

COURT OF APPEALS

IN THE NAME OF THE PEOPLE

Case number: PAKR 147/16

Date: 4 August 2016

THE COURT OF APPEALS OF KOSOVO in the Panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding and Reporting Judge, and EULEX Judge Radostin Petrov and Kosovo Court of Appeals Judge Xhevdet Abazi as Panel Members, with the participation of Noora Aarnio, EULEX Legal Officer, as the Recording Officer,

in the criminal proceedings against

R.K;

charged under the Indictment of the Mitrovica Basic Prosecution Office no. PP. **103 / 2011** filed with the Court on 12 December 2014 as follows:

- 1) **Aggravated Murder** under Article 146 and 147 (4), (6), (8) and (10) of the Criminal Code of Kosovo (hereinafter “CCK”), in conjunction with Article 23 CCK, *pari materia* with Articles 178 and 179 (1.5), (1.7), (1.9) and (1.10) of the 2013 Criminal Code of the Republic of Kosovo (hereinafter “CCRK”);
- 2) **Attempted Aggravated Murder** under Article 146 and 147 (4), (6), (8) and (10) of the CCK, in conjunction with Articles 20 and 23 CCK, *pari materia* with Articles 178 and 179 (1.5), (1.7), (1.9) and (1.10) of the CCRK as read in conjunction with Articles 28 and 31 of the CCRK;
- 3) **Unauthorized Ownership, Control, Possession or Use of Weapons** in violation of Article 328 (1) and (2) as read in conjunction with Article 23 of the CCK *pari materia* with Articles 374 of the CCRK as read in conjunction with Article 31 of the CCRK;
- 4) **Obstructing Official Persons in Performing Official Duties** in violation of Article 316 (1), and (3) CCK as read in conjunction with Article 23 of the CCK *pari materia* with Article 409 (1) and (2) of the CCRK as read in conjunction with Article 31 of the CCRK;

- 5) **Endangering Public Traffic by Dangerous Acts or Means** in violation of Article 299 (1) CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 380 (1) of the CCRK as read in conjunction with Article 31 of the CCRK;
- 6) **Causing General Danger** in violation of Article 291 (1), (3) and (5) CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 365 of the CCRK as read in conjunction with Article 31 of the CCRK;
- 7) **Participating in a Crowd Committing a Criminal Offence** in violation of Article 320 (1) CCK as read in conjunction with Article 23 of the CCK *pari materia* with Articles 412 of the CCRK as read in conjunction with Article 31 of the CCRK;

dismissed in relation to the charge of Unauthorized Ownership, Control, Possession or Use of Weapons by the Basic Court of Mitrovica with a Decision P. no. 147/2014, on 17 April 2015,

adjudicated in first instance by the Basic Court of Mitrovica with the Judgment P. no. 147/2014, dated 10 December 2015 as follows:

R. K was found guilty of and convicted for the requalified criminal offence of Obstructing Official Persons in Performing Official Duties (count 4) in violation of Article 318 of the Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25)¹ currently criminalized under Article 409 (2) of the CCRK as read in conjunction with Article 31 of the CCRK.

R. K was acquitted of committing the criminal offences of Aggravated Murder (count 1), Attempt Aggravated Murder (count 2), Endangering Public Traffic by Dangerous Acts or Means (count 5), Causing General Danger (count 6), Participating in a Crowd Committing a Criminal Offence (count 7) pursuant to Article 364 (1.3) Criminal Procedure Code (hereinafter “CPC”) because in the Basic Court’s assessment it was found that it had not been proven beyond a reasonable doubt that he committed the said actions.

R. K was sentenced to a punishment of six (6) months of imprisonment. Pursuant Article 43 (1) and (2) the execution is suspended for the verification period of two years. He is also ordered to reimburse the sum of EUR 200 as part of the costs of the criminal proceedings.

Deciding upon the following appeal, filed against the Judgment of the Basic Court of Mitrovica P.no. 147/2014 dated 10 December 2015

- **appeal of the EULEX Prosecutor Neeta Amin, filed on 20 January 2016,**

¹ This has been amended by Law No. 03/L-002 on Supplementation and amendment of the Provisional Criminal Code of Kosovo to exclude the word “Provisional”

having reviewed the response of the defence council Miodrag Brkljač filed on 3 February 2016;

after having held a public session of the Appellate Panel on 3 August 2016

having deliberated and voted on 4 August 2016;

pursuant to Articles 389, 390, 394 and 398 CPC;

renders the following

JUDGMENT

- I. **The appeal of the EULEX Prosecutor is partially granted and the sentence is amended. R. K is sentenced to one year of imprisonment pursuant to Article 38 (1) and (2) of the CCK. The sentence is suspended for three years pursuant to Articles 43 (2) and 44 (1) of the CCK.**
- II. **The Judgment of the Basic Court of Mitrovica no. P 147/2014 dated 10 December 2015 is amended ex officio in relation to the name of the offence under Article 318 Paragraph (1) of the CCK. The correct name is: “Participation in a Group Obstructing Official Persons in Performing Official Duties”.**
- III. **The rest of the Judgment is affirmed.**

REASONING

I. RELEVANT PROCEDURAL BACKGROUND

The events giving rise to this criminal case occurred on 26 July 2011 at approximately 13:30 hours in the area located between the village of Varage and the village of Zupce, and it involved a convoy of Kosovo Police officers, one of whom got killed.

The detailed description of the procedure up until the announcement of the Judgment of the Basic Court of Mitrovica can be found in the Judgment dated 10 December 2015.²

The written judgment was served to **R. K** and his defence counsel Miodrag Brkljač on 12 January 2016 and to the EULEX Prosecutor on 8 January 2016. On 20 January 2016, the EULEX Prosecutor filed an appeal against the Judgment. On 3 February 2016 the defence counsel of **R. K** filed a response to the appeal.

The case was transferred to the Court of Appeals for a decision on the appeal on 3 March 2016. On 14 March 2016 the Appellate State Prosecutor filed a motion.

The session of the Court of Appeals Panel was held on 3 August 2016 in the presence of the Appellate prosecutor Agren, the representative of the injured parties, defence counsel Mira Delevića (for **R.K**) and Dobrica Lazić (for **S.S**). Defendants **R. K** and **S.S** were duly invited to the session as demonstrated by the delivery slips in the case file but did not attend. The injured parties did not attend either.

The Appellate Panel deliberated and voted on 4 August 2016.

I. SUBMISSIONS OF THE PARTIES

EULEX Prosecutor Neeta Amin on 20 January 2016 timely filed an appeal dated 15 January 2016 with the Basic Court on the grounds of:

- Substantial violation of the provisions of criminal procedure, Article 383 (1.1);
- Violation of the criminal law, Article 383 (1.2);
- Erroneous or incomplete determination of the factual situation, Article 383 (1.3).

The EULEX Prosecutor claims that the Basic Court has erred in its finding concerning the intent of **R.K**. She contends that **R.K** was aware of the intent of the others to harm the Police Officers, and that he still chose to actively participate at the road block. Thus he acted in co-perpetration with the others to harm the Police Officers.

The EULEX Prosecutor further claims that the Basic Court has erred when it requalified the charge of Obstructing Official Persons in Performing Official Duties (Article 316 of the CCK and Article 409 of the CCRK). She opines that the actions of **R.K** do qualify as “force or threat of immediate use of force” (Article 316 paragraph 1 of the CCK) and as “serious threats” (Article 409 paragraph 1 of the CCRK).

² Pages 10 - 15

In relation to the charge of “Endangering Public Traffic by Dangerous Acts or Means” the EULEX Prosecutor claims that for ‘endangering’ to occur it suffices for the outcome to be reasonably foreseen. Thus the Basic Court has erred legal classification.

In relation to the charge of “Participating in a Crowd Committing a Criminal Offence” the EULEX Prosecutor asserts that the CCK clearly states what constitutes a crowd. Further, the evidence clearly proves that there were between 8-10 persons at the barricade. Therefore, the Basic Court’s judgment is clearly erroneous as well as a tenuous interpretation of the law.

As per sentencing the EULEX Prosecutor states that accepting passing of time as a mitigating factor when it was due to **R.K** hiding / being a fugitive is against the Article 74 of the CCRK. Thus, Basic Court’s reasoning is flawed, defective and contrary to law. The EULEX Prosecutor further states that the Basic Court failed to properly and reasonably take into cognisance the aggravating circumstances of “the presence of actual or threatened violence in the commission of the criminal offense”, “the criminal offense involved multiple victims” and “the criminal offense is committed against a person, group of persons ... because of ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, ... or because of their affinity with persons who have the aforementioned characteristics” as is stated in Article 74 (2.3), (2.5) and (2.12) of the CCRK respectively.

Lastly, the EULEX Prosecutor opines that there are no circumstances to order only partial reimbursement of the cost of the proceedings. Thus, the Basic Court has established the obligation of reimbursement of the cost of the proceedings incorrectly.

The EULEX Prosecutor proposes to annul the Judgment and return the case to Basic court for retrial and decision in relation to the defendant **R. K**.

Responses to the Appeal

Defence Counsel of the accused **R. K**, lawyer Miodrag Brkljač, filed a response to the appeal of the Prosecutor on 3 February 2016. He considers the appeal of the Prosecutor as ungrounded and proposes to reject it. He argues that the EULEX Prosecutor did not in her appeal explain the claimed violations of the procedure (in accordance to Article 384 of the CPC) and of the substantive law (in accordance to Articles 385 of the CPC) in sufficient detail. The appeal was even less articulate as to the erroneous and incomplete determination of the factual situation.

The defence counsel opines that the Basic Court did evaluate the evidence carefully and comprehensively, and established the facts correctly.

As to the actions of **R.K** at the barricade, the defence counsel reminds that **R.K** merely showed the middle finger and waived his hands in a way to signal that the convoy should turn back. He opines that these acts cannot be considered as “intimidating”.

Defence counsel of the accused **S. S**, lawyer Dobrica Lazić also filed a response to the appeal of the Prosecutor on 26 January 2016. As the Prosecutor did not appeal the Judgment in relation to him, there is no need to explain the response further.

Proposal of the Appellate Prosecutor

The Appellate Prosecutor, Lars Agren in his Motion dated 14 March 2016 supports the appeal of the Prosecutor. The Appellate Prosecutor points out that the Basic Court had failed to see the connection between **R.K**'s participation in the barricade and the shooting of the Police Officer **E.Z**. **R.K** acted in co-perpetration and according to a common plan. The barricade he created in co-perpetration with others was a decisive factor in the killing **E.Z** and the attempted aggravated murders.

Further, the Appellate Prosecutor notes that building a barricade of sand and stone created a concrete danger to the lives of the people driving on that road. Involvement to the shooting at the second barricade further endangered lives of people using the road. **R.K** was a co-perpetrator to both of these activities.

Also, as mentioned earlier, **R.K** should be held accountable to the shootings, and has thus caused general danger to people.

In addition, the Basic Court erred when it found that there were less than eight people in the crowd at the barricade. As **R.K** should be held accountable to the shootings, he should also be convicted of Participating in a Crowd Committing a Criminal Offence.

Lastly, the Appellate Prosecutor opines that the passing of time – four years from when the criminal offence took place - cannot be taken as a mitigating factor because the delay was due to his own behavior. Further, the Basic Court should have considered the aggravating factors referred to in Article 74 (2.3), (2.5) and (2.12) of the CCRK.

The Appellate Prosecutor moves the Court of Appeals to grant the appeal, to annul the contested Judgment and to return the case to the Basic Court for retrial. At the session of the Appellate Court, the Appellate Prosecutor moved alternatively the Court of Appeals to amend the Judgment and find the defendants guilty as per indictment.

II. FINDINGS OF THE APPELLATE PANEL

A. Competence of the Panel of the Basic Court

Pursuant to Article 472(1) CPC the Panel has reviewed its competence and since no objections were raised by the parties the Panel will suffice with the following.

On 23 March 2015 Kosovo Judicial Council has issued a decision no 24/2015³ approving the request from EULEX to continue the trial. The reasoning reads “*EULEX’s request to assign this case to a trial panel composed of EULEX judges was justified based on its urgency and high sensitivity ...*” It further reads “*... confirms that the above case will be tried by the EULEX judges ... and that this matter is considered as an “ongoing case”*”.

In accordance with the Law on Courts as well as Articles 2 and 3 of the Law on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo (Law no. 04/L-273), and also Agreement between the Head of EULEX Kosovo and the Kosovo Judicial Council dated 18 June 2014, the Panel concludes that EULEX had jurisdiction over the case and that the Basic Court Panel was competent to decide the case in the composition of EULEX judges.

B. Competence of the Panel of the Court of Appeals

No objections were raised by the parties. Pursuant to Article 472(1) CPC the Panel has reviewed its competence.

As noted above the Kosovo Judicial Council has on 23 March 2015 confirmed that the case is an “ongoing case”. The legal practice in Kosovo had an established interpretation according to which a case assigned to EULEX majority would continue to be adjudicated with EULEX majority throughout the entire course of the criminal proceedings at any stage or judicial instance until a final court decision is taken. This practice has been explicitly included in the new Law on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo (Law No. 05/L-103) Article 3 which rewords the Article 1 A paragraph 2 of 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 to read as follows: “*For the purpose of this law, the case set forth in paragraph 1. of this Article, shall be deemed as an ongoing case in the entire course of the criminal proceedings at any stage or judicial instance until a final court decision is taken, including the review on the basis of extraordinary legal remedies.*”

³ The English and Serbian translations mistakenly read “23/2015”

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 two EULEX judges and one Kosovo appellate judge.

C. Admissibility of the appeal

The impugned Judgment was announced on 10 December 2015. The written Judgment was served to R. K and to his defence counsel on 12 January 2016, and to the EULEX Prosecutor on 8 January 2016. The appeal was filed within the 15-day deadline pursuant to Article 380(1) CPC. The appeal was filed by the authorized person.

The appeal contains, at least in relation to some claims, all other information pursuant to Article 382 *et seq* CPC. It is therefore admissible.

D. Findings on the merits

The Appellate Panel will discuss all grounds of appeal raised under relevant headings below.

The defence has contested the appeal stating that it does not contain a sufficient explanation of the violations of Articles 384 and 385 of the CPC.

As to the explanation in the appeal of the claimed violations of the criminal procedure in accordance to Article 384 of the CPC, the Panel notes that indeed the appeal does not contain such an explanation. The panel has not *ex officio* found such a violation.

As to the explanation in the appeal of the claimed violations of the criminal law in accordance to Article 385 of the CPC, the Panel refers to the commentary of the criminal law⁴ which states that “*Violation of the Criminal Code foreseen in Article 385, paragraph 1, sub-paragraph 1.4, implies the erroneous application of the criminal law in a factual situation rightly verified. With erroneous application of the law must first of all be understood the wrong qualification of the law or any other application of material legal provisions, including the general provisions of the Criminal Code,...*” Thus the sub-paragraph 1.4 of Article 385 of the CPC applies to the prosecutors rejection of the legal classification of proven facts. The Panel will below discuss thematically the claimed violations of the criminal law raised in paragraphs 4, 5 and 7 of the appeal.

⁴ Authors Prof. dr. sc. Ejup Sahiti / Prof. dr. sc. Rexhep Murati / Mr. Xhevdet Elshani, Komentari -Kodi i Procedurës Penale

The intent of R.K in relation to the shooting

In his appeal the EULEX Prosecutor refers to the “totality of evidence” without singling out any individual piece of evidence.

The Panel recalls Article 15 (1) of the CCK which states that “*A criminal offence may be committed with direct or eventual intent.*” The paragraph 2 of the Article further explains direct intent as “... *he or she is aware of his or her act and desires its commission.*” The paragraph 3 explains eventual intent as “... *he or she is aware that a prohibited consequence can occur as a result of his or her act or omission and he or she accedes to its occurrence*”

The Basic Court of Mitrovica argued, for example that “... *no concrete indications that R.K observed any persons with weapons heading for the crime scene, or heard any one talking about or gave order to bring weapons before the barricade was established, nor was there presented any concrete evidence to indicate that R. K was even aware that there were other people in the forest near the barricade.*”⁵ The Basic Court of Mitrovica concluded that the Prosecutor has not proven the intent of the defendant **R.K.**

The Appellate Panel has read through the entirety of the evidence described in the Judgment⁶ as well as all the minutes of the main trial. In addition to the findings quoted above the Basic Court has considered as a fact that there had been “a tense situation in the area”⁷ already before the acts described in the indictment, and that there had been roadblocks and attacks against KP the day before.

The Panel stresses that the Prosecution was correct in pointing out that stopping the convoy at the barricade was essential condition for the killing of the police officer E.Z and endangering the other police officers. The Panel further notes that had there been evidence to connect the defendant either to the persons shooting at the convoy or to the planning of the ambush, the Panel would have found **R.K** criminally liable also for the murder and the attempted murders. However, the Panel opines that the presented factual circumstances are not sufficient to conclude that **R.K** should have known that taking part to a roadblock will result in shooting. Firstly, the general population had been called to attend other roadblocks by an alert siren, the previous attacks on KP had been by stones and some of the previous roadblocks had ended through negotiations and without violence.⁸ Secondly, the barricade attended by **R.K** was created in the moment the police arrived to the scene, and as a response for the police not stopping at the first,

⁵ Appealed Judgment, page 32

⁶ Appealed Judgment, pages 17 - 23

⁷ Appealed Judgment, page 26

⁸ Appealed Judgment, page 29 and Summary report issued by KP of the event of 25 to 27 July 2011, prosecution binder 1 pages 169 - 172

more permanent barricade.⁹ Thirdly, the attack did not start immediately. **R.K** and the others shouted and gestured to the police officers to go back.¹⁰ As the Basic Court has noted “*It might very well be that those who organized the operation thought that the convoy would stop and turn around because of the barricade.*”¹¹ Lastly, as the Basic Court has pointed out “... *when the persons on the barricade left ... all but **R. K** disappeared behind the curve of the road, while **R.K** went down into a water collector on the left side of the road some 60 meters ahead.*”¹² All of these factual circumstances support the conclusion **R.K** did not intend to take part in a premeditated ambush aimed at killing police officers. The Panel could not find a single piece of evidence to challenge this conclusion.

Thus, the Panel agrees with the reasoning and the assessment of the Basic Court.

The requalification

The Panel recalls that **R.K** was found to “*showing fingers and shouting at the KP.*”¹³ Contrary to the contention of the EULEX Prosecutor, the Appellate Panel does not find that the actions of **R.K** qualify as “force or threat of immediate use of force” as per (Article 316 of the CCK) or as “force or serious threats” (Article 409 paragraph 1 of the CCRK). Thus, the Panel concurs with the Basic Court’s assessment.

However, the Appellate Panel notes that the correct title of the criminal offence stipulated in Article 318 (1) of the CCK is “Participation in a Group Obstructing Official Persons in Performing Official Duties”. Further, the Basic Court had omitted to indicate the subparagraph but from the reasoning it is obvious that they refer to the subparagraph 1. Thus, the Panel *ex officio* amended the judgment in this respect.

The erred classification of ‘endangering’

The Panel recalls that in relation to the roadblock or barricade the indictment refers to “... between the village of Varage and Village of Zupce in the municipality of Zubin Potok...”¹⁴ Further, the Basic Court found that “... *four to five vehicles coming from the opposite direction. These approaching vehicles stopped and created a barricade that blocked the road and forced*

⁹ Appealed Judgment, page 24 “... the convoy encountered a first barricade made of stones and stand. ... The convoy therefore used an alternative road... ” and page 3 “... the KP convoy encountered four to five vehicles coming from opposite direction. The approaching vehicles stopped and created a barricade...”

¹⁰ Appealed Judgment, page 3

¹¹ Appealed Judgment, page 31

¹² Appealed Judgment, page 32

¹³ Appealed Judgment, page 36

¹⁴ Indictment, page 8

*the KP convoy to stop.*¹⁵ Witness E. D. , who was driving the first vehicle in the KP convoy, in his testimony stated that *“It was in the middle of the road and two cars were coming to my direction and I slowed down the armored vehicle and we stopped having the distance between the two of us in distance from 50 – 100 meters but I am not certain.”*¹⁶

The Panel agrees with the Basic Courts assessment that the formation of the barricade, under these conditions, did not pose concrete (actual) or abstract (possible) danger.

The erred interpretation of ‘crowd’

The Panel recalls that the basic Court found it proven *“...that there were at least 6 persons at the barricade, but there might have been more.”* and continues that *“... the exact number of participants at the barricade is not in any way of a decisive character when it comes to the question of guilt...”*¹⁷ Basic Court further explains that the activities of **R.K** – shouting and gesturing to the police officers to go back¹⁸ - do not fulfil the conditions of “ certain serious crimes” as is described in Articles 320 of the CCK or 412 CCRK.

The Panel agrees with this finding of the Basic Court.

The sentencing

As to the mitigating factors the Panel recalls that the Basic Court found **R.K** to have been on the run “most of the time” the case was pending. The Appellate Court Panel notes that the Basic Court correctly pointed out that since the delay in the procedure was due to the actions of the defendant, this delay has “limited weight”.

As to the aggravating circumstances the Panel recalls that as is stipulated in the CCRK, Article 3, the law in effect at the time a criminal offense was committed shall be applied to the perpetrator unless the new law is more favorable. As the trial panel of the Basic Court correctly assessed the CCRK is not more favorable to the defendant than the CCK. Thus, CCK is applicable also as to the mitigating and aggravating circumstances. Article 64 of the CCK does not contain a detailed list of aggravating circumstances such as listed in the Article 74 of the CCRK. Thus the Prosecutor’s claim that the trial Panel failed to apply this Article is mute, as the two codes cannot be mixed. However, as an answer to the reasoning of Prosecutor the Panel notes that *“showing fingers and shouting at the KP”*¹⁹ which **R.K** was found to have committed does not constitute

¹⁵ Appealed Judgment, page 3

¹⁶ Minutes of the main trial on 26 October 2015, page 24, English version

¹⁷ Appealed Judgment, page 25

¹⁸ Appealed Judgment, page 3

¹⁹ Appealed Judgment, page 36

“the presence of actual or threatened violence in the commission of the criminal offense”. Further, the Panel notes that the actual target of the barricade were not the individuals in the convoy *per se* but the institution that they represented (Kosovo police) and their position in this institutions (Police Officers). Therefore, the Panel opines that the criterion “multiple victims” is ill suited. Also, the Panel notes that the *ratio legis* of ethnic motives as aggravating factor is to protect individuals, not state institutions. Therefore, the Panel opines that the criterion of aggravation due to targeting “ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, color, gender, sexual orientation, or because of affinity with persons who have the aforementioned characteristics” does not apply in relation to **R.K**’s activities.

However, the Appellate Panel opines that the Basic Court trial panel did not give a proper weight to the double purpose of punishment as is required under Article 34 (1.2) of the CCK which states that “*The purposes of punishment are: ...To deter other persons from committing criminal offences.*” This general deterrence takes into consideration the interest of the society. The Appellate Panel recalls the frequency of obstructive behavior described in the indictment at the time, and notes that it is still ongoing. The Panel further notes the detriment of such behavior to the society, and states that it should not be tolerated. The Panel further opines that to reach real general deterrence effect to stop other persons from committing similar offences a longer imprisonment sentence is required. Further, to prevent **R.K** from committing criminal offences in the future, a longer period of suspended sentence is more proportionate considering the seriousness of the criminal offence and the grave consequences in relation to the offence the defendant was found criminally liable of.

The reimbursement of cost of the proceedings

The Appellate Panel reminds that the Basic Court has found that “... *to impose full payment would jeopardize the support of the defendant’s wife and children, given his precarious family situation.*” As Basic Court has pointed out, according to Article 453 (4) of the CPC “*In a decision which settles the issue on costs, the court may relieve the defendant of the duty to reimburse entirely or partially the costs of criminal proceedings ... if their payment would jeopardize the support of the defendant or of the persons whom he or she is required to support....*”

Thus, the Appellate Panel finds the Basic Court’s decision on reimbursement of costs correct.

III. CONCLUSION

The Court of Appeals, for the reasons elaborated above, modifies the impugned judgment in relation to the sentencing, corrects *ex officio* the name of the criminal offence and inserts *ex officio* the omitted number of the subparagraph to the enacting clause. As to the rest, The Court of Appeals rejects the EULEX Prosecutor's appeal and affirms the impugned judgment

Done in English, an authorized language. Reasoned Judgment completed on 8 August 2016.

Presiding Judge

Hajnalka Veronika Karpati
EULEX Judge

Panel member

Xhevdet Abazi
Kosovo Court of Appeals Judge

Panel member

Radostin Petrov
EULEX Court of Appeals Judge

Recording Officer

Noora Aarnio
EULEX Legal Officer

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