

DISTRICT COURT OF PEJA/PEC

P.nr. 280/09

Dt. 6 August 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of the International Judge Gianfranco Gallo as Presiding Judge, the International Judge Gerrit-Marc Sprenger and the Kosovan Judge Muharrem Hoti as panel members, assisted by the Recording Officer Robert Abercrombie, in the criminal case against the accused:

NIKOLLË GOJANI, born on 01 December 1974 in Novosellë e Ulët, municipality of Gjakova/ Đavovica, male, father's name Tush Gojani, mother maiden's name Vitore Lleshaj, Kosovo Albanian, residing in Novosellë e Ulët, municipality of Gjakova/Đavovica, single, of average economic status, elementary school education, single, previously allegedly not convicted, in detention since 17 November 2008, currently detained in the Peja Detention Center,

GJOK JAKAJ, born on 8 January 1982 in Gjakova/ Đavovica, male, father's name Zef Jakaj, mother maiden's name Zoje Dedaj, Kosovo Albanian, residing in Novosellë e Ulët, municipality of Gjakova/Đavovica, married with two children, elementary school education; of poor economic status, profession-bulldozer driver, previously allegedly not convicted, in detention since 17 November 2008, currently detained in Peja Detention Center.

GJIN GJOKAJ, born on 3 June 1979 in Trakaniq village, municipality of Gjakova/ Đavovica, male, father's name Nue Gjokaj, mother maiden's name Age Lasku, Kosovo Albanian, residing in Trakaniq village, municipality of Gjakova/ Đavovica, single, farmer, elementary school education, average economic status, previously allegedly not convicted, in detention since 18 November 2008, currently detained in Peja Detention Center

Charged, according to the Indictment PPQ 165/08, dated 1 June 2009, and filed with the Court on 9 June 2009, with the following criminal offence:

1. Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances contrary to Article 229 paragraph 4 in relation with Article 23 paragraph 1 of the Criminal Code of Kosovo ("CCK")

because:

From mid-September 2008 to 18 November 2008, intentionally and in co-perpetration, the defendants have insured narcotic substances of the kind of marijuana, in the total

weight of 152.5 kg, packed in 305 plastic bags in the villages of Novosellë e Ulët and Trakaniq in the municipality of Gjakova/ Đavovica.

The defendants kept in their possession this quantity of narcotic substances in the house of Nikolle Gojani in the village of Novosellë e Ulët and then in the house of Gjin Gjokaj in the village of Trakaniq with the intention of selling it to third parties to obtain unlawful benefits.

And,

2. Unauthorised ownership, control, possession or use of weapons contrary to Article 328 par.2 of the CCK

because

The defendant Gjoke Jakaj, for an unverified period of time until 18 November 2008, possessed the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Shmajzer with serial number 168203, two magazines for this rifle, a hunting gun with serial number YU23208, five bullets of calibre 7.62x25 mm and a magazine for TT pistols.

And

The Defendant Gjin Gjokaj for an unverified period of time until 18 November 2008 possessed the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Thompson with serial number SO7571 and two hand grenades with the symbol A-6Y.

After having held the main trial hearings in public on 28 July 2009, 29 July 2009, 4 August 2009 and 6 August 2009 in the presence of:

- The defendants and their defence counsels, respectively Mr. Armand Krasniqi for Nikolle Gojani, Ms. Sanije Seferi for Gjoke Jakaj and Ms. Nushe Kuka-Mekaj for Gjin Gjokaj

- The Special Public Prosecutor Mr. Lulzim Sulejmani;

After the trial panel's deliberation and voting held on 6 August 2009, based on Article 391 Paragraph (1) of KCCP,

On 6 August 2009, pursuant to Article 392 Paragraph (1) of KCCP, pronounces in public and in the presence of the Accused, the Special Public Prosecutor absent, the following verdict:

NIKOLLË GOJANI

is

FOUND GUILTY

of committing the criminal offence of having possessed and secured narcotic substances of the kind of marihuana for a total weight of 152.5 kg, packed in 305 plastic bags, first in the house of Nikolle Gojani in the village of Novoselle e Ulet and then in the house of Gjin Gjokaj in the village of Trakaniq with the intention of selling or distributing it, in Novoselle e Ulet until 18 November 2008,

THEREFORE, the accused, is

SENTENCED

To two(2) years of imprisonment and a fine of 2.500 Euros for the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic substances in contradiction with article 229, par 1 of the KCCP. According to Articles 54, 60 and 229 par. 5 of the CCK the drug seized in the house of Gjin Gjokaj on 18.11.2009 and in the car "Citroen" licence plate 512 KS 951, shall be confiscated.

GJOKE JAKAJ

is

ACQUITTED

of committing the criminal offence of having possessed and secured narcotic substances of the kind of marihuana for a total weight of 152.5 kg, packed in 305 plastic bags first in the house of Nikolle Gojani in the village of Novoselle e Ulet and then in the house of Gjin Gjokaj in the village of Trakaniq with the intention of selling or distributing it, in Novoselle e Ulet until 18 November 2008, because it has not been proven that the accused has committed the act with which he has been charged.

GJOKE JAKAJ

is

FOUND GUILTY

of committing the criminal offence of having possessed until 17.11.2008, in his house in the village of Janosh, municipality of Gjakova the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Shmajzer

with serial number 168203, two magazines for this rifle, a hunting gun with serial number YU23208, five bullets of calibre 7.62x25 mm and a magazine for TT pistols.

THEREFORE, the accused, is

SENTENCED

to one (1) year of imprisonment for the criminal offence of Unauthorized Ownership, Control, Possession, or Usage of Weapons in contradiction with article 328, par 2 of the CCK.

According to the Articles 41, 42, 43 and 44 of the CCK the sentence is suspended and therefore the punishment shall not be executed if the convicted person does not commit another criminal offence for a period of five years.

According to the Articles 54, 60, 229 par. 5 and 328 par. 5 of the CCK the weapons seized in the house of Gjoke Jakaj shall be confiscated.

GJIN GJOKAJ

is

FOUND GUILTY

of committing the criminal offence of having possessed and secured narcotic substances of the kind of marijuana for a total weight of 152.5 kg, packed in 305 plastic bags, first in the house of Nikolle Gojani in the village of Novoselle e Ulet and then in the house of Gjin Gjokaj in the village of Trakaniq with the intention of selling or distributing its to obtain unlawful benefits, in Novoselle e Ulet until 18 November 2008,

is

FOUND GUILTY

of committing the criminal offence of having possessed until 17.11.2008, in his house in the village of Trakaniq, municipality of Gjakova the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Thompson with serial number SO7571 and two hand grenades with the symbol A-6Y.

THEREFORE, the accused, is

SENTENCED

To one (1) year and six (6) months of imprisonment and a fine of 2.000 Euros for the criminal offence of Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic substances in contradiction with article 229, par 1 of the CCK.

To one (1) year and six (6) months of imprisonment for the criminal offence of Unauthorized Ownership, Control, Possession, or Usage of Weapons in contradiction with article 328, par 2 of the CCK.

The aggregated punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the CCK, is determined in two(2) years and six (6) months of imprisonment and a fine of 2.000 Euros.

According to the Articles 54, 60, 229 par. 5 and 328 par. 5 of the CCK the drug and the weapons seized in the house of Gjin Gjokaj and the drug found in the car, make "Citroen", licence plate 512 KS 951, shall be confiscated.

The mobile telephones seized during the investigation and belonging to Skender Lejkaj, Gjoke Jakaj, Nikolle Gojani, Gjin Gjokaj shall be given back to the legitimate owners.

The time spent in detention on remand by the defendants is to be credited against the punishment, pursuant to Article 391 Paragraph (1) Subparagraph 5 of the KCCP.

The accused shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the KCCP with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the KCCP.

* * *

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 9 June 2009, the Special Public Prosecutor filed the indictment PPQ. no.165/2008 with the District Court of Pejë/Peć, against the defendants Nikolle Gojani, Gjoke Jakaj, Gjin Gjokaj and Mic Kukelaj, accusing Nikolle Gojani, Gjoke Jakaj and Gjin Gjokaj of having committed the criminal offence of *Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances contrary to Article 229 paragraph 4 in relation with Article 23 paragraph 1 of the Criminal Code of Kosovo ("CCK")* and Gjoke Jakaj, Gjin Gjokaj and Mic Kukelaj of having committed the criminal offence of *Unauthorised ownership, control, possession or use of weapons* contrary to Article 328 par. 2 of the CCK.

According to the indictment, from mid-September to 18 November 2008, the defendants Nikolle Gojani, Gjoke Jakaj and Gjin Gjokaj kept in their possession 152.5 kg of

marijuana packed in 305 plastic bags, first in the house of Nikolle Gojani in the village of Novosellë e Ulët and then in the house of Gjin Gjokaj in the village of Trakaniq, with the intention of selling it to third parties to obtain unlawful benefits.

Furthermore, the accused Gjoke Jakaj was indicted for having possessed, until 17 November 2008, in his house in the village of Janosh, municipality of Gjakova, the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Shmajzer with serial number 168203, two magazines for this rifle, a hunting gun with serial number YU23208, five bullets of calibre 7.62x25 mm and a magazine for TT pistols.

The accused Gjin Gjokaj was indicted for having possessed until 17 November 2008, in his house in the village of Trakaniq, municipality of Gjakova the following weapons and ammunition without a valid authorization from a competent institution: an automatic rifle Thompson with serial number SO7571 and two hand grenades with the symbol A-6Y. Finally, the accused Mic Kukelaj was indicted for having possessed until 17 November 2008, in his house in Gjakova the following weapons and ammunition without a valid authorization from a competent institution: a TT pistol with serial number H-93618 of the caliber 7.62 mm, two magazines for this pistol and eight bullets of the caliber 7.62 mm.

By these actions, according to the indictment, the defendants Nikolle Gojani, Gjoke Jakaj and Gjin Gjokaj had committed, in co-perpetration, the criminal offence of *Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances contrary to Article 229 paragraph 4 in relation with Article 23 paragraph 1 of the CCK* punishable by a fine and by imprisonment of three to fifteen years. Furthermore, according to the indictment, the defendants Gjoke Jakaj, Gjin Gjokaj and Mic Kukelaj have committed the criminal offence of *Unauthorised ownership, control, possession or use of weapons* contrary to Article 328 par. 2 of the CCK, punishable by a fine of up to 7500 Euros or by imprisonment of one to eight years.

The hearing on Confirmation of the Indictment was held on 2 July 2009 in the District Court of Peja/Pec, in the presence of the defendants, apart from Mic Kukelaj, their defense counsels and the special prosecutor. The defendant Mic Kukelaj submitted on 29 June 2009 a written waiver of the review of the indictment.

The indictment was partially confirmed by the ruling KAQ.nr. 173/09, dated 3 July 2009: in fact the Confirmation Judge did not confirm that the charge under Article 229 CCK was in connection with Article 23 of CCK (the charge thus confirmed was solely under Article 229 par.1 and 4), as "the qualification of a crime as committed by a member of a group absorbs complicity and in the same precludes a separate charge of complicity". No appeal has been filed against the above mentioned ruling.

B. COMPETENCE OF THE COURT

1. Procedure, Competence and Panel Composition of the District Court of Peja/Pec.

In accordance with Article 23 paragraph 1 of the Kosovo Code of Criminal Procedure (henceforth: KCCP), District Courts have jurisdiction to adjudicate at first instance

criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

The offences listed in the indictment are punishable by a fine and by imprisonment of three to fifteen years as to the criminal offence of *Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances* and by a fine of up to 7500 Euros or by imprisonment of one to eight years as to the criminal offence of *Unauthorised ownership, control, possession or use of weapons*.

The criminal offences, according to the indictment, were committed in the village of Novosellë e Ulët and in the village of Traqanik, Gjakova Municipality, which are within the territory of the District of Peja/Pec. Therefore, in accordance with Article 27, par. 1 of KCCP, the District Court of Peja/Pec has the territorial jurisdiction to adjudicate the present case.

Pursuant to Article 3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, EULEX Judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the Special Prosecutors of Republic of Kosovo.

The present case was investigated and indicted by the Special Prosecutor of Kosovo and, therefore, in accordance with Article 4.7 of LoJ, the Trial Panel of the District Court of Peja/Pec was composed of a mixed panel of two EULEX Judges and one Local Judge .

Thus, it can be concluded that the District Court of Peja/Pec has the subject-matter-jurisdiction to adjudicate the present case.

None of the parties objected to the panel composition.

2. The Main Session

The main trial was held in public on 28 and 29 July 2009, 4 and 6 August 2009, in the presence of the accused Nikolle Gojani, Gjoko Jakaj and Gjin Gjokaj and their defense counsels, respectively, Armand Krasniqi, Sanije Seferi and Nushe Kuka-Mekaj, and the Special Public Prosecutor, Lulzim Sylejmani.

The defendant Mic Kukelaj did not receive the summons for the main trial and did not appear in the first hearing. Therefore, pursuant to Art. 34 of the KCCP, the proceeding against Mic Kukelaj was separated and the trial went on against the other three defendants.

In accordance with Article 15 of KCCP, international interpreters translated court proceedings and all court documents relevant to the trial into Albanian and English, as necessary.

C. SUMMARY OF EVIDENCE PRESENTED

1. Witnesses and expert witnesses

During the proceedings of the main trial, the following witnesses and expert witnesses were examined:

- V. G., on 28 July 2009
- S. L., on 29 July 2009
- A. N., on 29 July 2009

V. G. was presented by the defence counsel of Nikolle Gojani. He testified that, one day, during fall 2008, between 10 and 11 o'clock in the morning, he saw Nikolle Gojani with three individuals in the street. When he entered the yard of his house, he heard screams and noises and when he went out in the street, he saw Nikolle Gojani lying on the ground in front of his house. When he asked Nikolle Gojani what had happened, he replied that some of his friends hit him and then went away. He noticed that Nikolle Gojani was slightly injured on his face. He also noticed that the three individuals left with a Golf car, type 3 or 4. He only asked Nikolle Gojani who the individuals were and not why they had hit him.

S. L. was presented by the Special Prosecutor. The request was made during the trial session of 28 July and was granted by the trial panel. He was asked questions about his car and told the court that he bought his car, a Citroen pick-up, two and half years ago and that he mostly utilized it for his daily work as a car mechanic. The witness explained that he used to lend his car to different people upon request and he used to lend it to the defendant Gjoke Jakaj every time that the latter needed the car. As to the last occasion when Gjoke Jakaj requested to borrow the car to Skender Lekaj, the witness explained that Gjoke Jakaj requested the car for family reasons and, in particular, that Gjoke needed the car to go with his sister to get an official document. His sister was supposed to drive as Gjok Jakaj did not have a driving license. Asked by the Presiding Judge the witness pointed out that Gjoke Jakaj requested the car on 16 November, while he was about to enter the grocery shop. The witness gave him the keys of the car. The witness explained that he used to lend his car to Gjoke Jakaj when he needed it and that he was aware that Gjok Jakaj did not have a driving license, but a member of his family would drive the car. Upon a request, the witness replied that he was not sure whether he gave the keys to Gjoke Jakaj or if the keys were inside the car. He went into the shop and did not see Gjok Jakaj leave with the car. He explained that, after Gjok Jakaj took the car, he did not know what happened to the vehicle.

A. N. (who works as an analyst for the Central KP Criminal Laboratory, Chemistry and Drugs Section, in Pristina) performed, on 30 January 2009, the expertise on the substance retrieved in Gjokaj's house. The Prosecutor requested on 28 July 2009

that A-N was examined as an expert witness and the trial panel granted the request (the expert witness gave her statement on 29 July 2009).

A-N stated that she received the evidence from police officer Maliq Konushefci and that it was composed of one evidence paper bag sealed, containing 305 plastic bags with plant substances inside, green in color. All the bags weighted more or less the same. In order to perform the analysis, she took samples from 40 bags out of the 305 bags. The conclusion of her report was that in all of the 40 samples was present *cannabis* (marijuana) that contained tetrahydrocannabinol (THC).

A-N appeared in court and was asked to clarify why her report concerned 1352 grams whereas the total amount of drugs seized was indicated as 152 kilograms. The expert witness explained that she received from the police only 305 bags with a total weight of 1352 grams. The expert witness was not aware of who selected the 305 grams from the total amount of drugs seized and where the rest of the drugs were. She only made analysis on the samples that were sent to the laboratory. She also explained that, as a rule in her department, when samples appeared to be the same, the analysis would only concern 10% of the total (that is the reason why she extracted and analyzed only 40 samples). When asked about the powerfulness of the drugs, the expert witness explained that her department did not perform analysis on the powerfulness of the drug due to the lack of internal procedural rules.

She pointed out that cannabis plant contained 62 cannabinoids, and THC was the psycho active substance in *cannabis* and it was the element which made *cannabis* an illegal substance. However, she did not perform analysis on the amount of THC contained in these samples. She stressed out that the laboratory where she worked was the only laboratory in Kosovo performing such analysis and the rule was to perform qualitative analysis not quantitative.

2. Statements, police reports and other documentary evidence considered during the trial sessions.

a) Documentary evidence and reports

During the main trial the following report and documents were considered as read out with the consensus of all the parties:

- Report of the house search of defendant Gjin Gjokaj on 18 November 2008 with two confirmation documents on the confiscation of the narcotics, marijuana and of the weapons;
- Photo-documentation of the site on 18 November 2008;
- Reports of the house search of defendant Gjoke Jakaj on 17 November 2008 with two confirmation documents on the confiscation of weapons on the same date with the photos of the weapons
- The record of the all the incoming and outgoing calls performed on the telephone numbers of Nikolle Gojani, Gjin Gjokaj, and Gjoke Jakaj, as well as all the text messages sent and received on the following telephone numbers: 044 188 557, 044 466 606, 044 246 075, 044 230 496, 044 306 030 and 044 266 131.
- Police report dated 20 November 2008

- Police report dated 18 November 2008 signed by police officer Fatmir Tahir Begolli.
- Police report dated 18 November 2008, signed by the police officer Haki Lakaj.
- Statement given by Nikolle Gojani to the Prosecutor on 1 December 2008 and to the EULEX Prosecutor on 11 March 2009, accepted and given as read in evidence in trial session of 29 July 2009
- Expertise performed on the narcotics retrieved on the 30th January 2009, bearing registration number 2008-2413.

b) Statements of the accused

Nikolle Gojani initially chose to answer some of the questions and to remain silent as to some others, but after a couple of questions he decided just to stand by the statement he gave to the EULEX Prosecutor Francesco Mandoi on 11 March 2009 and not to answer to other questions. This statement was provided by the Prosecutor to the panel.

Oral examination: The defendant stated that, in the very beginning, he defendant did not know that the material he was asked to keep was drug; he thought it was simple grass. He realised that it was drug a few days later, when his friend did not come to fetch the material, as he originally said he would leave it for one or two days. He received the amount of drugs approximately one month and a half before he was arrested. Being asked by the Presiding Judge, Nikolle Gojani confirmed that the people who gave him the drug and the people who beat him in the street were the same individuals. The defendant added that Gjin Gjokaj and Gjok Jakaj had nothing to do with this matter.

Statement given to the Prosecutor on 1 December 2008:

Nikolle met an individual named D through a friend of his named M.B. and made friends with D. In October 2008 D called Nikolle in order to meet him in Lower Novosella and asked Nikolle to allow him to store some stuff in Nikolle's house. Nikolle accepted and, the next day, D came back with a van and two other individuals and they unloaded several black sacks which were stored in Nikolle's house. D said he would come back the next day or the day after to take the stuff.

Some days later, Nikolle called D to come but he never came.

After two weeks, one meeting occurred in Gjakova and D came with a person from Albania: Nikolle said that D had to come to pick up the substance, otherwise he would report to the police but the man from Albania threatened Nikolle by saying that people could get hurt for this kind of actions.

A further meeting took place in Novosella village and D attended it along with two other men: when Nikolle told again D that he would report to the police, one of the men threatened to burn him and his family and finally these people hit him in the head with an item. He lost conscience and the son of his uncle V.G. came and asked him what happened.

Afterward Nikolle called D. to ask why he had been threatened like that and that he would go to the police, but D. said that Albanian man warned him that he and his family would be "removed". Nikolle explained that he was left with the dilemma of whether reporting to the police or being the target of retaliation.

On 16 November, unknown individuals called him to meet. D. was present as well and Nikolle again asked them to remove the stuff things from his house.

Since nothing happened, on the same day he asked Gjin Gjokaj to help him and to store the drug at Gjin's place. In order to do the transfer, he borrowed S.L.'s car which was parked in Gjoke Jakaj's yard. He asked Gjoke Jakaj's mother for the permission. He explained his situation to Gjin Gjokaj who, realizing that Nikolle was very nervous, accepted to help him and keep the goods for a couple of days. Nikolle carried himself the sacks inside Gjin's house and put them in a room on the second floor. Then Gjin gave him the key of the door of the room as he did not want to be involved. Nikolle then brought the car back and with his own car went to Gjakova where he met with Gjoke Jakaj and Mic Kukelaj. Then, around 17:00, they were all arrested.

Nikolle added that he never opened the sacks, sold or used any of the amounts of drugs from the sacks.

Statement given to EULEX Prosecutor on 11 March 2009: Nikolle Gojani explained that everything started when he met someone called D., through a friend from Gjilan named

M-B
Nikolle made friends with D. and used to have dinners with him in Gjilan and coffees in Djakova. In August 2008, D. called him and asked for a meeting saying that he had a job for Nikolle. When they met, D. told Nikolle that he needed a favour and asked Nikolle to keep certain stuff in his house, because he could not take them to Gjilan; when Nikolle asked what was inside the sacks, D. replied that it was a kind of medicament. Nikolle stressed that he did not want anything illegal in his house and D. said that he would leave these sacks only for one day or two. Afterwards, someone called X.

B. came with another person in a van and brought the things at Nikolle Gojani's place.

Nikolle Gojani explained that he learnt from D. that the goods belonged to D. who bought them from someone in Albania. Nikolle pointed out that the true name of D. was D.H.

When, after one week, D. did not come to take back the sacks, Nikolle went to Gjilan to look for him, but could not find him. Later on, when they met in a restaurant, Nikolle told D. to take the things or he would throw them out. Another man called N. from Vlora in Albania was there and told Nikolle that the things belonged to him and that Nikolle would have serious problem if he had thrown them out and called the police. The man from Albania threatened him by saying that people are getting killed for such things in Albania. Afterwards, D. came to see Nikolle in Novosella with the man from Albania and this man hit Nikolle with the back of his gun and when Nikolle called D. to complain, the latter said that Nikolle would receive 3000 Euros in exchange of keeping the goods in his house. He never got the money. Nikolle Gojani also mentioned that he noticed some individuals following him.

Furthermore Nikolle Gojani explained how he borrowed Skender Lekaj's car from Gjoke Jakaj yard as this was a suitable vehicle to move the drug from his house. He asked Gjoke Jakaj's mother for the car and also had requested the permission to Skender Lekaj. He had previously asked Gjin Gjokaj whether he could store the goods at Gjin's place and explained to him that he was in trouble with the *mafia*.

Finally Nikolle Gojani concluded his statement by saying that Gjin Gjokaj and Gjok Jakaj had nothing to do with the drug.

The above statements given by the defendant during the investigation were considered as read out with the consensus of all the parties.

Gjin Gjokaj was examined in the main trial on 4 August 2009.

He explained that, on 17 November, Nikolle Gojani contacted him by phone in order to have a meeting. When Gjin Gjokaj entered Nikolle Gojani's car (a Fiat), he noticed that Nikolle was in a "panicky state". Nikolle explained that he was in danger because of the *mafia* and that he needed Gjin's help in order to store some goods in his place.

Fifteen minutes later, between 15.00 and 16.00, Nikolle Gojani brought goods in his house which were in the shape of black full sacks of approximately 1 meter and 20 centimetres. Nikolle came to Gjin's house to bring the drug by a Citroen pick up. Gjin Gjokaj recognised the car as being Skender Lekaj's car.

Gjin Gjokaj stated that he asked Nikolle Gojani what the sacks contained and Nikolle Gojani replied: "Marijuana". Gjin Gjokaj told the panel that he did not know the meaning of that word, since he was a simple villager and that he thought it was grass from the field. Judge Hoti asked him if he had ever brought field grass into his house before and Gjin replied that he had never. Gjin stated that, when he was arrested, he told the police that he did not know exactly what was inside the sacks and said that he thought it was hay or field grass or a medicament.

Gjin explained that Nikolle was the only one to carry the sacks in the house: on the point, he was confronted with his previous statement, given to the police on 19 November 2008, where Gjin stated the following: "Nikolle Gojani came to my place 10 minutes later with the pickup, a yellow Citroen, and parked it in my yard. Afterwards we brought the sacks in the room". Upon being asked to clarify, the only explanation given by the defendant was that he had never said to the police the above words.

Gjin further stated that he told Nikolle to put the goods in one of the rooms upstairs and that he did not know even in which rooms Nikolle put the goods. However, in the statement given to the Public Prosecutor on 1 December 2008, Gjin said that he had noticed that Nikolle had put the goods in a room on the second floor as the door of the room was wide open. When asked by Judge Sprenger to clarify, Gjin said that he had told Nikolle to put the things in one of the rooms and to take the key with him.

According to Gjin, Nikolle took the key because he did not want to leave it with Gjin as he did not trust him. When Gjin was arrested on 18 November and the police came to his house, Gjin asked him about the key and Nikolle said that he had hidden the key under the carpet.

Gjin stated that Nikolle did not offer any reward in exchange of the service. On the point, he was confronted with the statement given to the Prosecutor on 1 December 2008, where he said the following: "Nikolle told me he would pay something". Requested to clarify on the contradiction, Gjin stated that Nikolle just asked him if he needed anything, but not for the service rendered.

There were no questions on the seizure of the automatic rifle Thompson with serial number SO7571 and of the two hand grenades with the symbol A-6Y, as the defendant pleaded guilty on this count.

Gjoke Jakaj was examined during the main trial on 4 August 2009.

Gjoke testified that he used to borrow S-L's car from time to time for family needs. The last time, he borrowed S-L's car on 16 November, as he had planned to use it the next day to go with his sister to pick up a passport. However, the following day he did not go to Gjakova, since he was informed that the passport was not ready yet.

On 17 November, he went to Gjakova with Mic Kukelaj for a coffee, as it happened frequently. Initially Gjoke Jakaj stated that they arrived in Gjakova at around 10 or 11 in the morning and while they were in a coffee they came across Nikolle Gojani: they just greeted him, but Nikolle did not stay with them. On the point the defendant was confronted with his statement given on 19 December 2008, where he stated the following: "Approximately 30 minutes later Nikolle Gojani came there as well and he also had a coffee with us." After the confrontation, the defendant admitted that actually Nikolle sat with them for a coffee. Afterwards, Gjoke returned from Gjakova with Nikolle by car as Mic had to stay in Gjakova, but Nikolle did not ask him for S-L's car.

Gjoke stated that, on the same day, he returned to Gjakova later again with Mic for a coffee. When asked by the prosecutor whether he had met Nikolle again, initially the defendant replied that he had not and finally, after having being confronted, he said that he had met with Nikolle 20 to 30 minutes before his arrest.

Gjoke explained that Nikolle did not ask him to borrow the car but he asked Gjoke's mother. Afterwards, around 4 or 5 in the afternoon, Gjok's sister called him to inform him that Nikolle had borrowed the car. Upon being questioned by the Presiding Judge, Gjoke explained that, as he was in Gjakova, he met again with Nikolle, and asked him why he had taken the car and the answer was that he needed it.

Gjoke was asked to explain why he had called on the phone Nikolle Gojani on 17 November. He replied that he had called him to borrow a shaving kit and that he had tried

several times during the morning to reach him, but unsuccessfully. Finally, he could reach Nikolle and ask for the shaving kit (which was brought to him by Nikolle's son). Since the metering showed that further attempts of reaching Nilolle were undertaken by Gjoke in the afternoon, the defendant was asked to explain the reason for these phone calls and he replied that he wanted to know why Nikolle had borrowed the car, as his sister had informed him.

Gjoke was also questioned about the following text message, sent to Mic Kukelaj on 17 November 2007: "Don't you dare getting mixed on that business. Where are you? And if you want me to pick you up call me. I am going home." Gjoke explained that he had thought that Mic was going to be beaten up by someone named ~~V. J.~~ in relation to dog fighting.

As to the weapons seized in his house (an automatic rifle Shmajzer with serial number 168203, two magazines for this rifle, a hunting gun with serial number YU23208, five bullets of calibre 7.62x25 mm and a magazine for TT pistols), Gjoke explained that the weapons were already in the house since they belonged to his father who had died during summer 2008. He had learnt from his mother about the existence of the two weapons one month after his father died. Upon being asked by the Presiding Judge why he did not report to the police the existence of these weapons, Gjoke replied that such a thing was not in the Albanian culture.

D. Additional evidence and records acquired during the sessions of the main trial.

The court *ex officio* requested the criminal record of the defendants from the District Court of Pristina and Peja and Municipal Court of Gjakova and the outcome was that all the defendants had not previous convictions.

During the examination of the expert witness ~~A. N.~~ the report related to the hand over to the forensic laboratory of the samples of the substances seized was acquired *ex officio* by the panel.

E. EVALUATION OF PRESENTED EVIDENCE

1. Factual Findings and examination of the pieces of evidence

In the light of the evidence as accumulated during the investigation and as presented during the sessions of the main trial, the Panel considers the following sequence of events as proven beyond reasonable doubt.

On 17 November 2008, the Kosovo Police Service, Regional Command of Peja, arrested in Gjakova Mic Kukelaj, who was found carrying a weapon without any authorization, Nikolle Gojani and Gjoke Jakaj who were together with him.

On the same day, a search was conducted in the house of Gjoke Jakaj, where the following weapons and ammunitions were retrieved: an automatic rifle Shmajzer with serial number 168203, two magazines for this rifle, a hunting gun with serial number YU23208, five bullets of calibre 7.62x25 mm and a magazine for TT pistols. A search was conducted also on the vehicle Citroen, licence plate 512 KS 951, parked in the courtyard of the house and a small amount of drug, which lately proved to be marijuana type, was retrieved.

On the following day, the police were informed by Nikolle Gojani that he had stored a big amount of drug in the house of Gjin Gjokaj and therefore a search was performed in that house, where, actually, 152.5 kg of substance suspected to be marijuana were retrieved. In the house, an automatic rifle Thompson, with serial number SO7571, and two hand grenades were also found. Gjin Gjokaj was therefore immediately arrested. The substance retrieved was examined by an expert in the central KP Criminal Lab in Pristina who identified it as marijuana (see the expertise conducted on 30.1.2009).

Nikolle Gojani admitted, in the statement given on 11.3.2009, in front of the Prosecutor (the above statement was confirmed by the defendant in the main trial), that, around the beginning of October, he was asked by a person from Gjillan (called D, whom he knew through another person, called M) to keep the substance for a couple of days in exchange of 3000 Euros. He accepted and the substance, wrapped in plastic bags, was delivered around two weeks later and stored in his house.

Even though Nikolle Gojani, in his two statements (on 1.12.2008 and on 11.3.2009), affirmed that he had realized the substance was drug only after it had been delivered to his house, from the modality of the delivery (other people and not D brought the substance) from the quantity of the substance delivered and from the amount of the money promised in order to keep the substance, it is clear that, from the very beginning, he knew or at least he accepted the possibility that the substance was actually drug.

The version given by Nikolle Gojani is that he had tried many times to give back the drug to the persons who had handed it over to him, but they told him repeatedly to wait; finally, since he was getting more and more scared of the situation, he decided to move the drug to another place and asked to a distant relative of his, Gjin Gjokaj, to keep the substance for one day or two.

It is stated both by Gojani and by Gjokaj (see Gjokaj's statements given on 1.12.2008 and in the main trial) that the former clearly said to the latter that the substance was marijuana, but, according to Gjokaj he did not know what the meaning of such a word was and, in any case, he believed it was a sort of weed or medical herb.

Of course this affirmation is not reliable and clashes blatantly with logic and common sense.

Firstly, it is unbelievable that a person, almost in his thirties, does not know the meaning of the word marijuana.

Secondly, from the modality of the delivery (Gjokaj admitted that Gojani was very scared and tense) and from the fact that Gojani promised a reward for the favour, it was undeniable that the substance brought in the house of Gjokaj was illegal (during the main trial Gjin Gjokaj stubbornly denied having received any promise of reward, but on the

point he was confronted with his statement given on 1.12.2008 in which he admitted that Nikolle Gojanj promised to him a compensation).

Gjin Gjokaj and his defence counsel tried to demonstrate, throughout the entire main trial, that the defendant did not have the material possession of the drug, stressing out that the substance, even though stored in Gjokaj's house, was actually kept in a room with the door locked (and only Gojani had the keys of the room). This factual reconstruction can be accepted, since there are no elements which contrast with it, but on the other hand it does not change the legal assessment: Gjin Gjokaj allowed Gojani to bring and store the drug in his house and therefore it can be inferred that also Gjokaj had the possession of the illegal substance.

It is undisputed that Nikolle Gojani, in order to bring the drug from his house to Gjokaj's house, utilized a Citroen pick up owned by S - L and that, on 16 November 2008, the day on which the drug was transported; the car had been lent to Gjoke Jakaj. It has been affirmed by Gojani (see the statement given on 11.3.2009, pag. 13), and confirmed by Jakaj during the main trial, that the former asked Jakaj's mother the permission to take the car and that the latter was not aware of this when the car was taken by Gojani.

Upon this factual basis the Prosecutor has assumed that all the three defendants were acting as members of a group involved in the drug deal and asked the conviction of the three of them under Art. 229, par. 1 and 4 of the KCCP.

As to Gojani and Gjokaj it is undeniable that they have to be blamed for the drug which they stored and kept in their houses, but, after the verification of the main trial, the accusation against Gojani and Jakaj cannot be confirmed in its entirety: in fact, in the course of the entire proceeding, not a single piece of evidence has been provided that the two defendants acted as members of a group involved in the drug deal. In this regard the examination of the text messages related to the telephone of the defendants proved to be completely useless, since there are no messages which can give at least a hint of the participation of the two defendants to a group.

Also the examination of the telephonic contacts between the defendants was of scarce relevance, since it is undisputed that the defendants knew each other and therefore it is understandable and absolutely normal that they contacted each other.

From the statement given by Nikolle Gojani, it can be surely inferred the existence of a group of people involved in the drug trafficking (the person who contacted Gojani and delivered the drug), but it can not be sustained that Gojani himself or Gjokaj were members of this group. From the statements given by Gojani, it appears that he was contacted just in order to keep the drug and he did not know anything else. In the lack of any other piece of evidence which can challenge it, the reconstruction offered by Gojani that he wanted to get rid of the drug, but was threatened not to do so, must be considered as reliable and corroborated by testimonial evidence (see the minutes of 28.7.2009, testimony of V - G)

On the other hand, it can not be assumed, (although it appears to be the argumentation behind the charge of the Prosecutor) that the amount of drug kept by the defendants is enough in itself to prove that the defendants were members of a group.

In conclusion, it must be said that there is no evidence that the two defendants were acting as members of a group dealing with the drug seized: therefore Nikolle Gojani and Gjin Gjokaj must be convicted only for the criminal offence of Unauthorised Possession of Drug, contrary to Article 229, par. 1 of the CCK.

As to Gjoke Jakaj, the simple fact that he borrowed the car from S.L on 16 November 2009, that on the following day Nikolle Gojani borrowed from Jakaj's mother the same car to move the drug to Gjokaj's house and that Jakaj, on the same day, was together with Nikolle Gojani do not provide enough evidence that Jakaj was involved in the drug deal. The defendant has given a logical explanation of the above factual circumstances: he said that he needed the car in order to go the following day together with his sister to Gjakova to collect her passport and that actually they did not go, because he was informed that the passport was not ready yet. The consideration of the Prosecutor that the model of the car (Citroen pick up) was not fit in order to transport people and therefore it was borrowed for other purposes, not only was not proven, but simply does not stand since a pick up model has at least two seats and therefore it can be used in order to transport two people.

Furthermore it is worth stressing that text messages relative to the mobile of Jakaj have not revealed anything useful to corroborate the charge related to the drug and that the few telephone contacts between Gojani and Jakaj on the 17 November 2009 have been explained and clarified convincingly by the latter (see the minutes of 4.8.2009).

Certainly the above circumstances (especially the contacts on 17.11.2009 and the fact the telephone conversation was very short, just 8 seconds, as if an agreement between them already existed) are suspicious, but a mere suspicion, since the Prosecutor was not able to provide a single piece of evidence of the involvement of the defendant in the criminal offence, does not constitute evidence.

As to the charge of Unauthorised Possession of Weapons, Gjin Gjokaj pleaded guilty: in this regard it must be highlighted that, in any case, that charge is well grounded since the rifle Thomson and the two hand grenades were retrieved in Gjokaj's house and therefore were indisputably under his control and possession, notwithstanding he did not have any formal permit (see the report about the police search performed in Gjokaj's house on the day of his arrest).

As to the charge of Unauthorised Possession of Weapons, it is undisputed that Gjoke Jakaj possessed the weapons and the ammunitions without any authorization and, therefore, it must be found guilty of the accusation. On the point, the circumstance that the weapons and the ammunition belonged to his father does not have any relevance, if we think of the fact that Gjoke admitted that he was the heir of his father's belongings and that he was informed of the presence of the weapons in his house a couple of months after the death of his father which occurred in August 2008.

Therefore it is undeniable that, as soon as he had the intelligence of the presence of the weapons in his house, he should have handed them over to the police or at least asked for the issuance of a Weapon Authorization Card on his name (pursuant to Unmik Regulation 7/2001). Since he did not undertake any of these deeds, it can be surely

affirmed that he unlawfully possessed the weapons and the ammunitions described in the indictment.

Concerning the legal qualifications of the criminal acts, no other remarks have to be done in relation to the indictment apart, from the one above mentioned.

2. Motions of the Parties

The defense counsels raised objections against the expertise performed on the substance seized, complaining of the lack of precision of the expertise.

Actually it is undeniable that the expertise was not accurately performed. In fact, as it was admitted by the expert witness ~~MA-N~~ (see the minutes of 29.7.2009) the expertise just ascertained the "quality" of the substance analyzed (assessing that it was cannabis) without examining the "quantity" (i.e. the percentage of THC present in the substance examined).

The outcome is that, through the expertise presented by the Prosecutor, it is not possible to assess the real dangerousness of the substance seized. The only result offered by the expertise is that the substance is *cannabis*, but nothing can be said regarding the real powerfulness of the drug which, as it was explained by the expert witness, depends on the percentage of THC.

The expert witness pointed out that in the forensic laboratory in Pristina, as well as in each other laboratory in Kosovo, it was not possible to perform an expertise regarding the percentage of THC, due to the lack of internal procedural rules (and exigencies linked to the quickness of the trial and to the fact that the defendants were in detention on remand have made the panel decide not to entrust a foreign laboratory to perform a new expertise). Consequently the datum regarding the big amount of drug possessed by the defendants loses much of his relevance since the real powerfulness of the substance is unknown: of course, this pivotal flaw has been taken in consideration by the panel when it came to the decide upon the punishment and has been decisive in order to issue a punishment far from the maximum envisaged by Article 229, par. 1 of the KCCP (five years of imprisonment).

F. LEGAL QUALIFICATION

1. Legal assessment of the facts by the Court

- **Count 1: Unauthorized Purchase, Possession, Distribution and Sale of dangerous Narcotic Drugs and Psychotropic Substances**

Art. 229, par. 1 of the KCCP, enlists a series of conducts which must be carried out by the accused in order to be convicted for the above crime: in particular, it states that a

person must either purchase or possess with the intent to sell or distribute or offer for sale dangerous drug and psychotropic substances.

Article 107 of the KCCP defines the term dangerous drug and psychotropic substances as those substances listed in the official Gazzette of the Socialist Republic of Yugoslavia nos. 70/78, 14/81, 39/82, 28/85, 10/87, 53/88, 2/89. The expertise performed on the drug retrieved in the house of Gjin Gjokaj clarified that the substance was *cannabis* (substance indisputably indicated in the above list).

Once established, as explained before, that neither Gojani nor Gjokaj acted as members of a group, nevertheless it must be affirmed that both of them possessed the drug with the intention to sell or distribute it: in fact, from the amount of drug seized (152.5 kilograms), it is undeniable that the drug could not be utilized for personal use.

Therefore no doubt subsists that both Gojani and Gjokaj committed the above criminal act as to the existence of the required *actus reus* (the possession of the drug with the intent to give it to other people) and of the *mens rea* (the will to possess it).

- **Count 2 and 3: Unauthorized ownership, control, possession or use of weapons.**

Article 328 par. 2 of the KCCP, enlists a series of conducts which must be carried out by the accused in order to be convicted for the above mentioned crime: in particular, it states that a person must either own or possess or utilize a weapon.

The definition of weapon is given by Art. 107, par. 28 of the KCCP: the provision indicates as weapons any instrument (including ammunition) designed, used or usable to inflict bodily harm.

It is undeniable that all the instruments retrieved and seized in the houses of Gjokaj and Jakaj are included in this definition and therefore that they committed the above criminal offence.

As to Gjoke Jakaj, unlike what he affirmed during his examination, there is no evidence that for one of the rifle retrieved in his house his father had a permission to possess it. Therefore the qualification of the criminal offence committed by the defendant has been rightly assessed by the Prosecutor as falling under Art. 328, par. 2 and not under par. 4 of the same article.

G. DETERMINATION OF PUNISHMENT

When imposing the criminal sanction, the court has to bear in mind both the general purpose of punishment - that is to suppress socially dangerous activities by deterring others from committing similar criminal acts - and the specific purpose, to prevent the offender from re-offending.

In the present case, the Panel came to the conclusion that, the possession of drug was a serious criminal act especially thinking of the huge amount of substance kept by the defendants. As to the aggravating circumstances, it must be stressed the big amount of drug possessed by the defendants (152.5 kilograms). As to the mitigating circumstances, it must be taken in consideration that there are no previous convictions against the defendants, that their role was extremely marginal, that *cannabis* is not considered as one

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Moreover, in regard to Nikolle Gojani, it must be taken in consideration also the cooperation given to the investigators (as it has been stressed out by the Prosecutor in his final speech).

Therefore, taking in consideration both the aggravating and the mitigating circumstances, the punishment shall be of 2 years of imprisonment and of a fine of 2.500 Euros for Nikolle Gojani and of 1 year and six months of imprisonment and of a fine of 2.000 Euros for Gjin Gjokaj.

On the point of the Unauthorized Possession of Weapons, as to the aggravating circumstances, it must be noted that the weapons were firearms and therefore particularly dangerous; as to the mitigating circumstances, it must be taken in consideration, again, that there are no previous convictions against the defendants (as to Gjin Gjokaj, it must be taken in consideration that he pleaded guilty, but, on the other hand, that the two hand grenades are weapons of a particular dangerousness).

Therefore, taking in consideration both the aggravating and the mitigating circumstances, the punishment shall be of 1 year of imprisonment for Gjoke Jakaj and of 1 year and six months of imprisonment for Gjin Gjokaj.

As to Gjin Gjokaj the aggregated punishment, due to the rules for punishment of concurrent criminal offences, shall be of 2 years and six months of imprisonment and of a fine of 2.000 Euros.

As to Gjok Jakaj the sentence shall be suspended, due to the existence of the conditions envisaged in Art. 44 of the KCCP and due to the limited degree of criminal liability showed by the defendant.

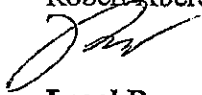
The time spent in detention on remand by the defendants is to be credited in the sentence.

The panel issued a separate decision on the confiscation of the goods seized.

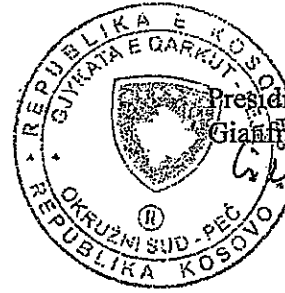
H. COSTS

The accused were pronounced guilty; they have to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1). A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

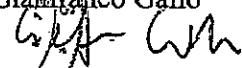
Recording Officer
Robert Abercrombie



Legal Remedy



Presiding Judge
Gianfranco Gallo



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



