

that he was really drunk on the night of 18 October 2007, but he does not remember meeting the accused Nikolic that night or the day after while witness was in Novi Pazar, but Witness states it is possible he talked by phone with the accused Nikolic in that period.

Aleksandar Vasic, the statement of this witness was read out on 12 March 2009. In his statement given to Police on 9 November 2007 in Leposavic police station, witness stated that the brother of the accused Vladimir Jovanovic, Slobodan, told him his brother Vladimir had given to him few days before 700 euro that Slobodan wanted to use to purchase a car from Witness.

This evidence is hearsay and it is not proven that what witness stated to police, even if true, corresponds to a real transfer of money from the accused to his brother Slobodan. Furthermore, there is no indication that the money came from any unlawful activity or is in any way linked to the robbery in Gnjezdane village.

Police Reports:

The police reports do not contain any material evidence linking the suspects to the crime or the crime scene or to the offence.

The check points logs corroborate the witness statements concerning their movements on the night of the events, but they provide no indication of the whereabouts of both accused during the night of the 18th.

The accused were only controlled on their way back from Serbia on 19 October 2007, data compatible with the alibi of the witness.

The inspection of the outdoor area surrounding the crime scene, which leads the investigators to a reconstruction of the night of the event, was conducted on the 24 October 2007 six days after the crime, on an area exposed to the changing weather conditions and passengers; circumstances which limit the reliability of the investigators' findings.

It is missing from the case file the result of the comparison of the soils samples collected from the VW Vento of the accused and the crime scene, data which in principle could have indicated the presence of the accused car on the crime scene in an imprecise moment, although the samples were collected only six days after the commission of the offence, as indicated in the police report KPS # 8049 dated 26 October 2007.

The same report mentions that finger prints were collected from the crime scene for the purpose of comparison, but no result of such comparison is contained in the case file.

The accused **Miroljub Nikolic** pleaded not guilty to all charges and testified that he was not present and did not commit the alleged criminal act.

The accused **Vladimir Jovanovic**, pleaded not guilty to all charges. and testified that he was not present and did not commit the alleged criminal act.

During the course of the proceedings of the main trial the following evidence was excluded because declared inadmissible:

- (1) Document n. 31 - request for phone listing for the accused number;
- (2) Document n. 38 - request for phone listing for the accused number;
- (3) Document n. 57 - phone listing for accused mobile phone numbers.

This evidence was challenged by the defence counsel Ljubomir Pantovic who submits that the phone listing (documents n 57) is in fact the result of a cover investigative measure-metering of phone calls- which can be ordered by the Public Prosecutor but not undertaken by Police ex officio, as done in this case – see documents number 31 and 38-.

The Public prosecutor opposes the counsel's argument submitting that the phone records are the result of investigative act lawfully conducted by police ex officio; The Public Prosecutor distinguishes the metering of phone calls, as described by article 256 -10) PCPCK, from the data referring to the location of the terminal of the accused on the night of the events; the latter, which the prosecutor seeks to have admitted as evidence, is not listed among the investigative acts requiring the Prosecutor's order (article 258 PCPCK) and therefore may be ordered by police ex officio.

The panel finds that the data listed in document n. 57, -so called phone listing-, were obtained pursuant to the request of Police for the metering of phone calls of the numbers in use to the accused – documents n 31 and 38- and include the *record of telephone calls*, which the article 256 10) PCPCK defines as the result of "metering of phone calls ".

The panel finds that the localization of the accused terminal cannot be divided from the other data contained in the phone records obtained through the metering of the accused phones ordered by police ex officio. Noted that, according to article 258 PCPCK the metering of phone calls requires an order of the Public Prosecutor, the panel finds that the procedure established in chapter XXIX PCPCK *for ordering of covert and technical measures of surveillance and investigation* has been violate and therefore the evidence so obtained is declared inadmissible and orders its exclusion from the case file.

The panel finds that the presented evidence, as discussed and pointed out above, does not lead to the conclusion that it has been proven beyond reasonable doubt that Miroljub Nikolic or Vladimir Jankovic has committed the crimes as alleged in the indictment.

APPLICABLE LAW AND LEGAL QUALIFICATION

Concerning the applicable law the panel considers the following:

As to the material law the panel followed the basic rule and applied the Provisional Criminal Code of Kosovo (PCCK), since this was the only relevant material law in force at the time the criminal offence was committed and no material law from a later date exists that would be more favourable to the defendants.

The panel is aware that especially in the Northern region of Mitrovica/Mitrovicë the applicable law is under discussion.

In Kosovo the relevant laws are the Kosovo laws, that is the Criminal Procedural Code of Kosovo (CPCK) and the Criminal Code of Kosovo (CCK), in their former versions the Provisional Criminal Procedural Code of Kosovo (PCPCK), as made applicable by UNMIK Reg/2003/26 and the Provisional Criminal Code of Kosovo (PCCK) as made applicable by UNMIK Reg/2003/25.

As to the procedural law the panel in its verdict refers to the PCPCK but points out that the substance of the PCPCK and CPCK is almost fully identical, whereas the substance of every single article that the court applied or could have applied in this case, is fully identical in both aforementioned procedural laws.

The panel considered and applied the substance of these relevant articles.

Concerning the legal qualification:

The accused were charged with grave case of robbery because the criminal act was committed by a group of four persons and weapons were used in carrying out the robbery, both hypotheses foreseen by article 256 1 PCCK read in connection with art 255.1 PCCK.

COSTS

The accused were found not guilty, therefore pursuant to article 103 PCPCK, the costs of criminal proceedings under article 99 paragraph 2) subparagraph 1 to 5 PCPCK, the necessary expenses of the defendant and the remuneration and necessary expenditures of the defence counsel shall be paid from the court budget.

PROPERTY CLAIMS

At the opening of the proceedings, on 5 March 2009, the Presiding Judge informed the present Injured Party about their rights under the PCPCK, including their right to file property claims, but no property claims had been filed.

Nevertheless, if property claims had been filed, the panel would have been obliged to reject them as the defendant as the main trial resulted in the acquittal of the defendants.

LEGAL REMEDY

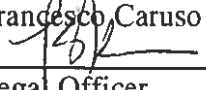
Authorized persons may file an appeal in written form against this verdict through the District Court of Mitrovica/Mitrovicë to the Supreme Court of Kosovo within fifteen days from the date the copy of the judgment has been served.

District Court of Mitrovica/Mitrovicë
K. no. 81/08

Prepared in English, an authorized language.

Recording Officer
Francesco Caruso

FM



Legal Officer



Presiding Judge
Kjetila Kaptein

EULEX Judge