

DISTRICT COURT OF MITROVICA
P nr. 31/09
27 May 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Hajnalka Veronika Karpati and Nikolay Entchev as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer, in the criminal case against;

Remzi RUSHITI and Ajshe VELIJA, charged according to Indictment PP nr. 231/09 of District Public Prosecutor Zjazi Rexha dated 11 September 2009 and filed with the District Court on 14 September 2009 with **Trafficking in Persons** in violation of Article 139, para (1) of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK;

After having held the main trial hearing on 24, 25, 26 and 27 May 2010, all in the presence of the Accused Remzi Rushiti and Ajshe Velija, their Defence Counsel Rexhep Kacaniku and Fatmire Braha, EULEX Public Prosecutor Neeta Amin, and Burhan Maxhuni as Legal representative of Injured Party [REDACTED];

After the trial panel's deliberations and voting held on 27 May 2010, pursuant to Article 392 para (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, Defence Counsel, EULEX Public Prosecutor Amin and Legal Representative Maxhuni, the following

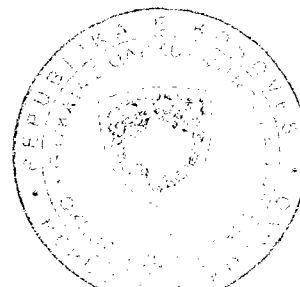
VERDICT

The accused **Remzi Rushiti**, nickname "Remi", son of Sherif Rushiti and Sherife Bici, born on 13 September 1965 in Vushtrri, Kosovo, Kosovo-Albanian, tradesman, married with three children, in detention from 19 June 2009 until 15 September 2009 and then under House Arrest until 01 February 2010;

And

The Accused **Ajshe Velija**, nickname "Elvana", daughter of Isuf Velija and Zarife Spasi, born on 23 June 1983 in Kalimash village, Kukes, Republic of Albanian, citizen of Albania, waitress, divorced with two children, no previous conviction, in detention from 19 June 2009 until 21 April 2010, currently under the measure of reporting to KP station;

Are



FOUND NOT GUILTY

- Because it was not proven that from beginning of 2008 until 12 July 2009, Remzi Rushiti and Ajshe Velija jointly recruited [REDACTED] to work at Café Qarli by accompanying Ajshe Velija and sitting down with male customers, socializing with them and ordering expensive drinks in order to increase the café's material profits. It was also not proven that Remzi Rushiti recruited [REDACTED] by deception, offering her employment as a waitress in Café Qarli and then finding customers to be sexually exploited for material gain.

THEREFORE, the Accused Remzi Rushiti and Ajshe Velija are

Acquitted

Of committing the criminal offence of **Trafficking in Persons** in violation of Article 139 para (1) of the CCK in conjunction with Article 23 of the CCK.

The passport of Ajshe Velija shall be returned pursuant to Article 251 of the CPCK.

Pursuant to Article 103 para (1) of the CPCK, the costs of criminal proceedings under Article 99 para (2) subparas (1) through (5) of the CPCK, the necessary expenses of the Accused and the remuneration and necessary expenditures of their defence counsel, as well as the costs of interpretation and translation, shall be paid from budgetary resources.

REASONING

A. Procedural Background

District Public Prosecutor Njazi Rexha filed Indictment PP nr. 231/09 dated 11 September 2009 with the District Court of Mitrovica on 14 September 2009. The Indictment charges Remzi Rushiti and Ajshe Velija with the criminal offence of Trafficking in Persons in violation of Article 139 para (1), as read with Article 23, of the Criminal Code of Kosovo (CCK). The Indictment was confirmed on 29 December 2009 in decision KA nr. 75/09.

EULEX Public Prosecutor Neeta Amin took over the case and filed a request for EULEX judges to hear the case. EULEX judges took over the case on 15 February 2010.

The Main Trial was held on 24, 25, 26 and 27 May 2010. The closing arguments of EULEX Prosecutor Neeta Amin, Representative of the Injured Party Burhan Maxhuni,



Defence Counsel Rexhep Kacaniku (for Remzi Rushiti), and Defence Counsel Fatmire Braha (for Ajshe Velija) were heard on 27 May 2010. The Verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23 Item 1) i) of the CPCK, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused were charged with the criminal offence of Trafficking in Persons pursuant to Article 139 para (1) of the CCK, which is punishable by a sentence of imprisonment of two to twelve years. Furthermore, the Indictment alleges that the two Accused committed the criminal acts in Vushtrri, which lies within the Mitrovica District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 15 February 2010 the President of the Assembly of EULEX Judges issued a decision for EULEX to take over this case based on Articles 3.3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors ("Law on Jurisdiction") and assigned it to EULEX judges in the Mitrovica District Court.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

The panel was composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX judges Hajnalka Veronika Karpati and Nikolay Entchev as panel members. None of the parties objected to the composition of the panel.

C. Evidence Presented

During the course of the main trial the following witnesses were heard:

- (1) ██████████ (Injured Party) on 25 May 2010
- (2) Nexhat Kurti on 25 May 2010
- (3) Faruk Bojku on 26 May 2010
- (4) Police Officer Luljete Halili on 26 May 2010

On 26 May 2010, the following documents were read into the record:

- (5) Statement of Injured Party ██████████ dated 12 June 2009.
- (6) Statement of Injured Party ██████████ dated 16 June 2009.



(7) Statement of Injured Party ██████████ dated 13 July 2009.

During the main trial session on 26 May 2010, both Remzi Rushiti and Ajshe Velija gave statements and answered questions.

1. Testimony of Injured Party ██████████

██████████ testified that she met Remzi Rushiti and Ajshe Velija when Velija rented a room in the same house where ██████████ also rented a room. Ajshe introduced herself to ██████████ as "Elvana". Ajshe Velija told ██████████ that she was from Albania, that she worked for Rushiti as a waitress in his café called Café Qarli, and that she was also in a relationship with Rushiti.

Velija told ██████████ that she was sad and lonely and needed a female friend. Velija invited ██████████ to visit her at Café Qarli on several occasions. ██████████ visited Café Qarli on two or three occasions. ██████████ testified that when she was at the café, it was Ajshe Velija's idea and suggestion that ██████████ sit with male customers who were regular customers of the café and order drinks with them. ██████████ sat with male customers several times who she did not know and they bought drinks for her.¹ ██████████ would be introduced to the male customers as a friend and a visitor.² There were times that ██████████ did not want to sit with male customers at the café, but either Ajshe Velija or Remzi Rushiti told her not to be afraid and to sit with them because they were regular customers and the drinks were free.³

On one occasion at the café, ██████████ overheard Ajshe Velija and Remzi Rushiti say that they would have higher earnings if ██████████ sat with customers. On that same occasion, Ajshe Velija and Remzi Rushiti asked ██████████ whether she would be interested in working at the café as a waitress. Both Ajshe Velija and Remzi Rushiti told ██████████ that in if she worked there, their earnings would be higher if she sat with the customers having drinks.⁴ They told her that if she worked at the café, she would receive 150 euros per month and free accommodation in the apartment above café Qarli which Rushiti owned. ██████████ told her parents about the job offer and her father phoned Rushiti to tell him to stay away from ██████████

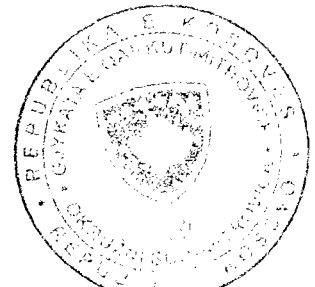
██████████ testified that she never worked at the café, that she did not receive any payment for sitting with male customers at the café, and that she did not receive any money from either Remzi Rushiti or Ajshe Velija. ██████████ also testified that she did not know ██████████, Nexhat Kurti or Faruk Bojku.

¹ Minutes of the Main Trial Hearing, 25 May 2010, p. 16.

² Minutes of the Main Trial Hearing, 25 May 2010, p. 9.

³ Minutes of the Main Trial Hearing, 25 May 2010, p. 13-14 & 21.

⁴ Minutes of the Main Trial Hearing, 25 May 2010, p. 13 & 20.



2. Statements of Injured Party ██████████

Injured Party ██████████ did not appear in Court for any of the hearings despite being duly summoned. According to the Public Prosecutor and the Kosovo Police, ██████████ was no longer living in her family's house and efforts to locate her were unsuccessful. Due to her disappearance, the Court read into the Record her three previous statements made to police and the Prosecutor, pursuant to Article 368 para (1) subpara (1).

On 12 June 2009 ██████████ stated the following to police:

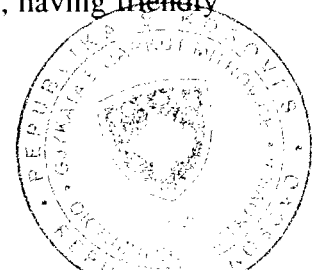
██████████ had been working as a waitress in Café Qarli owned by Remzi Rushiti since 09 June 2009 for 6 euros/day. She agreed with Rushiti that she would have sexual intercourse with men he brought to her. The man would pay 20 euros for sex, 10 euros would go to ██████████ and 10 euros to Rushiti. On 09 June 2009 at approximately 21:30 hrs, a man spoke to Rushiti, and they agreed that he would have sex with ██████████ for money. ██████████ went with the man to his flat located near the Police Academy and had sex for an hour, for which she received 10 euros and Rushiti received 10 euros. The following day, another man met with Rushiti for the same reason, but ██████████ refused to have sex with this man. On 12 June 2009, ██████████ was in Café Qarli at 20:40 hrs when an argument began with two customers, Azem Bojku and his son Faruk Bojku. ██████████ had refused to have sex with Azem Bojku, and as a result Faruk grabbed her by the arm and tried to hit her with a beer bottle. Rushiti intervened to protect ██████████, and ██████████ went into the kitchen while a fight broke out between the men in the café. Afterwards she went to the flat located above the café until the police came and took her to the station.

On 16 June 2009 ██████████ stated the following to police:

██████████ for three years. The week before giving the statement, ██████████ and Kurti went to Café Qarli together. ██████████ agreed with Remzi Rushiti to work as a waitress for 6 euros/day and free accommodation. They also agreed that she would have sex with customers, and she and Rushiti would split the money in half. Nexhat Kurti did not know about this agreement. ██████████ had sex with a customer named Astrit from Pristina in a flat near the Police Academy. They had sex for one hour and then returned to the café. Astrit paid Rushiti for the sex, who gave 10 euros to ██████████ and stated "Keep this money for having sex with Astrit." On 12 June 2009, Azem and Faruk Bojku came to Café Qarli and ██████████ sat at a table with them. Azem Bojku told ██████████ that she had no choice but to have sex with him. She refused and Azem began shouting and cursing at her. She left their table and went to sit with Rushiti and his girlfriend Elvana (Ajshe Velija). Faruk Bojku then tried to hit ██████████ with a beer bottle and Rushiti intervened. A fight broke out between the men. ██████████ went to the flat above the café and stayed there with Velija until the police arrived.

On 13 July 2009 ██████████ stated the following to the Public Prosecutor:

██████████ stated that she spent 4-5 days in Café Qarli with her friend Ajshe Velija. During that time, she spent time both in the café and in the flat above it, having friendly



talks with Velija and Remzi Rushiti. Neither Velija nor Rushiti has ever offered ██████ a job at the café. ██████ never had sex with customers, she never had sex with a person named Astrit from Pristina, and Rushiti has never given her money after having sex with customers. ██████ was not truthful in the two prior statements given to the police because she was under pressure to quote police officer Luljeta Halili.

3. Testimony of Faruk Bojku

Faruk Bojku testified that he visited Café Qarli often, two or three times a week, and Ajshe Velija, whom Bojku knew as “Elvana”, worked there as a waitress. He was at Café Qarli on the night of 12 June 2009. The owner Remzi Rushiti and Ajshe Velija were present. Faruk Bojku saw his father Azem Bojku, his neighbour Shaban Mani, and ██████ sitting together at a table having drinks. Faruk Bojku stated that ██████ was under the influence of alcohol and served him some drinks, however he did not know whether she worked there as a waitress. ██████ sat with him at a table for approximately ten minutes, chatted with him and had a drink. That same evening, Faruk Bojku and a customer named Berhan got into an argument because they were under the influence of alcohol and they collided chairs. At the time of the argument, ██████ was sitting at a table with Behran and Ismet.

Faruk Bojku testified that he did not know ██████ or a person named Astrit.

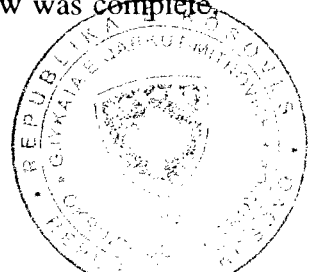
4. Testimony of Nexhat Kurti

Nexhat Kurti testified that he first met ██████ three or four years ago when she was a customer at his sweetshop and they later became lovers. Occasionally Kurti and ██████ would go to Café Qarli for drinks. Nexhat Kurti testified that Ajshe Velija asked ██████ to stay with her in the accommodation over Café Qarli because Velija was afraid to sleep there alone. ██████ stayed with Velija only on one occasion, but stayed for a period of 2-3 days. According to Kurti, ██████ was very grateful to Ajshe Velija because she had helped her and had given her personal clothes and food. ██████ never worked at Café Qarli, she was only a customer there.

Nexhat Kurti testified that he did not know a person named Astrit and had only seen ██████ once before.

5. Testimony of Luljete Halili

Luljete Halili is a police officer working in investigations of human trafficking. She interviewed Injured Party ██████ on 16 June 2009 together with her colleague, Ferat Rrukolli. Burhan Maxhuni, attorney for ██████, was present during the interview. The police did not apply any pressure on ██████, and she gave her statement willingly. Neither ██████ nor Burhan Maxhuni voiced any complaints about the interview, or claimed that it was conducted unfairly or wrongly. After the interview was complete,



the police read the statement back to [REDACTED] and [REDACTED] signed it without any pressure. In Halili's opinion, [REDACTED] seemed like a real victim during the interview.

Officer Halili was later informed by the Prosecutor that the Defence Counsel, together with the wife of Remzi Rushiti, had gone to [REDACTED]'s house and asked her to change her statement.

6. Testimony of the Two Accused

Testimony of Remzi Rushiti

Remzi Rushiti met Ajshe Velija in May 2008. He invited her to work as a waitress at Café Qarli for 10 euros/week, one meal a day, and free accommodation. She agreed and moved into the flat above the café. At some point they began dating.

Remzi Rushiti knows Nexhat Kurti and [REDACTED]. Kurti and [REDACTED] came to Café Qarli on 09 June 2009 to have some drinks. [REDACTED] stayed with Ajshe Velija for a few days because Velija was feeling alone and scared. On 12 June 2009, [REDACTED] was drinking at the café with Faruk Bojku and Azim Bojku. They consumed a lot of alcohol and Azim Bojku stated that [REDACTED] was his friend. Rushiti overheard Azim Bojku say to [REDACTED], "Do you remember when I cut your high heels and pushed your head under the water and you gargled?" Azim told Rushiti that [REDACTED] had been "his woman" for a long time.

With regard to [REDACTED] testimony, Rushiti denied that Ajshe Velija brought [REDACTED] to work for him, that he ever stated that his earnings would be higher if [REDACTED] sat with the customers, that he ever instructed [REDACTED] to sit with his customers, or that he ever gave any money to [REDACTED].

With regard to the two statements [REDACTED] gave to the police, Remzi Rushiti categorically denied that [REDACTED] ever worked for him as a waitress at Café Qarli, that he ever told [REDACTED] to offer sexual services to anyone, that he ever sold [REDACTED] to anyone, or that he had ever given [REDACTED] any money. Rushiti also denied knowing any person by the name Astrit.

Rushiti testified that while he was in detention on remand, his wife asked [REDACTED] whether Rushiti had sold her, and [REDACTED] replied "No". [REDACTED] then told his wife that she had accused Rushiti because she "was upset and was beaten up in Mitrovica". Afterwards, [REDACTED] voluntarily withdrew her previous statements to police.

Testimony of Ajshe Velija

Ajshe Velija testified that she was working as a waitress in Pristina when she met Remzi Rushiti. She went to work as a waitress for him in Vushtrri because the pay was better. She and Rushiti began dating. Velija worked as a waitress in Café Qarli for approximately one year for 10 euros/day. Then she left and went to Pristina for one



month, where Rushiti paid the rent on her flat and she met [REDACTED]. After one month, Velija returned to Vushtrri.

With regard to [REDACTED], Velija testified that [REDACTED] came to visit her in Vushtrri for two or three days on her own volition. Velija denied telling [REDACTED] that she was afraid to stay at her flat alone. When [REDACTED] came to stay with her, she sat at the tables in Café Qarli and drank with her friends, not strangers. Velija denied that she and Rushiti told [REDACTED] that she should also work at the café, or that she and Rushiti discussed the fact that if [REDACTED] sat with men at tables, the earning would be higher. Velija also denied that she recruited [REDACTED] to have sex with male customers.

With regard to [REDACTED], Velija testified that she only knew [REDACTED] for a few days. Velija knew her as [REDACTED].

Velija stated that she was not involved in the events which occurred in Café Qarli on 12 June 2009. On that night, she saw [REDACTED] drinking alcohol in Café Qarli. Velija was upstairs in the flat watching tv when the incident occurred and the police came to the café.

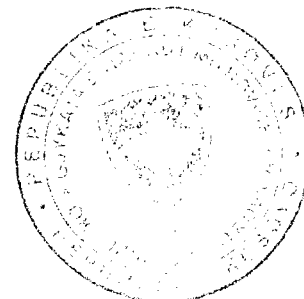
Velija denied knowing any person named Astrit.

D. Evaluation of Presented Evidence

1. Credibility of Witnesses

The Court found the testimony of witness [REDACTED] to be credible and consistent, and as such accepts the general content of her evidence. The Court found the testimony of Nexhat Kurti also to be credible, however as he was not a witness to any of the criminal allegations and had limited information regarding the actions of [REDACTED] or [REDACTED] in connection with Café Qarli, his testimony did not add anything additional to the case.

The Court also found as credible the testimony of Police Officer Luljeta Halili. Officer Halili was clear and forthright in her testimony regarding the lawful conduct of the two police interviews of [REDACTED]. Halili's account is corroborated and supported by the facts that: The statement of the 12 June 2009 interview contains a signed declaration by [REDACTED] that it is truthful and accurate, and was not given under any pressure or influence; The interview on 16 June 2009 was conducted in the presence of attorney Burhan Maxhuni as the legal representative of [REDACTED]; and the statement of the 16 June 2009 interview contains a signed declaration by [REDACTED] that the statement was read aloud to her and she did not have any objections. For these reasons, the Court has no reason to doubt the lawfulness of the interviews, and that the written statements are an accurate representation of what the witness stated before the police.



However, the truthfulness of the actual statements made by [REDACTED] can not be established by the Court. There is obvious direct contradiction between the statements to police and the statement on 13 July 2009 to the Public Prosecutor. In addition, there are even some discrepancies between the two statements given to the police in June 2009. Had [REDACTED] appeared before the Court, her testimony could have cast some credibility on one or the other version of the statements. However, as she failed to appear, it was impossible for the Court to assess the credibility of the witness, and the Court could not arrive at any conclusion as to the truthfulness of any of the three statements made by [REDACTED]. Therefore, the aspects of the statement which are contradictory must be viewed in the light most favourable to the Accused.

2. Factual Findings

Upon the evidence presented during the course of the main trial, the Court can only consider the following facts as proven:

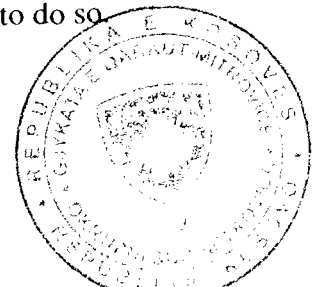
Ajshe Velija was working as a waitress in Café Qarli, which was owned by Remzi Rushiti. Velija lived in the flat located above the café. Velija met [REDACTED] when she left Vushtrri and rented a room in the same house in Pristina. Afterwards, Velija returned to Vushtrri and [REDACTED] came to visit her there for a few days.

The Court believes that there was some discussion between Ajshe Velija and/or Remzi Rushiti with [REDACTED] regarding [REDACTED] working as a waitress in the café, however the Court is not convinced that there was a formal job offer. Furthermore, even if the two Accused had asked [REDACTED] whether she wanted to work at the café as a waitress, as there is no evidence that either of the Accused tried to recruit [REDACTED] to work in any other capacity than as a waitress, this fact would have had no bearing on the outcome of the verdict.

The Court also finds that it does not have any bearing on the case or the verdict whether Ajshe Velija asked [REDACTED] to visit her because she was afraid or whether [REDACTED] visited Velija on her own volition, and does not make any finding on this point.

While at Café Qarli, [REDACTED] sat at the tables and socialized with some customers, who would order and pay for drinks. The Accused were aware of the fact that male customers would spend more money on drinks at the café when socializing with [REDACTED].

The Court believes that the two Accused did acknowledge that the earnings of the cafe were higher when [REDACTED] sat with customers. Nevertheless, such a remark does not amount to a criminal offence, as it is clear from [REDACTED] testimony that she had the ability to turn down the job offer to work at the café and she was never forced to sit and socialize with the customers. During [REDACTED] testimony, Judge Hajnalka Veronika Karpati questioned [REDACTED] in detail whether there was any force or threat of force applied against [REDACTED] in the context of working at the café or sitting with customers at the café, and the answer was that [REDACTED] was never forced to do so.



On the evening of 12 June 2009, an altercation broke out in Café Qarli which involved Faruk Bojku. As a result, the police came to the café and arrested Ajshe Velija.

No further factual details could be established about this incident. The reasons for the altercation, including whether it stemmed from a refusal by [REDACTED] to have sex with Azem Bojku, can not be established due to the contradictions between the testimonies of Faruk Bojku and Remzi Rushiti and the various statements of [REDACTED] (which are conflicting in and of themselves and lack credibility for the reasons explained above).

E. The Law / legal Qualification

The alleged criminal acts were committed in June of 2009. The Criminal Code of Kosovo entered into force on 06 January 2009, and is therefore the applicable law. Pursuant to Article 2, para (1) of the CCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator.

The Accused are charged with Article 139 para (1) of the CCK: Trafficking in Persons. Trafficking in Persons is defined in para (8) as “the recruitment, transportation, transfer, harbouring 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.”

With regard to Injured Party [REDACTED]

The evidence presented at trial, summarized above, establish only that [REDACTED] voluntarily went to Café Qarli where she sat at tables with male customers, socialized with them and ordered drinks. As explained above, there is no evidence that [REDACTED] was forced or coerced to perform any of these acts. She also did not receive any payment from either of the Accused. Furthermore, the extent of the acts of Remzi Rushiti and Ajshe Velija appears to be their discussion or remark that Rushiti made higher profits from drinks when [REDACTED] was socializing with the male customers.

With regard to Injured Party [REDACTED]

Due to the failure of [REDACTED] to appear before the Court and the lack of credibility of her conflicting statements to police and Prosecutor, and because no other corroborating or clarifying evidence presented to the Court with regard to the sexual allegations initially made by [REDACTED], the following allegations have not been proven:

- That either Accused forced or otherwise coerced [REDACTED] to have sexual intercourse with any person.



- That either Accused received money from any person who had engaged in sexual intercourse with [REDACTED].
- That either Accused gave money to [REDACTED] for having sexual intercourse with any person.

Thus, there has been no establishment of any of the *actus reus* required for commission of the criminal act of Trafficking in Persons, or for any lesser criminal offence which would possibly be applicable under the CCK.

For these reasons, the Trial Panel acquitted Ajshe Velija and Remzi Rushiti of the charge of Trafficking in Persons in accordance with Article 390(3) of the Criminal Procedure Code of Kosovo.

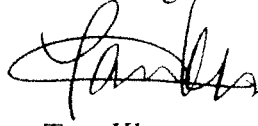
F. Costs

Due to the acquittal of both Accused, pursuant to Article 103 para (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subpara 1 through 5 of the CPCK, the necessary expenses of the Accused, and the remuneration and necessary expenditures of both defence counsel, as well as the costs of interpretation and translation will be paid from budgetary resources.

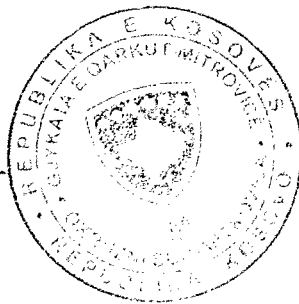
District Court of Mitrovica K. nr. 32/09

Prepared in English, an authorized language.

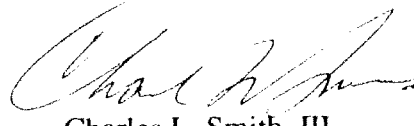
Recording Officer



Tara Khan



Presiding Judge



Charles L. Smith, III

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 para (1) of the CPCK.