti for the defendant I. B.

In his response to the appeal filed by the Special Prosecutor on 10 December 2013 the defence counsel Ahmet Ahmeti on behalf of I. B. finds that the prosecution did not provide any new circumstances that could lead to an amendment of the challenged judgment and to impose a sentence between three (3) and five (5) years. The appeal from SPRK is unjustified, ungrounded, unreasonable and without any new facts. Thus, he proposes to approve the response and to reject the appeal filed by SPRK.

I. Response of defence counsel Petrit Dushi for the defendant A. D.

In his response to the appeal filed by the Special Prosecutor on 10 December 2013 the defence counsel Petrit Dushi on behalf of A. D. finds that the prosecutor's submission is without any substance. He refers to his appeal challenging the judgment on the grounds of: a) substantial violations of the provisions of criminal procedure, b) erroneous and incomplete determination of the factual situation, c) the violation of the criminal law, d) the decision on punishment and e) the property claim. He moves the Court of Appeals to consider his claims as grounded and to reject the appeal filed by the prosecution as ungrounded in its entirety.

J. The motion of the appellate prosecution

The appellate prosecutor on 19 February 2014 filed a motion dated 19 February 2014 moving the Court of Appeals to reject the appeals of the defence counsel as ungrounded and to decide on the issues raised in the appeal of the SPRK as well as on those that can be examined *ex officio*.

*I. B.*
With regard to the appeal of behalf of I. B. the appellate prosecutor observes that the appeal does not meet the requirements of Article 401 paragraph l of the PCPCK and should be dismissed pursuant paragraph 2 of the same article. Alternatively, the appellate prosecutor observes that the impugned judgment provides a detailed account of the evidence against the defendant, including the statements of the witnesses who knew and saw I. B. working in the clinic as anesthesiologist assisting the surgeons in the organ transplants. The claims of the defence are ungrounded.

*A. D.*
With regard to the appeal on behalf of A. D. the appellate prosecutor observes the criminal offences the defendant was found guilty of are the same charges the defendant was charged with under the indictment.
The claims that the Basic Court violated its duty to truthfully and completely establish the facts which are important to rendering a lawful decision as per Article 7 of the PCPCK; and that the Court applied the principle *in dubio contra reum* in violation of Article 3 paragraph 2 of the PCPCK, do not contain any substantiate reasoning.
Further, the illegality of the transplant activities carried out in the clinic and mentioned in the enacting clause is sufficiently detailed in the reasoning part of the judgment. Despite the claims of the defence no license for kidney transplants was ever issued to the Medicus Clinic. Furthermore the appellate prosecutor observes that the Basic Court correctly and fully established the factual situation and that there is sufficient evidence to convict the defendant.
The appellate prosecutor observes that the Basic Court took into consideration all the relevant circumstances of the case and it properly balanced the mitigating circumstances with the aggravating ones.
The Basic Court however failed to determine the punishment for each criminal offence the defendant was convicted of, pursuant to Article 71 paragraph 1 of the PCCK.

*S. H.*
With regard to the appeal on behalf of S. H. the appellate prosecutor observes that the defence claims violation of the provision of the criminal procedure without substantiating them with a proper reasoning on the alleged mistakes the Court incurred on. As such the appeal does not meet the requirements of Article 401 paragraph 1 of the PCPCK and should be dismissed pursuant paragraph 2 of the same Article. Further, the criminal offences and the role of the defendant are correctly established and sufficiently elaborated on. The defendant was aware that

he was participating in his capacity as anesthesiologist in an illegal medical procedure aimed at the removal of kidneys for transplantation; and in doing so he gave a substantial contribution to the permanent and substantial weakening a vital organ of the donors in which the criminal offence of the grievous bodily harm consists.
Furthermore, the appellate prosecutor observes that – as no procedural, substantive or factual mistake can be detected in the reasoning of the Basic Court – the appraisal of the circumstances of the case and the imposition on the defendant of an accessory punishment of prohibition from exercising the profession as anesthesiologist are commensurate to the criminal responsibility of S. H..

*S. D.*
With regard to the appeal on behalf of S. D. the appellate prosecution observes that the defence had ample time and deemed possible to prepare the defence against the amended charge as raised by the state prosecutor. The Basic Court further has the power to classify the act regardless of the indicted qualification and did so based on the factual situation. Regarding the other issues raised by the defence, the appellate prosecution refers to its observations made with regard to the other appeals so far.

*SPRK*
With regard to the appeal of the state prosecutor the appellate prosecution refers to its opinion filed in the case PPN 58/13, PN 577/2013, P 8/2013 and PPS 425/2009 regarding the legality of the search at the Medicus Clinic. In addition the appellate prosecution observes that no provision of the law expressly prescribes the inadmissibility in criminal proceedings of evidence of criminal activity, legitimately collected by state institutions – other than the police – in the performance of their institutional functions. The fact that the outcome of the investigative activities of the police might be considered as inadmissible due to the infringement of the provisions of Article 240 et seq. of the PCPCK does not affect negatively the activities of the health inspectors which were carried out for different institutional purposes and are not subject to the same regime of admissibility as the former. The fact that in the present case the activities of the health inspectors were carried out in the context of a criminal investigation made by the Kosovo police does not affect the otherwise autonomous legal status of those activities and the Court keeps its authority to freely assess the probative value and the relevance of the collected evidence.
Regarding the admissibility of the SMS content the Kosovo Courts so far seem to point towards the conclusion that the acquisition of the content of text messages falls within the category of the ex post interception of telecommunications for which a court order is required pursuant to Article 258 paragraph 2 subparagraph 4 of the PCPCK. Article 264 paragraph 1 of the PCPCK imposes a declaration of inadmissibility of the evidence collected by covert or investigative measure in two cases: when the (judge or prosecutor's) order is unlawful, and when the implementation of

the (judge or prosecutor's) order is unlawful. In the present case, the issue at stake is exactly one of implementation contrary to the order issued by the prosecutor.
Regarding the remaining issues the appellate prosecution concurs with the arguments put forward by the state prosecutor and moves the Court of Appeals to decide accordingly.

*L. D.*
With regard to the appeal on behalf of L. D. the appellate prosecution observes that the claim of the defence that the investigation was closed with no indictment is without merit as all the legal requirements for filing, extending and confirming the indictment were met by the prosecution and the Basic Court. As for the claim that the presiding judge should have been excluded from the participation in the main trial, the appellate prosecution notes that since the extension of the investigation is a mere technical procedure based on the assessment of the complexity of the case without the judge entering into the merits of case, the claim is ungrounded.
Further, with regard to the search of the Medicus Clinic and the issue of admissibility of the evidence the appellate prosecutor refers to its observations made with regard to the other appeals so far. The evidence was furthermore properly submitted in the trial proceedings. The claim that the prosecution suppressed the 'Medical Operation Protocol Book' is completely without merit, and the claim that the book would have shown that the defendant is not guilty is unsubstantiated.
Furthermore, the appellate prosecutor observes that the factual situation was correctly and fully determined and shows that L. D., as owner of the private Medicus Clinic, was responsible for the overall development and functioning of the Clinic with regard to illegal kidney transplants and was personally involved in many of the illegal kidney transplant operations carried out in the institution in co-perpetration with the other defendants by taking advantage of the desperate financial situation of the donors under the deceitful assurance that kidney transplant was legal in Kosovo.

## V. FINDINGS OF THE PANEL

A. Admissibility of the Appeals

*a. The appeals filed on behalf of the defendants*
The appeals filed by the SPRK, defence counsel Linn Slattengren for the defendant L. D., defence counsel Petrit Dushi for the defendant A. D., defence counsel Ramë Gashi for the defendant S. H., defence counsel Ahmet Ahmeti for the defendant I. B. and defence counsel Hilmi Zhitia for the defendant S. D. are admissible. The appeals were filed within the 15-day deadline pursuant to Article 398 PCPK. The appeals were filed by authorized persons and contain all other relevant information pursuant to Article 399 and 401 PCPK.

*b. The submission filed on behalf of the defendant L. D.*

The Panel notes that the impugned judgment was served on the defendant L. D. on 6 December 2013. The impugned judgment was served on his defence counsel Linn Slattengren on 29 November 2013. The appeal filed by defence counsel Linn Slattengren on behalf of the defendant L. D. was filed on 13 December 2013. The initial appeal is thus filed within the 15-day deadline pursuant to Article 398 PCPK. However, the submission handed over during the session on 4 November 2015 by defence counsel Linn Slattengren is to be dismissed as belated with regards to the newly asserted ground for challenging the judgment, namely the judicial bias of the presiding judge. This ground was not included in the initial appeal and thus is filed belated. The Panel shall however discuss this issue in general, seeing as the defence of the defendant A. D. raised this issue timely.

B. Impartiality of the Basic Court

The defence questions the impartiality of the Basic Court presiding judge Arkadiusz Sedek due to his prior involvement as a pre-trial judge when extending the investigation in this case on 9 November 2009 via ruling GJPP 361/08.

In pursuance of the decision of the President of the Assembly of EULEX judges, JC/EJU/OPEJ/2760/chs/11, dated 11 January 2012, the Panel finds that no objective or subjective elements can be found that would render the impartiality of presiding judge Arkadiusz Sedek doubtful. The mere fact that presiding judge Arkadiusz Sedek was involved in a decision on extending the investigation does not automatically disqualify him at a later stage of the same case. The scope and nature of the decision taken was not substantial and was merely based on the overall complexity of the case. In accordance with the practice of the European Court of Human Rights, the Panel therefore finds the composition of the judges panel of the Basic Court unambiguous and impartial.

The defence further submits that the Basic Court appeared to be partial at times when interfering during the defence counsel's questioning of witnesses and being too strict with regard to submissions and requests of the defence.

After carefully reviewing the minutes of the session of the main trial, the Panel finds the submission of the defence without merit. The conduct of the Basic Court at all times was in accordance with the law and the Panel finds no objective or subjective elements that would render the impartiality of the panel doubtful.

Concluding, the Panel rejects the appeal of the defence as unfounded.

C. Extension of Investigation

The defence argues that the extension on investigation was conducted illegally and contrary to the proper proceedings and thus the investigation was closed on 8 May 2009 with no indictment rendering the case against the defendants inadmissible.

The Panel notes the following procedural background:

On 12 November 2008 a ruling on initiation of investigation was issued against the defendants L. D., A. D. and others for Trafficking in Persons – Article 139, paragraph 1, and 23 PCPCK.

After the initiation of investigation the investigation was extended and expanded with new defendants.

On 12 May 2010 with ruling Pn-Kr 238/2010 the Supreme Court of Kosovo approved an extraordinary extension of investigation for an additional 6 months, until 12 November 2010.

The indictments were filed upon this court on 15 and 21 October 2010.

Considering the above sequence, there are no chronological gaps. Furthermore, all applications and respective decision on the extension of the investigation were decided pursuant to Article 225, paragraph 4, PCPCK. In such cases the defendants are not notified about the investigation and the request for extension. This procedure is in full concurrence with the law. Furthermore, the Supreme Court already issued a ruling on the extension and the Panel fully abides by this ruling and finds the extension in full concurrence with the law and finds the indictment timely filed.

The appeal of the defence is rejected as unfounded.

D. Consistency and Comprehensibility of the Enacting Clause

The defence submits that the enacting clause of the judgment is incomprehensible or internally inconsistent or inconsistent with the grounds for the judgment and that the judgment lacks sufficient grounds for a conviction. The defence submits that the impugned judgment is not drafted in accordance with Article 403, paragraph 12, PCPCK.

This ground of the appeal is rejected as unfounded.

The enacting clause is clear, logical and does not contradict itself or the reasoning. The enacting clause provides a coherent and comprehensive description of the decisive facts and contains all

the necessary data prescribed by Article 396, paragraph 3 and 4, PCPCK in conjunction with Article 391 PCPCK.

The enacting clause is fully coherent with the reasoning of the impugned judgment and reflects the findings elaborated therein. The Basic Court presented grounds for each individual point of its decision, as required by Article 396, paragraph 6, PCPCK.

The enacting clause read together with the detailed reasoning of the impugned judgment provides a comprehensive assessment of the evidence and of the facts the Basic Court considered proven and not proven. In accordance with Article 396, paragraph 7, PCPCK the Basic Court also made a detailed assessment of the credibility of the evidence and the reasons guiding the Basic Court in settling points of fact and law.

The enacting clause contains all the information that is compulsory.

The Court of Appeals Panel shall however modify the enacting clause of the Basic Court judgment when required in accordance with its findings as set out below.

E. Admissibility of Evidence

*a. Search of the Medicus Clinic premises*

The defence submits that the search of the Medicus Clinic premises and the confiscation of evidence therein are to be found inadmissible, while the prosecution submits that the search and confiscated evidence are to be found admissible.

The issue of the legality of the search and confiscation has been discussed and reviewed in detail by the Basic Court on page 27 to 45 of the impugned judgment. After careful analysis of this assessment and the casefile as a whole the Panel comes to a different conclusion than the Basic Court. The Panel finds that the search of the Medicus Clinic premises and the confiscation of evidence therein are inadmissible. The Panel fully concurs with the assessment made by judge Vitor Hugo Pardal in ruling PPS. No. 02/2009 of the Basic Court of Pristina, dated 31 January 2011. The Panel shall adopt the analysis and conclusions of this ruling as its own and reiterates the following (with some grammatical corrections):

> "As foreseen by article 200, paragraph 1 PCPCK, "The police shall investigate criminal offenses and shall take all measures without delay, in order to prevent the concealment of evidence". This article must be considered as a basic principle concerning the aim of judicial police (general duties and powers of the police – subchapter 1, chapter XIII PCPCK). This means specifically nothing but that all legally admissible measures must be taken without delay. Moreover, as per article 201, paragraph 1, "(…) the police have a

duty (…) ex officio (…) to take all steps necessary (…) to detect and preserve traces and other evidence (…) and objects which might serve as evidence (…)". According to paragraph 2, "the police shall have the power to (…) take the necessary steps to establish the identity of (…) objects (subparagraph 4); confiscate objects (…) (subparagraph 7)". However, the power to take those steps cannot be considered above all other articles specifically foreseeing the respective proceedings. Otherwise, some limits as defined, for instance, by the same article would be absolutely useless (as restricting a search only to vehicles, passengers and their luggage, or restricting it regarding premises of public entities only in the presence of the responsible person, respectively subparagraphs 2 and 6). The same applies for all limits considered under article 204 PCPCK. Moreover, article 245 PCPCK referring to conditions for a search performed by the judicial police would be also useless. Thus, an accurate hermeneutic and systematic interpretation of all referred articles leads to an undisputable conclusion: articles 240 to 253 PCPCK pointing specifically to search and temporary confiscation must always prevail, and no loopholes may be raised through the content of generic articles like 200 and 201 PCPCK. This is the only possible interpretation according to article 36 paragraph 2 of the Constitution of Kosovo, according to which, "Searches of any private dwelling or establishment that are deemed necessary for the investigation of a crime may be conducted only to the extend necessary and only after approval by a court after a showing of the reasons why such a search is necessary. Derogation from this rule is permitted if it is necessary if it is necessary for a lawful arrest, to collect evidence which might be in danger of loss or to avoid direct and serious risk to humans and property as defined by law. A Court must retroactively approve such actions".

Considering so, the performed search must be judged exclusively under the specific and correctly interpreted content of Articles 240 to 253 PCPCK.

This finding does not close the issue. If according to Article 240 PCPCK it is up to the pretrial judge to order a search of a house and other premises and property (paragraph 1) there are factual and legal conditions to be met for such investigative action (paragraph 2). Also several strict proceedings must be assured during the action (Articles 242 and 243 PCPCK).
However, those legal proceedings may be derogated by law in exceptional conditions as foreseen by Article 36 paragraph 2 of the Constitution of Kosovo. Those conditions and derogated proceedings are specifically described through Article 245, paragraph 1 PCPCK, according to which, "Police may, if necessary and to the extent necessary, enter the house and other premises of a person and conduct a search without an order of the pretrial judge if (…) the person concerned knowingly and voluntarily consents to the search (subparagraph 1); a person is calling for help (subparagraph 2); a perpetrator caught in the act of committing a criminal offence is to be arrested after a pursuit

(subparagraph 3); reasons of safety of people and property so require (subparagraph 4); or a person against whom an order for arrest has been issued by the court is to be found in the house or other premises (subparagraph 5)".

It is clear that, if it is up to the pretrial judge to authorize and order a search on premises and property, it is also possible that, in urgent circumstances as defined by law, police may perform a search without such a search order previously issued according to the proceedings as defined by Article 240, paragraph 4 and Article 245, paragraphs 2, 3, 4 and 6 PCPCK.

Considering the case at stake and conditions as listed in Article 245, paragraph 1, subparagraphs 1 to 5 PCPCK, the performed search could only stand on subparagraph 4 – "reasons of safety of people (…) so require". As a matter of fact, it is clear that no consent is documented on the file, no person was calling for help, no perpetrator was caught in the act and no order for arrest was previously issued by the court, so no other reason could be ground for it.
According to the same article, paragraphs 3 and 6, "exceptionally, in exigent circumstances, if a written order for a search cannot be obtained in time and there is a substantial risk of delay which could result in the loss of evidence or of danger to the lives and health of people, the judicial police may begin the search pursuant to the verbal permission of the pretrial judge" and "if the police have conducted a search without a written judicial order they shall send a report, to that effect to the public prosecutor and the pretrial judge, if any pretrial judge is assigned to the case, no later than 24 hours after the search".

Analyzing all above referred articles we shall consider the following: to enter the house or other premises of a person, police needs a previously issued judicial order except if any of the conditions under paragraph 1, subparagraphs 1 to 5 is verified. However, to conduct a search a written order must be previously issued by the pretrial judge, except in any of the conditions as foreseen by paragraph 3, and also a verbal permission is obtained from the pretrial judge. The reason for the difference is also comprehensible: the urgency for entering a house or premises may be not of the same level to conduct a subsequent search, since other measures might be applicable, namely the legal possibility to restrict movement in that specific area which is to be considered the strictly necessary measure, as demanded by the Constitution of Kosovo, Article 36, paragraph 2.

Pursuant Article 246 PCPCK, "evidence obtained by a search shall be inadmissible if (…) the search was executed without an order from a pretrial judge in breach of the provisions of the present code (paragraph 1); persons whose presence is obligatory were not present during the search – owner or his representative and 2 witnesses (paragraph 5

according to Article 243, paragraphs 1 and 2); the search was conducted in breach of Article 245, paragraph 1, 3, 4 and 5 of the present code (paragraph 6)".

Considering the raised issue, in order for a search, as conducted by judicial police, to be valid and all evidence gathered through this to be admissible, a written search order must be previously obtained; alternatively, a substantial risk of delay which could result on the loss of evidence or of danger to the lives and health of people – or reasons of safety of people as referred by Article 245, paragraph 1, subparagraph d) must be verified, as well as a verbal permission from the pretrial judge (Article 245, paragraph 3 PCPCK). If this is mandatory even for beginning a search, a fortiori it shall be mandatory to perform the proper search itself.

Taking into consideration the legal analysis and the factual frame as evaluated from the documents available, the legal consequence must be the inadmissibility of all evidence obtained by the search at stake.

As per Article 3 paragraph 6 of Law on Health Inspectorate, "In order to implement legal authorizations from its field of activity the Health Inspectorate cooperates and coordinates its activity with the Labor Inspectorate, the Sanitary Inspectorate, the Inspectorate of Environment, Water Inspectorate and other relevant inspectorates, Prosecutor's Offices, Kosovo Protection Corps (KPC) and the Kosovo Police Service (KPS)."

As per Article 7, paragraphs 1, 2, 4 and 8, "Health Inspectors possess authorization for free access in the inspection of the implementation of normative acts of health care institutions. Health Inspectors shall freely enter at any time to all working places within health care institutions during their inspection without any notification. Health Inspectors shall carry out necessary inspection and research to collect evidences that are considered important in order to ensure that legal provisions are being applied by health care institutions. Health Inspectors shall carry out control of all books and documents kept by the health care institution".
Finally, according to Article 7 paragraph 9, "The Inspector has the authorization to copy extracts from registers and documents and confiscate them in case they need evidence in the presence of the staff or witnesses, by keeping records on the materials confiscated from the respective health care institution (…)" A misleading and abusive interpretation of the above-transcribed articles would allow a search by the Prosecutor's office or by Kosovo Police in cooperation or coordination with Health inspectorate – rather than following a judicial authorization – once in order to implement legal authorizations from its field of activity, since this inspectorate is legally allowed not only to enter but also to search and confiscate evidence.

However it is worthy to bear in mind the search at stake was not motivated by health reasons as defined by Articles 2 and 6 of the referred law but "kidney transplantation is suspected to have taken place after a Turkish person who was apprehended by the Kosovo Police stated that he had sold a kidney at that hospital" instead, as it is specifically stated on Z. K. report. On the other hand on A. G. report it is clearly stated "By the District Prosecutor's order Mr. Osman Mehmeti was decided to block the entire building premises, and which should be examined in details on the incoming days". It was clearly a criminal search, motivated by criminal reasons, by Prosecutor's order, where evidence seized were carried on to criminal proceedings. It was not a simple cooperation on implementation of legal authorizations from health's field of activity.

A similar case – Funke vs. France (App. 10828/84 25th Feb 1993, Series A No. 256-A, (1993) 16 EHRR 297 – must be addressed here with similar interpretation, *mutatis mutandis*, but referring to specific powers attributed to customs police and their connectivity to criminal procedure. In this case it was considered that restrictions and limitations provided for in the law cannot be too lax and full of loopholes for the interferences to be strictly proportionate to the legitimate aim pursued. And it is always worthy to mention Article 53 of Constitution of Kosovo according to which "interpretation of human rights and fundamental freedoms must be interpreted consistent with the court decision of ECHR".

*b. Consequence of the illegal search*

Consequently the Panel also comes to the same conclusion as judge Vitor Hugo Pardal in ruling PPS. No. 02/2009 of the Basic Court of Pristina, dated 31 January 2011, with regard to the inadmissibility of certain evidence confiscated during the search. Although a review panel confirmed the indictment and determined that all of the disputed evidence was to be regarded as admissible, the Panel is not bound by this decision. As detailed above, the Panel is of the opinion certain evidence was obtained in violation of the law. Pursuant to Article 246 PCPCK such evidence shall be inadmissible. To determine what specific evidence is to be declared inadmissible the Panel shall apply the doctrine of the "fruit of the poisonous tree", namely if the source (the "tree") of the evidence or evidence itself is tainted, then anything gained (the "fruit") from it is tainted as well. However, certain exceptions apply, namely if the evidence was discovered in part as a result of an independent, untainted source or if the evidence would inevitably have been discovered despite the tainted source as well. Applying the aforementioned doctrine of the "fruit of the poisonous tree" the Panel considers the following evidence inadmissible seeing as it was directly obtained through the conducted search and/or it was directly grounded on the search, whilst it is not possible to have been obtained through a different, untainted source:

1. Clinic books and other documents confiscated during the search (Binder IV, page 6 to 150);

2. Pictures taken during and after the search (Binder V, page 80);
3. Report on expert examination on confiscated objects (Binder V, page 128-131) dated 20 January 2009;
4. Review of evidence: comparison of protocol book as seized evidence (B VII, page 647), dated 9 July 2009;
5. Reporting on expertise regarding evidence seized during the search, dated 9 June 2009, and 4 August 10 (B VIII, page 1086, 1140 and 1144);
6. Results of the analysis of the Medicus Clinic records, dated 24 November 2010 (Binder Post indictment evidences, page 75 to 80);
7. Evidences listed as result of confiscation during the search (Binder Post Indictment evidences, page 45).
8. Pictures taken during the search (Binders A and B).

As noted above, any evidence that inevitably would be discovered without the search must however be considered as admissible. The Panel finds that any list of eventual donors and/or recipients could be based on lists provided by entrance and departure official registries on the border, travel documents and air tickets issued as well as by all guarantees and invitation letters applied and provided before the search. Even though the same names could be confirmed on clinic books and registries seized, this was not the only and definitive source of them. Furthermore, the discovery of a witness is not evidence in itself because the witness is attenuated by separate interviews, in-court testimony and his or her own statements. Considering so, all of the witnesses statements are hereby considered as admissible evidence.

With similar reasoning as above, namely the search not being the only means or source to obtain the evidence, the following evidence is deemed as admissible:

- All witness statements, as detailed on pages 53 to 88 and 107 to 112 of the impugned judgment;
- Entry and Exit Data of Donors, Recipients, Foreign Doctors and Others, as detailed on page 93 to 98 of the impugned judgment;
- Forensic Medical Expertise Prepared by Dr. C. B. regarding Donors DS and AK, as detailed on page 88 to 89 of the impugned judgment;
- E-mail exchanges, as detailed on page 98 to 104 of the impugned judgment;
- Metering of Telephone Calls, as detailed on page 112 of the impugned judgment;
- The Ethics Committee, as detailed on page 112 of the impugned judgment;
- Letters of Invitation, as detailed on page 112 of the impugned judgment.

*c. SMS*

The prosecution submits that the content of the SMS text messages should be considered as part of the metering of phone calls, for which the order from the prosecution is sufficient, and therefore is admissible.

The Panel rejects the appeal of the prosecutor and adopts and affirms the finding of the Basic Court that the information of SMS text messages can only be disclosed upon an order of the pretrial judge under Article 258, paragraph 2, subparagraph 4, PCPCK, and therefore the evidence is inadmissible under Article 264, paragraph 1, PCPCK.

F. Determination of the Factual Situation

The defence submits that the Basic Court did not properly evaluate the evidence administered during the main trial and consequently came to wrong conclusions regarding the criminal offences and the role of the defendants.

Before assessing the merits of the arguments presented by the defence on the alleged erroneous or incomplete determination of facts, the Panel reiterates the standard of review regarding the factual findings made by the trial panel.

It is clear from Article 405 PCPCK that it is not sufficient for the appellant to demonstrate only an alleged error of fact or incomplete determination of fact by the trial panel. Rather, as the criminal procedure code requires that the erroneous or incomplete determination of the factual situation relates to a "material fact", the appellant must also establish that the erroneous or incomplete determination of the factual situation indeed relates to a material fact, i.e. is critical to the verdict reached.[1] Furthermore, it is a general principle of appellate proceedings that the Court of Appeals must give a margin of deference to the finding of fact reached by the trial panel because it is the trial panel which is best placed to assess the evidence. The Supreme Court of Kosovo has frequently held that it must "*defer to the assessment by the trial panel of the credibility of the trial witnesses who appeared in person before them and who testified in person before them. It is not appropriate for the Supreme Court of Kosovo to override the trial panel assessment of credibility of those witnesses unless there is a sound basis for doing so.*" The standard which the Supreme Court applied was "*to not disturb the trial court's findings unless the evidence relied upon by the trial court could have not been accepted by any reasonable tribunal of fact, or where its evaluation has been wholly erroneous*".[2]

[1] See also B. Petric, in: Commentaries of the Articles of the Yugoslav Law on Criminal Procedure, 2nd Edition 1986, Article 366, para. I. 3.

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

With the above in mind, the Panel has reviewed the assessment of the Basic Court with regard to the admissible evidence and finds the following.

*a. Witness statements of the kidney donors and recipients (and/or relatives)*
The Panel examined the thorough analysis of the Basic Court regarding the witness statements of the kidney donors, as set out on pages 53 to 69 of the impugned judgment. The Panel also examined the thorough analysis of the witness statements of the recipients and/or their relatives, as set out on pages 69 to 87 of the impugned judgment. The Panel furthermore autonomously reviewed all the witness statements. In the view of the Panel, the Basic Court comes to logical conclusions in its assessment of the evidence, as elaborated on page 87-88. The Panel finds no reason to doubt the credibility of the witness statements. Nor does the Panel find that the Basic Court incorrectly interpreted the witness statements. The Panel fully adopts and affirms the analysis of the Basic Court that the kidney donors were recruited, transported, transferred, received and harboured. Furthermore, the kidney donors were subjected to abuse of their position of vulnerability, coerced, deceived and/or defrauded. The Panel affirms that the kidney donors were exploited by the removal of their kidneys.

*b. Witness statements of others with knowledge of the activities*
The Panel also examined the thorough analysis of the Basic Court regarding the witness statements of others with knowledge of the activities, as set out on pages 107 to 112 of the impugned judgment. The Panel furthermore again autonomously reviewed all the witness statements. The Panel finds that the Basic Court comes to logical conclusions in its assessment of this evidence as well. The Panel finds that the Basic Court correctly interpreted the witness statements. The Panel fully adopts and affirms the analysis of the Basic Court. Together with the other corroborating evidence as mentioned below, the Panel finds that the defendants L. D., A. D. and S. H. were substantially involved in the Trafficking of Persons and that the defendants L. D., A. D. and S. H. were also involved in a criminal organization.

*c. Corroborating evidence*
The Basic Court in detail analyzed the other corroborating evidence as well. The Panel again finds no flaws in the reasoning of the Basic Court and adopts the analysis and conclusions entirely. The following evidence supports the ascertainment that the defendants L. D., A. D. and S. H. were substantially involved in the Trafficking of Persons and that the defendants L. D., A. D. and S. H. were also involved in a criminal organization:

- Forensic Medical Expertise Prepared by Dr. C. B. regarding Donors DS and AK, page 88 to 89 of the impugned judgment;
- Entry and Exit Data of Donors, Recipients, Foreign Doctors and Others, page 93 to 98 of the impugned judgment;
- E-mail exchanges, page 98 to 104 of the impugned judgment;

- Metering of Telephone Calls, page 112 of the impugned judgment;
- The Ethics Committee, page 112 of the impugned judgment;
- Letters of Invitation, page 112 of the impugned judgment.

*d. Number of kidney transplants*

Although the Panel concurs with the assessment made by the Basic Court that kidney transplants took place in the Medicus Clinic, the Panel finds that there is only sufficient evidence to proof that seven kidney transplants took place, namely regarding Protected Witnesses W2, W1, W3, victims PM, DS, AK and Y. A.. The evidence of these specific transplants is directly based on the testimonies of the victims (six kidney donors testified during the main trial and one kidney donor testified during the pre-trial phase) and further on the remaining evidence as discussed under *a.*, *b.* and *c.* above. For the other seventeen kidney transplants initially proven by the Basic Court, the Panel finds there is insufficient evidence that these transplants took place, seeing as evidence directly obtained through the conducted search, such as the Clinic books and other documents, is inadmissible and no other sufficient evidence is available regarding the exact date of the other alleged transplantation operations and personal data of the alleged concerned donors and recipients.

*e. Conclusion*

Concluding, the Panel finds that the Basic Court erred when establishing that twenty-four kidney transplants took place at the Medicus Clinic. Article 405 PCPCK was thus violated and the Panel finds that the Basic Court incorrectly determined the factual situation. The Panel shall therefore modify the impugned judgment insofar as the number of proven kidney transplants that took place at the Medicus Clinic in which the criminal organization, including the defendants L. D., A. D. and S. H., were involved is to be established as seven and not twenty-four.

With regard to the seven kidney transplants, certain inadmissible evidence cannot be used to establish the factual situation regarding these transplants. However, with the remaining admissible evidence there is sufficient proof that these transplants took place and the criminal organization, including the defendants L. D., A. D. and S. H., were involved. The Basic Court therefore did not incorrectly determine the factual situation regarding these seven kidney transplants. Neither is there evidence that undermines the correctness or reliability of the determination of a material fact. Article 405 PCPCK was thus not violated regarding the assessment of aforementioned seven kidney transplants and the Panel finds that the Basic Court correctly and completely determined the factual situation.

The appeals of the defence are partially granted.

G. Legality of kidney transplants in Kosovo

The defence submits that the kidney transplants were carried out in full compliance with the Kosovo Health Law, and alternatively that the defendants were acting in good faith that the kidney transplants were in full compliance with the Kosovo Health Law.

The Basic Court on pages 45 to 52 in detail discussed whether or not the kidney transplants were in accordance with the Kosovo Health Law. The Panel finds no flaws in the reasoning of the Basic Court. The Panel comes to the same conclusion, namely that the kidney transplants carried out at the Medicus Clinic were in violation of Section 46, item d, of the Kosovo Health Law[3] and that the document of 12 May 2008 issued by I. R. was merely an advisory notice to the effect that if special authorizing legislation was enacted at some time in the future, the Medicus Clinic "in principle" would be permitted to conduct kidney transplants. The document, by its very terms, however was not a license or authorization; it was not intended to be a license or authorization; it was not understood by the Medicus Clinic to be a license or authorization; and it was not used as a license or authorization. This document does not provide any authorization and was of informative nature only. The performed kidney transplants in the Medicus Clinic were therefore illegal.
As respective director, manager and lead anesthesiologist of the Medicus Clinic, the defendants L. D., A. D. and S. H. at the very least should have been aware that the kidney transplants were illegal. Considering their combined professional background and expertise, the Panel therefore rejects the assertion that the defendants were acting in good faith.

The appeals of the defence are thus rejected as unfounded.

Moreover, whether or not the kidney transplants were in full compliance with the Kosovo Health Law is for the most part irrelevant for the determination of the criminal offence of Trafficking in Persons. It only affects the element of 'deception' as will be discussed below.

H. Trafficking in Persons

*a. The criminal offence*
It is not contested that kidney transplantations took place at the Medicus Clinic. The defence does however contest that the kidney transplantations constitute a criminal offence.

Article 139 PCPCK reads as follows:

[3] Private health activities are not allowed in the following fields: d) Collection, preservation transport and transplantation of tissues and human organs except in cases of auto-transplantation.

Trafficking in Persons

(1) Whoever engages in trafficking in persons shall be punished by imprisonment of two to twelve years.

(2) When the offence provided for in paragraph 1 of the present article is committed against a person under the age of 18 years, the perpetrator shall be punished by imprisonment of three to fifteen years.

(3) Whoever organizes a group of persons to commit the offence in paragraph 1 of the present article shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

(4) Whoever negligently facilitates the commission of trafficking in persons shall be punished by imprisonment of six months to five years.

(5) Whoever uses or procures the sexual services of a person with the knowledge that such person is a victim of trafficking shall be punished by imprisonment of three months to five years.

(6) When the offence provided for in paragraph 5 of the present article is committed against a person under the age of 18 years, the perpetrator shall be punished by imprisonment of two to ten years.

(7) When the offence provided for in the present article is committed by an official person in the exercise of his or her duties, the perpetrator shall be punished by imprisonment of five to fifteen years, in the case of the offence provided for in paragraph 1 or 2, by imprisonment of at least ten years, in the case of the offence provided for in paragraph 3, by imprisonment of two to seven years in the case of the offence provided for in paragraphs 4 or 5 or by imprisonment of five to twelve years, in the case of the offence provided for in paragraph 6.

(8) For the purposes of the present article and Article 140,

1) The term "trafficking in persons" means the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2) The term "exploitation" as used in subparagraph 1 of the present paragraph shall include, but not be limited to, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

3) The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth in subparagraph (1) of the present paragraph have been used against such victim.

4) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (1) of this paragraph.

As can be clearly read in paragraph 8, item 2, the removal of organs is a form of exploitation. Seeing as there is no doubt that the kidneys of the victims were removed in the Medicus Clinic, this condition of the criminal offence of Trafficking in Persons has been met.
There is also no doubt that the victims were transported and transferred from their place of residence to the Medicus Clinic specifically for the intent of removing the kidney. The Medicus Clinic furthermore harbored the victims in its premise prior, during and after the removal of the kidneys. This condition of the criminal offence of Trafficking in Persons is also met.
The key issue is whether or not the kidney donors were victims of either threat, use of force, coercion, abduction, fraud, deception, abuse of power or if they were in a position of vulnerability or if they were given payments or benefits to achieve the consent of a person having control over another person. With the Basic Court, the Panel finds that the victims were in a position of financial vulnerability. The victims that testified at the main trial were all foreign nationals from relatively poor countries and were personally experiencing acute financial distress. The victims were thus in a position of vulnerability. Furthermore, the victims were told that their specific kidney transplants were legal in Kosovo, when this in fact was not the case. Pursuant to Section 46, item d, of the Kosovo Health Law private health activities are not allowed with regard to the collection, preservation transport and transplantation of tissues and human organs. Thus their kidney transplants were illegal. This constitutes deception. Additionally, the victims were not provided valid information about the risks of the surgery and were escorted into surgery without ample to time to reconsider, constituting a form of coercion. In some cases the victims were also not given the full amount of money they had been promised or they were given no money at all. The condition of fraud has therefore also been met. Concluding, multiple means were used for the purpose of exploiting the victims for their kidneys.
Whether or not the kidney donors gave their consent for the removal of their kidney is irrelevant for the constitution of the criminal offence of Trafficking in Persons, pursuant to Article 139, paragraph 8, item 3, PCC.
Considering the above, the Panel fully concurs with the assessment of the Basic Court that the removal of kidneys from the victims and the surrounding course of events in the Medicus Clinic constitute the criminal offence of Trafficking in Persons.

*b. The role of the defendants*

*b.i. L. D.*

As can be derived from the witness statements, e-mail exchanges and statements of the defendants, L. D. set up a sophisticated medical facility with all of the necessary staff, equipment, supplies and procedures, with the purpose of conducting kidney transplants. L. D. on his own account initiated the quest to perform kidney transplants in the Medicus Clinic. L. D. then closely collaborated with Y. S. in order to run the Medicus Clinic as a place where the kidney transplants could take place. L. D. also employed several other persons in order to execute the kidney transplants. The specific surgeries were all conducted in the Medicus Clinic.

L. D. also was present during (some of) the kidney transplants. Furthermore, the defendant L. D. does not contest that kidney transplants took place in the Medicus Clinic and that he was either directly involved with or aware of the transplants.

The Panel therefore finds that it is proven beyond a reasonable doubt that the defendant L. D. deliberately, with direct intent, engaged in trafficking in persons, pursuant to Article 139, paragraph 1, PCC.

The appeal of the defence that the defendant L. D. is innocent is thus rejected as unfounded.

*b.ii. A. D.*

As can be derived from the witness statements, e-mail exchanges and statements of the defendants, A. D. helped to set up a sophisticated medical facility with all of the necessary staff, equipment, supplies and procedures, with the purpose of conducting kidney transplants. The specific surgeries were all conducted in the Medicus Clinic. A. D. closely corroborated with his father, L. D., to arrange the practical functioning of the modus operandi that was in place to successfully conduct the kidney transplants. For example, arranging the Medicus letters of invitation for the donors and recipients to show customs officials at the airport or picking up the donors from Pristina Airport for their transport to the Medicus Clinic. A. D. was also in close contact with Y. S..

Considering the nature of the acts committed by defendant A. D., the Panel finds that there is no other way than that the defendant A. D. was fully aware of the kidney transplants that were taking place at the Medicus Clinic.

The Panel therefore finds that it is proven beyond a reasonable doubt that the defendant A. D. deliberately, with direct intent, engaged in Trafficking in Persons, pursuant to Article 139, paragraph 1, PCC.

The appeal of the defence that the defendant A. D. is innocent is thus rejected as unfounded.

*b.iii. S. H.*

Count 1, the criminal offence of Trafficking in Persons, in violation of Article 139 PCCK, committed in co-perpetration (Article 23 PCCK), against the defendant S. H. was requalified by the Basic Court as per negligent facilitation of the criminal offence of Trafficking in violation of Article 139, paragraph 4, PCCK and was subsequently rejected. S. H. was then found guilty of Article 154, paragraph 1, subparagraph 2, PCCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person, as this offence was requalified from the criminal offence of Grievous Bodily Harm, in violation of Article 154, paragraph 4, PCCK.

In its rejection of Count 1 the Basic Court came to the conclusion that the defendant S. H. committed the offense of trafficking in persons by unconscious negligence. The Panel, however, does not agree with this assessment.

As can be derived from the witness statements, e-mail exchanges and statements of the defendants, the defendant *S. H.* participated in a significant number of operations. He thus had to be aware that the operations involved kidney transplantations. He also had substantive and direct interaction with the patients before the surgery and thus had knowledge that they were foreign nationals. S. H. furthermore was the lead anesthesiologist at the Medicus Clinic and he therefore had a position in which he had, or at the very least should have had information about the kidney operations procedures. As corroborating evidence the Panel also takes into account that the defendant's name was mentioned in the email exchange between S. and L. D..

Based on the above, the Panel finds that the defendant's actions are too heavily involved to be considered 'unconscious negligence'. Considering his direct role in the operations and his leading role within the clinic, the Panel is therefore of the opinion – in contrast to the Basic Court and the defence – that there is sufficient evidence that S. H. had at the least eventual intent to engage in Trafficking in Persons. Given the gravity of the operations and his direct involvement in the operations, the defendant cannot hide behind his line of defence that he was so busy that he did not pay so much attention to the international patients and never asked L. D. for explanations. The Panel finds this explanation unreliable. The Panel therefore finds that there is sufficient evidence to proof beyond a reasonable doubt that the defendant S. H. committed the criminal offence of Trafficking in Persons.

The appeal of the defence that the defendant S. H. is innocent is thus rejected as unfounded.

The appeal of the prosecution on the other hand is granted. Pursuant to Article 426, paragraph 1, PPCPCK, the Panel thus modifies the judgment of the Basic Court insofar as the defendant S. H. is found guilty of the criminal offence of Trafficking in Persons. The enacting clause shall be modified accordingly.

I. Organized Crime

*a. L. D.*

With the Basic Court the Panel finds that there is sufficient evidence to proof that the kidney transplants were conducted by an organized criminal group. There was a well-structured international criminal group in place which profited greatly. The enterprise was well organized; it consisted of many persons including L. D., A. D., and others; and it involved many interrelated functions, such as recruitment, logistics, payment, transportation, availability of a suitable medical facility (Medicus Clinic), availability of trained medical doctors, and the performing of

specialized medical procedures (kidney transplants). While all of the participants did not necessarily know each other, they were all part of a structured group that produced a seamless criminal endeavor, namely the trafficking in persons.
The defendant L. D. on his own account initiated the quest to perform kidney transplants at the Medicus Clinic and he was eventually responsible for the overall organization, establishment, supervision, management and directing of the kidney transplants that took place at the Medicus Clinic. He thus had a substantial and crucial role in organizing the criminal group.

The Panel therefore finds that it is proven beyond a reasonable doubt that the defendant L. D. established and organized the activities of an organized criminal group, pursuant to Article 274, paragraph 3, PCC.

The appeal of the defence that the defendant L. D. is innocent is thus rejected as unfounded.

*b. A. D.*
With the Basic Court the Panel also finds that it is proven beyond a reasonable doubt that the defendant A. D. committed a serious crime, namely the Trafficking in Persons, as part of the organized criminal group as specified above, pursuant to Article 274, paragraph 1, PCC.
A. D. was the director/manager of the Medicus Clinic and closely corroborated with his father, L. D., to arrange the practical functioning of the modus operandi that was in place to successfully conduct the kidney transplants at the Medicus Clinic. He thus had a substantial and crucial role in the organized criminal group.

The appeal of the defence that the defendant A. D. is innocent is thus rejected as unfounded.

*c. S. H.*
Contrary to the Basic Court the Panel finds that it is proven beyond a reasonable doubt that the defendant S. H. committed a serious crime, namely the Trafficking in Persons, as part of the organized criminal group as specified above, pursuant to Article 274, paragraph 1, PCC.
S. H. participated in a significant number of operations. He thus had to be aware that the operations involved kidney transplantations. S. H. furthermore was the lead anesthesiologist at the Medicus Clinic and he therefore had a position in which he had, or at the very least should have had information about the kidney operations procedures. He thus had a substantial and crucial role in the organized criminal group.
As corroborating evidence the Panel also takes into account that the defendant's name was mentioned in the email exchange between S. and L. D..

The appeal of the defence that the defendant S. H. is innocent is thus rejected as unfounded.

*d. Co-perpetrators*

With regard to both L. D. and A. D., the Panel however modifies the enacting clause insofar that the names of the other co-perpetrators involved in the organized criminal group shall not be included, as will be discussed in more detail below (L.*b*.). This however does not affect the enacting clause and guilty verdict as a whole and the reasoning as discussed above still applies.

J. Same Criminal Act

*a. Trafficking in Persons and Organized Crime*

The Court of Appeals Panel finds that the Basic Court rightfully found the defendants L. D. and A. D. guilty of Trafficking in Persons and Organized Crime and correctly imposed the punishment for the two criminal offences.

It however has to be clarified that the defendants committed one criminal offence, instead of two separate criminal offences. The enacting clause will also be modified accordingly.

The Basic Court found the defendant L. D. guilty of the criminal offence of Trafficking in Persons in violation of Article 139 paragraph 1 of the PCCK, committed in co-perpetration pursuant to Article 23 of the PCCK (Count 1) and the defendant was found guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 3 of the PCCK (Count 2). He was sentenced to imprisonment of 8 (eight) years and a fine of 10,000 (ten thousand) Euros.

A. D. was found guilty of committing the criminal offence of Trafficking in Persons in violation of Article 139 of the PCCK, committed in co-perpetration pursuant to Article 23 of the PCCK (Count 1) and the defendant was found guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 1 (Count 3). He was sentenced to imprisonment of 7 (seven) years and 3 (three) months and a fine of 2,500 (two thousand five hundred) Euros.

The Court of Appeals stresses that in the case at hand both defendants cannot be convicted for the two separate criminal offences of Trafficking in Persons and Organized Crime. The Panel refers to previous decisions rendered by the Supreme Court/Court of Appeals confirming that "Organized Crime" is a qualifying act and therefore never can be taken as a separate criminal offence. The courts have held continuously that the defendant cannot *for the same criminal act* be convicted of both (i) Organized Crime **and** (ii) the underlying serious crime required as element of the criminal offence, in this case Trafficking in Persons. If a different approach would be taken, the defendant would be punished twice for the same act. The Supreme Court of Kosovo has in a previous judgment stressed that the offence of Organized Crime requires the commission of an 'underlying' offence, in addition to the offence of Organized Crime. The formulation used throughout Article 274 PCPCK clearly stipulates that the commission of an underlying offence is a constitutive element of this offence. Otherwise, an individual could be found guilty for the same act, forming part of both criminal offences, of Organized Crime and of the underlying

offence. This situation amounts to a breach of the prohibition to impose a double punishment for one single offence.[4]

The Court of Appeals Panel concurs with the above interpretation by the Supreme Court and finds that it necessitates the modification of the contested judgment. In the case at hand the criminal offence of organized crime subsumes the criminal offence of Trafficking in Persons as the 'underlying' criminal offence to it. As a result, the defendants L. D., A. D. and S. H. are found guilty for one criminal offence, namely Organized Crime in connection with Trafficking in Persons. The enacting clause shall be modified accordingly.

*b. Trafficking in Persons and Grievous Bodily Harm*

In accordance with the above mentioned principle that the defendant cannot be convicted for the same criminal act twice, the Panel furthermore adopts and affirms the reasoning of the Basic Court that Count 7 against the defendant L. D. is to be rejected, pursuant to Article 389, paragraph 4, due to the circumstance that this Count constitutes an element of Count 1, Trafficking in Persons, for which the defendant L. D. is already being convicted.

The appeal of the prosecution on this issue is therefore rejected as unfounded.

K. I. B. and S. D.

The defendants I. B. and S. D. were found guilty of Article 154, paragraph 1, subparagraph 2, PCCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person, as this offence was requalified from the criminal offence of Grievous Bodily Harm, in violation of Article 154, paragraph 4, PCCK.

The Panel finds that there is indeed a suspicion that the defendants I. B. and S. D. were aware of the fact that illegal kidney transplants were taking place at the Medicus Clinic and that they were in fact performing their medical profession as anesthesiologist on the very donors and recipients of these kidney transplants. However, the Panel finds that with the inadmissibility of certain evidence confiscated at the Medicus Clinic there is insufficient evidence to proof beyond a reasonable doubt that the defendants I. B. and S. D. were so directly involved in the procedures at the Medicus Clinic and the specific kidney operations that they knew they were permanently and substantially weakening an organ of the other person, other than performing their medical profession to tend for the patients at hand.

The appeals on behalf of the defendants I. B. and S. D. are granted.

[4] See Judgment of the Supreme Court of Kosovo in case no. Ap-Kz 61/2012 dated 2 October 2012, para 48; see also Judgment of the Appellate Court of Kosovo, case no. PAKR 215/2014, dated 14 May 2015.

The Panel therefore acquits the defendants I. B. and S. D. of Count 7, Article 154, paragraph 1, subparagraph 2, PCCK: destroying or permanently and substantially weakening a vital organ or a vital part of the body of the other person, as this offence was requalified from the criminal offence of Grievous Bodily Harm, in violation of Article 154, paragraph 4, PCCK. The Panel modifies the judgment of the Basic Court accordingly, as specified in the enacting clause.

L. Enacting clause

*a. Exceedance of the indictment*

The defence asserts that the scope of the indictment was exceeded as the enacting clause of the impugned judgment attributed actions to the defendants they were not charged with, thus violating Article 403, paragraph 10, PCPCK in conjunction with Article 386, paragraph 1, PCPCK.

The Panel finds no violation with regard to the exceeding of the indictment in the enacting clause. The Panel finds that - with regard to the parts of the enacting clause of the Basic Court judgment that the Panel affirms - the proven facts match the charges as stipulated in the indictment. The Panel therefore finds the enacting clause in accordance with Article 386, paragraph 1, PCPCK, as the enacting clause relates "only to the accused and only to an act which is the subject of a charge contained in the indictment as initially filed or as modified or extended in the main trial".

*b. Identification of co-perpetrators*

The co-perpetrators, other than the defendants, are not indicted in this specific case and they thus don't have an opportunity to defend themselves. Furthermore, other criminal proceedings are being or might be initiated against certain co-perpetrators. The Panel therefore *ex officio* modifies the enacting clause insofar as the names of all the co-perpetrators, not being the defendants, are removed and are merely defined and referred to as co-conspirators.

M. Decision on the Criminal Sanction

With regard to the punishment the prosecutor submits the following: The sentence imposed on the defendant L. D. is presumably an aggregate of the convictions for the two offences although this is not stated in the judgement. The punishment is on the very low end of the scale, considering the minimum sentences applicable for organized crime and trafficking. Furthermore, L. D. should have been convicted of Grievous Bodily Harm as well and this criminal offence should be included in the punishment. The Basic Court failed to first pronounce the punishment for each act and then impose an aggregate punishment for all of the acts. This should be modified. The accessory punishment of prohibition on L. D. from exercising the profession of

urologist should be modified to include all practice by him and should be increased to the maximum of 5 (five) years starting after he is released from prison.
Concerning the defendant A. D. the prosecution deems that the Basic Court failed to first pronounce the punishment for each act and then impose an aggregate punishment for all of the acts. This should be modified.
Regarding S. H. the imposed sentence is too low. Furthermore, the accessory punishment of the prohibition from exercising his profession should be modified to include all practice and should also be increased starting after he is released from prison.

The defence submits that the punishments are far too severe.

The Court of Appeals is of the opinion that based on Article 34 and Articles 64 to 71 PCPCK the applicable principles to calculate the punishment are the following:
A criminal sanction is the last resort to protect social values and cannot intervene beyond what it is found as strictly necessary. A sanction must not be higher than the necessity of justice enforcement and cannot be disproportionate considering the social protected values. Therefore, according to this principle of minimum intervention, it must be assumed that the lower punishment foreseen in the law will be sufficient, adequate and a reference point for standard situations that may be subsumed in the legal incriminating provision.
The Punishment is bound by the purposes of ensuring individual prevention and rehabilitation, ensuring general prevention, expressing social disapproval of the violation of the protected social values and strengthening social respect for the law.
While determining the punishment, the maximum penalty applicable in concrete will be given by the degree of guilt of the perpetrator and the minimum by the intensity of the demands of social reprobation. Inside this limit, the sanction must not be contrary to the referred principles of prevention and rehabilitation and must be proportionate to the specific mitigating and aggravating circumstances related to the criminal fact and the conduct and personal and social circumstances of the offender.

Pursuant to Article 64 (1) PCPCK, the court when rendering a judgment has to take into consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment, in particular, the degree of criminal liability, the motives for committing the criminal offence, the intensity of danger to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the personal circumstances and his behaviour after committing the criminal offence. The punishment shall finally be proportionate to the gravity of the offence and the conduct and circumstances of the offender.
Generally, the Court of Appeals, in reviewing the sentences, is limited by the factual situation established in the judgment and by the evaluation of the legal rules applicable to determination of punishment by the Basic Court. The Panel is not bound by the specific weight given by the Basic Court to each aggravating and mitigating circumstances. Other conjectural facts in favour

or to the detriment of the defendants but not established by the Basic Court cannot be considered to determine the punishment.

L. D. was found guilty of the criminal offence of Trafficking in Persons in violation of Article 139 paragraph 1 of the PCCK, committed in co-perpetration pursuant to Article 23 of the PCCK (Count 1) and he was found guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 3 of the PCCK (Count 2). He was sentenced to imprisonment of 8 (eight) years and a fine of 10,000 (ten thousand) Euros for both criminal offences in conjunction. The prohibition from exercising the profession of urologist for the period of 2 (two) years once the judgment becomes final was imposed as accessory punishment.

A. D. was found guilty of committing the criminal offence of Trafficking in Persons in violation of Article 139 of the PCCK, committed in co-perpetration pursuant to Article 23 of the PCCK (Count 1) and he was found guilty of committing the criminal offence of Organized Crime, in violation of Article 274, paragraph 1 (Count 3). He was sentenced to imprisonment of 7 (seven) years and 3 (three) months and a fine of 2,500 (two thousand five hundred) Euros for both criminal offences in conjunction.

S. H. was found guilty of committing the criminal offence of Grievous Bodily Harm in violation of Article 154, paragraph 1, subparagraph 2 of the PCCK (Count 7) and was sentenced to imprisonment for 3 (three) years. The prohibition from exercising a profession of anaesthesiologist for the period of 1 (one) year once the judgment becomes final was imposed as accessory punishment.

With regard to the defendant L. D. the Court of Appeals finds that the Basic Court duly considered all mitigating and aggravating circumstances. The Panel found as mitigating circumstances his past conduct as head of his family and his respectful status in society providing needed medical services to the inhabitants of Kosovo, and his lack of a criminal record. As aggravating circumstances the court took into consideration his selfish motives, namely generating illegal income. He used his highly regarded and respected position as a source of illegally accrued financial income. His unacceptable actions brought Kosovo to the attention of the international community as the place where kidney transplantations took place, creating a widespread perception of Kosovo as the country where the law is not observed. Vulnerable persons were injured and their lives exposed to a potentially life threatening situation, leaving them with real danger that life conditions could suddenly deteriorate and they could end up as patients in urology wards waiting for dialysis or transplants. An additional aggravating factor was the professional method of setting the clinic up on an international scale. Overall, the defendant played an active part in an internationally organized group and was – at least for the area of Kosovo – the key figure that trafficked poverty stricken human beings from their homes to his operating theatre in a medical clinic in Pristina that he co-owned. Without the participation of L. D. none of these events would have taken place. He is the man who employed Y. S. to come to Kosovo. He is the man who sought and then paid for S. H. to act as anesthesiologist in the kidney transplant surgeries in the Medicus Clinic and he is the man who bears the highest degree of responsibility for these events. The Court of Appeals fully concurs with the calculation

of punishment the Basic Court made and remarks that all mitigating and aggravating circumstances have correctly been taken into consideration.

As concluded above, the defendants L. D. and A. D. are found guilty of the criminal offence of Organized Crime in connection with Trafficking in Persons. The Basic Court in the impugned judgment already imposed one punishment for both criminal offences. The Panel therefore finds no need to modify the punishment in this specific regard.

The Court of Appeals affirms the punishment for the accused L. D. as it finds an aggregated punishment of eight (8) years fair and proportionate based on the grounds as elaborated on above.

With regard to the defendant A. D., the Appellate Panel principally follows the argumentation of the prosecution and deems a punishment of 7 (seven) years and 3 (three) months too lenient. The Basic Court found as aggravating circumstance that the defendant acted propelled by desire to acquire substantial material benefit at the expense of innocent and vulnerable people. He held the position of main administrator of the illegal criminal organization in Kosovo, being responsible for all administrative and factual arrangements, and without him this criminal enterprise would not have succeeded. The Panel further opines that A. D. played an equally important role in the group as the defendant L. D.. Together with his father he was one of the key figures for organizing the kidney transplantations in Kosovo. Therefore, the Court of Appeals considers a punishment of 8 (eight) years as fair and proportionate to the gravity of the offence and the conduct and circumstances of the defendant. Regarding the imposed fine of 2,500 (two thousand five hundred) Euros the Panel affirms the impugned judgment as this decision was not appealed by the prosecution.

With regard to the defendant S. H. the Court of Appeal now finds the defendant guilty of Trafficking in Persons, in violation of Article 139 of the PCCK, committed in co-perpetration pursuant to Article 23 of the PCCK. The Panel finds that a punishment of 5 (five) years and a fine of 2,500 (two thousand five hundred) Euros is appropriate and notes that this punishment reflects the level of criminal responsibility of the defendant and takes into account the number of acts giving rise to the conviction and the manner in which the criminal offence was committed. As mitigating circumstance the court took into consideration that he was not convicted previously. As aggravating circumstances the Panel considered that this defendant held an important position as a senior anesthesiologist working in the clinic. He very actively participated in most operations. However, the defendant does not deserve the same punishment as the defendants L. D. and A. D.. He was less a key figure for the criminal group but more an important “human tool” who provided his “hands” to L. D. and A. D.. Taking the criminal offences and the above elaborated circumstances into account the Court of Appeals, after careful consideration, finds that an imprisonment of 5 (five) years and a fine of 2,500 (two thousand five hundred) Euros is appropriate and necessary to serve all purposes of punishment.

Pursuant to Article 57, paragraph 1 and 2 of the PCPCK, the Basic Court imposed accessory punishments, namely prohibition from exercising profession as urologist and anesthesiologist for L. D. and S. H. starting from the day the judgment becomes final. According to the court, the

criminal offenses committed by these two doctors represent a great danger to public safety as they exposed patients in particular donors to unprecedented danger. These doctors were persons of public trust, and as such should have presented a high level of moral integrity. That behavior should be strongly condemned by this accessory punishment. The Panel therefore modifies the impugned judgment so that the prohibition from exercising the profession shall start **after** the defendants have served the imposed sentence of imprisonment. That means the prohibition of practice will not simultaneously start to run with the imprisonment i.e. when the judgment becomes final but when the defendants are released from prison. The Basic Court judgment is modified in this accordingly. The Panel however finds no grounds to expand the accessory punishment beyond the specific profession of the defendants. The motion of the prosecutor to expand the accessory punishment to all of the fields of medical profession is therefore rejected.

Seeing as the Panel comes to different qualifications of the committed criminal offences as compared to the Basic Court, the sentences have also been imposed according to the new qualifications. Thus any omissions of the Basic Court to first pronounce the punishment for each act and then impose an aggregate punishment for all of the acts, pursuant to Article 396, paragraph 5, have consequently been amended by the newly imposed punishments in this judgment.

N. Partial Compensation

With regard to the submission of the prosecution that the amount ordered for the psychological and physical damages sustained during kidney transplantations by the victims is too low, the Panel finds that the amount of 15.000 Euro's determined by the Basic Court is adequate. The Panel takes into consideration with this, that the injured parties also violated the law in Kosovo. That is why they should not benefit from their illegal action and should not be awarded a higher compensation.

## VI. CONFISCATION

A. SUBMISSIONS OF THE PARTIES

*a. The appeal of the SPRK*

The SPRK submits that although the prosecution concurs with the decision rendered by the Basic Court and the legal arguments thereof, the ruling contains a serious and implacable omission pro forma, namely an incomprehensible enacting clause. It is admitted that the absence of a comprehensible enacting clause is likely to be the result of human error. However, such error must be corrected for reasons of clarity and legality.

The SPRK requests the Court of Appeals to modify the ruling with respect to the enacting clause, by clearly stating that the court decides to close and confiscate the Medicus Clinic.

*b. The appeal of F. I. on behalf of the economic entity Medical Center LLC*

F. I., the now owner of the Medical Center LLC, submits that it is unclear from the enacting clause what the decision is.

Additionally, as owner of the property, F. I. is directly damaged by the court. He bought the property legally and the Medical Center is properly registered. There is no illegal activity ongoing in the Medical Center. There is therefore no ground for confiscation and closure of the property.

*c. The appeal of Linn Slattengren on behalf of L. D. and the companies Klinika Kardiokirkurgjike Medikus and Ordinanca Urologjike Medicus*

It is submitted that the ruling has no enacting clause, at least it is incomprehensible. Additionally, there is no possible basis for a confiscation. The reference to Article 489 CPCK is without merit. Furthermore, there is no substantive justification for the confiscation. All in all, the ruling is procedurally flawed, factually ungrounded, based on nonexistent law, and constitutes an illegal attempt to confiscate private property in violation of Article 1 protocol 1 of the European Convention on Human Rights. It is requested that ruling be modified in order to deny the motion of the prosecution for confiscation.

*d. The motion of the appellate prosecution*

The Appellate Prosecutor concurs with the challenged ruling that legal conditions for closure and confiscation of the premises of the then Medicus Clinic are met. The prosecutor observes that the challenged ruling needs to be amended with respect to the enacting clause.

B. FINDINGS OF THE PANEL

The Panel agrees with the submissions of the parties that the enacting clause of the Basic Court ruling is incomprehensible. The enacting clause merely specifies the object of the confiscation issue without issuing a decision whether or not the object is to be closed and confiscated. However, it is unambiguously clear from the reasoning of the ruling that the Medicus Clinic premises is to be closed and confiscated, namely paragraph 17 of the impugned ruling. The Panel shall therefore assess if the ruling of the Basic Court to close and confiscate the Medicus Clinic premises is in accordance with the law.

The Basic Court based their ruling upon Article 6 of UNMIK/REG/2001/4, which stipulates:

> Confiscation of Property and Closure of Establishments
> 6.1 Property used in or resulting from the commission of trafficking in persons or other criminal acts under the present regulation may be confiscated in accordance with the applicable law. The personal property of the victims of trafficking shall not be

confiscated wherever it can be immediately identified by the law enforcement officer as such.

6.2 Where there are grounds for suspicion that an establishment, operating legally or illegally, is involved in, or is knowingly associated with trafficking in persons or other criminal acts under the present regulation, an investigating judge may, upon the recommendation of the public prosecutor, issue an order for the closing of such establishment.

6.3 A reparation fund for victims of trafficking shall be established by administrative direction and shall be authorised to receive funds from, inter alia, the confiscation of property pursuant to section 6.1.

in conjunction with Article 489 of the Provisional Criminal Procedure Code of Kosovo, which stipulates:

(1) Objects which in accordance with the Provisional Criminal Code have to be confiscated shall be confiscated even when criminal proceedings do not end in a judgment in which the accused is declared guilty if there is a danger that they might be used for a criminal offence or where so required by the interests of public safety or by moral considerations.

(2) A separate ruling thereon shall be rendered at the time when proceedings have been completed or were terminated by the competent authority before which proceedings are conducted.

(3) The court shall render the ruling on the confiscation of objects under paragraph 1 of the present article also where a decision to that effect is not contained in the judgment by which the accused is declared guilty.

(4) A certified copy of the decision on the confiscation of objects shall be served on the owner if his or her identity is known.

(5) The owner of the objects shall be entitled to appeal against the decision under paragraphs 2 and 3 of the present article if he or she considers that there are no legal grounds for confiscation. If the ruling under paragraph 2 of the present article was not rendered by a court, the appeal shall be heard by the three-judge panel of the court which would have had the jurisdiction to adjudicate at first instance.

The in this case applicable code however is the Provisional Criminal Code of Kosovo which came into force on 6 April 2004. More in particular, Article 60 PCCK:

Article 60

(1) Objects used or destined for use in the commission of a criminal offence or objects derived from the commission of a criminal offence may be confiscated if they are property of the perpetrator.

(2) Objects provided for in paragraph 1 of the present article may be confiscated even if they are not the property of the perpetrator if this is necessary for the interests of general security, but such confiscation does not adversely affect the rights of third parties to obtain compensation from the perpetrator for any damage.
(3) The law may provide for the mandatory confiscation of an object.

The Provisional Criminal Code of Kosovo supersedes UNMIK/REG/2001/4 as per Article 354 PCCK:

Article 354
(1) Provisions in UNMIK Regulations and Administrative Directions covering matters addressed in the present Code shall cease to have effect upon the entry into force of the present Code unless otherwise expressly determined in the present Code or in an UNMIK Regulation.
2) Provisions in the applicable Criminal Codes shall cease to have effect upon the entry into force of the present Code.

Whether or not the Medicus Clinic premises should be closed and confiscated should therefore be assessed on the basis of Article 60 PCCK in conjunction with Article 489 PCPCK.

With the facts as they are presented now, the Panel finds no grounds to question the transfer of the Medicus Clinic premises from L. D. to company Graniti Com, represented by F. I.. All the legal documents have been provided and the Panel ascertains that F. I. is now the owner of the Medicus Clinic premises.

Paragraph 1 of Article 60 PCCK therefore does not apply since the Medicus Clinic premises no longer is the property of L. D., the perpetrator.
With regards to paragraph 2 of Article 60 PCCK, namely whether or not the confiscation of the Medicus Clinic premises is necessary for the interests of general security the Panel finds the following. Although the criminal offences that have taken place in the Medicus Clinic premises are grave and appalling, there is no concrete evidence to suggest that such activities have taken place in the Medicus Clinic premises since the search of the premises on 4 November 2008, nor are there concrete indications that such activities will be undertaken in the Medicus Clinic premises in the future. The mere fact that the defendant L. D. still performs his profession at the Medicus Clinic premises does not constitute sufficient indication. The Panel therefore finds it is not necessary for the interests of general security to confiscate the Medicus Clinic premises.

The Prosecutor's Application for confiscation of the Medicus Clinic establishment dated 29 April 2013 is therefore to be rejected, seeing as there are currently no known grounds for the

closure and confiscation of the Medicus Clinic premises. The Court of Appeals modifies the ruling of the Basic Court of Pristina P 309/10 & 340/10 dated 25 November 2013 accordingly.

The appeal of the defence is granted and the appeal of the SPRK is rejected as unfounded.

C. Closing Remarks

With regard to the impugned judgment of the Basic Court, the Court of Appeals for reasons elaborated above:

> partially grants the appeal of the SPRK insofar as the defendant S. H. is convicted for Count 1, Trafficking in Persons, insofar as the defendant A. D. is sentenced to a higher punishment, and insofar as the accessory punishments shall start after the defendants have served the imposed sentence of imprisonment and modifies the enacting clause accordingly;
> grants the appeals on behalf of the defendants I. B. and S. D. insofar as the defendants I. B. and S. D. are acquitted of Count 7, and modifies the enacting clause accordingly;
> rejects the appeals on behalf of the defendants L. D., A. D. and S. H. as unfounded; and
> affirms the remainder of the impugned judgment accordingly;

With regard to the impugned ruling of the Basic Court, the Court of Appeals for reasons elaborated above:

> grants the appeal of F. I. on behalf of the economic entity Graniti Com and the appeal of Linn Slattengren on behalf of L. D. and the companies Klinika Kardiokirkurgjike Medikus and Ordinanca Urologjike Medicus, insofar as there is no ground to close and confiscate the Medicus Clinic premises and modifies the enacting clause accordingly; and
> rejects the appeal of the SPRK.

_____

*Reasoned written judgment completed on 22 January 2016.*

Presiding Judge

_____

Radostin Petrov
EULEX Judge

| Panel member | Panel member |
| --- | --- |
| _____ | _____ |
| Mejreme Memaj<br>Kosovo Judge | Dariusz Sielicki<br>EULEX Judge |

Recording Officers

| _____ | _____ |
| --- | --- |
| Alan Vasak<br>EULEX Legal Officer | Bernd Franke<br>EULEX Legal Officer |

**LEGAL REMEDY:** The defendant S. H. may file an appeal against this judgment with the Supreme Court of Kosovo, in accordance with Article 430, paragraph 1, item 3 PCPCK. The appeal may be filed within 15 days from the day the copy of this judgment has been served.

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**Court of Appeals**
Pristina

**PAKR 52/14**

**6 November 2015**