

DISTRICT COURT OF PEJA/PEC

P.nr. 180/08

30 March 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PEJA/PEC, in the trial panel composed of International Judge Emilio Gatti as Presiding Judge, International Judge Gianfranco Gallo and Local Judge Elmaze Syka as panel member, in the criminal case against the accused

LULZIM THAQI, SADIK THAQI, SHQIPRIM UKA and ALI XERXA charged, according to the indictment PP.no. 110/2008 filed on 18.07.2008, corrected by the ruling of the Confirmation Judge KP.no. 198/2008 dated 16 September 2008, with the following criminal offences

LULZIM THAQI, SADIK THAQI, SHQIPRIM UKA

Trafficking in Persons contrary to Articles 139, paragraph 1 and 3 and 23 of KCCP,

LULZIM THAQI, SADIK THAQI, SHQIPRIM UKA, ALI XERXA

Money Laundering contrary to Section 11.2 of UNMIK Regulation No. 2004/2, Article 10.2 (d), as amended under UNMIK Regulation No. 2006/53, and Article 23 KCCP,

LULZIM THAQI and SADIK THAQI

Facilitation of Prostitution, contrary to Article 201 (3) and (1) and Article 23 of the KCCP

After the public main trial conducted on 28, 29 January, 03, 04, 19, 23, 24, 25 February, 16 and 30 March 2009, in the presence of the abovementioned accused, their Defense Counsels Teki Bokshi, Orhan Basha, Mustafe Kastrati, Mybijene Sedefi, the Special Public Prosecutor Raze Loshaj, the legal representative of the Injured Party Merita Baloku, after the trial panel's deliberation and voting held on 30 March 2009, based on the article 391 par. 1 and 392 par. 1 of KCCP, publicly announces, in the presence of the Accused, their Defense Counsels, the Special Prosecutor, the Legal Representative of the Injured Party, the following:

VERDICT

The accused ALI XERXA, father's name Rasim, mothers name Naxhije - maiden name Gorani, date of birth 27.05.1952, profession Administrative Employee of Western Union in Gjakova, place of birth Gjakova, place of residence Nena Tereze str. no. 257, nationality and citizenship Albanian - Kosovan, education - Faculty of Political Science, family income - medium, family status - married,

is

ACQUITTED

of committing Money Laundering contrary to Article 11.2 items a, b, d and e of UNMIK Regulation n. 2004/2, under count 2 of the confirmed indictment, since the act with which the accused is charged does not constitute a criminal offence.

In particular, according to the confirmed indictment, in Gjakovë /Đakovica, between 1 March 2004 and 31 December 2007, at the dates mentioned below, the defendant in complicity, who knew or had cause to know that certain property, such as cash, was the proceeds of some form of criminal activity – such as facilitating prostitution and trafficking in human beings – and the money being in fact proceeds of the crime,

Count 2.3) converted or transferred for the purpose or purposes of promoting the underlying criminal activity or

Count 2.4) acquired, possessed or used.

the following amount of money:

A – an amount of 89.891,50 EUR in total, transferred by Lulzim THAQI on the dates mentioned in the table of money transfers, binder 6, documents 236 to 238 of the court file

B – an amount of 34.970,00 EUR in total, transferred by Sadik THAQI on the dates mentioned in the table of money transfers, binder 6, documents 234 to 236 of the court file

C – an amount of 5.200,00 EUR in total, transferred by Shqiprim UKA on the dates mentioned in the table of money transfers, binder 6, documents 234 of the court file

D – an amount of 40.176,46 EUR in total, transferred by _____ presently at large, on the dates mentioned in the table of money transfers, binder 6, documents 232 to 234 of the court file

E – an amount of 143.036,45 EUR in total, transferred by the women employees who used to work in the clubs, on the dates mentioned in the table of money transfers, binder 3, documents 229 to 235 and binder 4, documents 294 to 301 of the court file.

The total amount of money transfers to Moldavia through the Financial Union in Prishtinë/Priština, Western union, was 313.274,41 Euros. These transfers were made with the assistance of the defendant Ali Xerxa who, although he knew or had cause to know that the money had been obtained in an unlawful manner, allowed the transfers in absence of the persons who were in effect giving the transfers order, which means that he was a co-perpetrator in this case.

The accused LULZIM THAQI, nickname Xiki, father's name Sahit, mothers name Sabrije - maiden name Lulaj, date of birth 09.07.1977, place of birth Gjakove, place of residence village Osek-Hyle, Municipality of Gjakova, nationality and citizenship Albanian - Kosovan, education - elementary education, family income - medium, family status - married, in detention since 31.01.2008,

is

ACQUITTED

of committing Trafficking in Person, contrary to Article 139, par. 1 and 3 of KCCP, under count 1 of the confirmed indictment, since it has not been proven that the accused has committed the act which he has been charged.

In particular, according to the confirmed indictment, in Gjakovë /Đakovica and Xërxë/Zrze, between 6 April 2004 and 31 January 2008, the defendants Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka in co-perpetration with the defendant and a person at large with the intention to obtain a material benefit, organized a group of persons to commit the offence of trafficking in persons and recruited, transported and harbored women from Moldavia in exchange for money, by means of threat or use of force or other forms of coercion, of fraud, of deception, or abuse of power, to exploit them sexually as sex workers in the "Vala", "Alska" and "Makuba" Clubs in Gjakovë /Đakovica.

The person at large and the defendant supported the recruitment of new victims from Moldavia, obtaining and sending employment contracts and money for their travel tickets to Kosovo. The criminal acts were fully revealed when the police investigators, pursuant to a court order, on 31 January 2008, round 06:20, searched hotel "Adora" in Xërxë/Zrze village, and hotel "Amsterdam" in Gjakovë /Đakovica, and found the victims in rooms with clients who on that night had bought the sexual services of the women paying €100 each to the defendants Lulzim and Sadik Thaqi. These women, as they were entirely dependent on them, were compelled to provide their services to several clients involuntarily.

is

FOUND GUILTY

of committing Money Laundering, contrary to Section 11.2 of UNMIK Regulation No. 2004/2, Article 10.2 (d), as amended under UNMIK Regulation No. 2006/53, and Article 23 KCCP, under count 2 of the confirmed indictment, because in Gjakovë /Đakovica; between the start of 2007 and 31 December 2007, the defendant, in complicity, who knew or had cause to know that certain property, such as cash, was the proceeds of some form of criminal activity - such as facilitating prostitution - and the money being in fact proceeds of the crime,

transferred for the purpose or purposes of promoting the underlying criminal activity

the amount of 25.190 Euros to Moldavia through the Financial Union in Prishtinë/Priština, Western Union.

Is

FOUND GUILTY

of committing Facilitation of Prostitution, contrary to Article 201 (3) and (1) and Article 23 of the KCCP, under count 3 A of the confirmed indictment, because in Gjakovë /Dakovica between the start of 2007 and 31 January 2008, the accused Lulzim Thaqi, as co-owners of "Makuba" club, in complicity, in a continuing manner, recruited, organized, assisted the injured persons

and a lot of other women, or provided them premises for the purpose of the prostitution. The above – mentioned women used to work in their clubs and were sold several times to several clients for sexual services.

THEREFORE, the accused, is

SENTENCED

to three/3/years of imprisonment and a fine of 40.000 Euros for the criminal offence of Money Laundering (Count 2);

to 1/one/ year of imprisonment for the criminal offence of Facilitating Prostitution (Count 3 A);

the aggregated punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the KCCP, is determined in three/3/ years and eight/8/ months of imprisonment and a fine of 40.000 Euros;

.....

The accused SADIK THAQI, father's name Ali, mothers name Gjyle - maiden name Lokaj, date of birth 28.03.1964, profession catering, place of birth village Osek-Hyle, Municipality of Gjakova, nationality and citizenship Albanian – Kosovan, education – secondary education, family income - medium, family status – married, in detention since 31.01.2008

is

ACQUITTED

of committing Trafficking in Person, contrary to Article 139, par. 1 and 3 of KCCP, under count 1 of the confirmed indictment, since it has not been proven that the accused has committed the act which he has been charged.

premises for the purpose of the prostitution. The above – mentioned women used to work in their clubs and were sold several times to several clients for sexual services.

THEREFORE, the accused, is

SENTENCED

*to three/3/years of imprisonment and a fine of 40.000 Euros for the criminal offence of Money Laundering (Count 2);
to 1 /one/ year of imprisonment for the criminal offence of Facilitating Prostitution (Count 3 A);
the aggregated punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the KCCP, is determined in three/3/ years and eight/8/ months of imprisonment and a fine of 40.000 Euros;*

The accused SHQIPRIM UKA, father's name Asllan, mothers name Vjollca - maiden name Thaqi, date of birth 03.07.1986, profession car mechanic, place of birth Gjakove, place of residence Peja/Pec, Sali Jaha str. nr. 16, nationality and citizenship Albanian – Kosovan, education – secondary education, family income - poor, family status – single, in detention for other criminal case.

is

FOUND GUILTY

of committing Money Laundering, contrary to Section 11.2 of UNMIK Regulation No. 2004/2, Article 10.2 (d), as amended under UNMIK Regulation No. 2006/53, and Article 23 KCCP, under count 2 of the confirmed indictment, because between 15 March 2007 and 24 September 2007, in Gjakovë /Đakovica, the defendant, in complicity, who knew or had cause to know that certain property, such as cash, was the proceeds of some form of criminal activity – such as facilitating prostitution – and the money being in fact proceeds of the crime,

transferred for the purpose or purposes of promoting the underlying criminal activity

the amount of 5.220 Euros to Moldavia through the Financial Union in Prishtinë/Priština, Western union.

is

FOUND GUILTY

of committing Facilitation of Prostitution, contrary to Article 201 (3) and (1) and Article 23 of the KCCP, under count 3 A of the confirmed indictment, because between 15 March 2007 until the end of September 2007, the defendant in complicity with Lulzim and Sadik Thaqi, in a continuous manner, recruited, organized, assisted the injured persons, and a lot of other women, or provided them premises for the purpose of the prostitution. The above – mentioned women used to work in their clubs and were sold several times to several clients for sexual services.

THEREFORE, the accused, is

SENTENCED

*to one/1/year and eight/8/ months of imprisonment and a fine of 9.000 Euros for the criminal offence of Money Laundering (Count 2);
to 9 /nine/ months of imprisonment for the criminal offence of Facilitating Prostitution (Count 3 A) so reclassified the original charge of Trafficking in Person;
the aggregated punishment, pursuant to Article 71 Paragraph (1) and (2) Subparagraph 2, of the KCCP, is determined in two/2/ years of imprisonment and a fine of 9.000 Euros;*

.....

The time spent in detention on remand by the defendants Lulzim Thaqi and Sadik Thaqi until 30 March 2009 is to be credited against the punishment, pursuant to Article 391 Paragraph (1) Subparagraph 5 of the PCPCK.

The accused Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCPCK 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 PCPCK.

REASONING

A. PROCEDURAL BACKGROUND – THE INDICTMENT

On 18 of July 2008, the Special Public Prosecutor filed the indictment PP.no.110/2008 with the District Court of Peja/Pec, against the defendants Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka and Ali Xerxa, accusing them of the criminal offences of Trafficking in Persons in Complicity, contrary to the ART. 139 par. 1 and 3 and ART. 23 of KCCP, Money Laundering, contrary to the ART. 11.2 items a, b, d and e of UNMIK Regulation

no. 2004/2, (as amended by section 1 item k of UNMIK/REG/2005/9 and as renumbered by item h, last sentence of UNMIK/REG/2006/53) and ART. 23 of the KCCP and Facilitating Prostitution, contrary to the ART. 201.1 and the ART. 23 of the KCCP.

On 16 September 2008, the Confirmation Judge corrected some parts of the indictment. According to the corrected indictment, the charges against the defendants have been established as follows:

“Count 1: Against the defendants Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka in complicity with

In Gjakovë /Đakovica and Xërxë/Zrze, between 6 April 2004 and 31 January 2008.

TRAFFICKING IN PERSONS IN COMPLICITY *contrary to Article 139, Paragraph 1 and 3, and 23 of the Provisional Criminal Code of Kosovo (KCCP), punishable by a fine of up to € 500, 000 and imprisonment from seven to twenty years.*

The defendants Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka in co-perpetration with the defendant and a person at large with the intention to obtain a material benefit, organized a group of persons to commit the offence of trafficking in persons and recruited, transported and harbored women from Moldavia in exchange for money, by means of threat or use of force or other forms of coercion, of fraud, of deception, or abuse of power, to exploit them sexually as sex workers in the “Vala”, “Alaska” and “Makuba” Clubs in Gjakovë /Đakovica.

The person at large and the defendant supported the recruitment of new victims from Moldavia, obtaining and sending employment contracts and money for their travel tickets to Kosovo. The criminal acts were fully revealed when the police investigators, pursuant to a court order, on 31 January 2008, round 06:20, searched hotel “Adora” in Xërxë/Zrze village, and hotel “Amsterdam” in Gjakovë /Đakovica, and found the victims in rooms with clients who on that night had bought the sexual services of the women paying €100 each to the defendants Lulzim and Sadik Thaqi. These women, as they were entirely dependent on them, were compelled to provide their services to several clients involuntarily.

Count 2: Against defendants Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka, Ali Xerxa and

In Gjakovë /Đakovica, between 1 March 2004 and 31 December 2007, at the dates mentioned below

MONEY LAUNDERING *contrary to Article 11.2 items a, b, d and e of UNMIK Regulation No. 2004/2 (as amended by section 1 item k of UNMIK/REG/2005/9 and as renumbered by item h, last sentence of UNMIK/REG2006/53), and Article 23 of KCCP, punishable by imprisonment of up to 10 years and a fine three times the value of the property that is the subject of the criminal offense.*

The defendants in complicity, who knew or had cause to know that certain property, such as cash, was the proceeds of some form of criminal activity – such as facilitating prostitution and trafficking in human beings – and the money being in fact proceeds of the crime,

Count 2.1) converted or transferred for the purpose or purposes of concealing or disguising the nature, source, location, disposition, movement or ownership of the property,

Count 2.2) converted or transferred for the purpose or purposes of assisting any person who is involved in, or purportedly involved in the commission of the criminal offence that produced the property to evade the legal consequences, or apparent legal consequences of his or her actions,

Count 2.3) converted or transferred for the purpose or purposes of promoting the underlying criminal activity or

Count 2.4) acquired, possessed or used.

the following amount of money:

A – an amount of 89.891,50 EUR in total, transferred by Lulzim THAQI on the dates mentioned in the table of money transfers, binder 6, documents 236 to 238 of the court file

B – an amount of 34.970,00 EUR in total, transferred by Sadik THAQI on the dates mentioned in the table of money transfers, binder 6, documents 234 to 236 of the court file

C – an amount of 5.200,00 EUR in total, transferred by Shqiprim UKA on the dates mentioned in the table of money transfers, binder 6, documents 234 of the court file

D – an amount of 40.176,46 EUR in total, transferred by _____, presently at large, on the dates mentioned in the table of money transfers, binder 6, documents 232 to 234 of the court file

E – an amount of 143.036,45 EUR in total, transferred by the women employees who used to work in the clubs, on the dates mentioned in the table of money transfers, binder 3, documents 229 to 235 and binder 4, documents 294 to 301 of the court file

The total amount of money transfers to Moldavia through the Financial Union in Prishtinë/Priština, Western union, was 313.274,41 Euros. These transfers were made with the assistance of the defendant Ali Xerxa who, although he knew or had cause to know that the money had been obtained in an unlawful manner, allowed the transfers in absence of the persons who were in effect giving the transfers order, which means that he was a co-perpetrator in this case.

Count 3: Against defendants Lulzim Thaqi, Sadik Thaqi

Count 3 A. In Gjakovë /Đakovica, from 29 October 2003 to 31 January 2008

FACILITATING PROSTITUTION, contrary to Article 201.1 and Article 23 of the KCCP, criminal action that was contrary to ART. 251.1 SFRY CL prior to the introduction of the KCCP

During the period between 2003 and 2008, the defendants Lulzim Thaqi and Sadik Thaqi, as co-owners of "Makuba" club, in complicity, in a continuing manner, recruited, organized, assisted the injured persons

and a lot of other women, or provided them premises for the purpose of the prostitution. The above – mentioned women used to work in their clubs and were sold several times to several clients for sexual services, as described in the first enacting clause of this Indictment.

Count 3 B. In Gjakovë /Đakovica, from 29 October 2003 to 31 January 2008

FACILITATING PROSTITUTION, contrary to Article 201.3 and Article 23 of the KCCP, criminal action that was contrary to ART. 251.2 SFRY CL prior to the introduction of the KCCP

During the period between 2003 and 2008, the defendants Lulzim Thaqi and Sadik Thaqi, as co-owners of "Makuba" club, in complicity, in a continuing manner, compelled the injured persons and a lot of other women, to engage in prostitution by holding them in a situation of personal and economic dependence, because the above-mentioned women used to work in their clubs and were sold several times for sexual services, as described in the first enacting clause of this indictment.

After having corrected the indictment, the confirmation judge, in his ruling, confirmed only the following parts of the indictment:

- As for the defendant Lulzim Thaqi the indictment was confirmed as to the counts 1, 2.3 (for all transfers mentioned under A, B, C, D and E), 2.4 (for all transfers mentioned under A, B, C, D and E) and 3A.
- As for the defendant Sadik Thaqi the indictment was confirmed as to the counts 1 (in the period between 17 October 2005 and 31 January 2008), 2.3 (for all transfers mentioned under A, B, C, D and E in the period between 10 June 2005 and 31 December 2007), 2.4 (for all the transfers mentioned under A, B, C, D and E in the period between 10 June 2005 and 31 December 2007) and 3A (from 17 October 2005 to 31 January 2008).

- As for the defendant [redacted] the indictment was dismissed.
- As for the defendant Shqiprim Uka the indictment was confirmed as to the counts 1 (in the period between 25 June 2005 and 31 January 2008), 2.3 (for the transfers mentioned under C in the period between 15 March 2007 and 24 September 2007) and 2.4 (for the transfers mentioned under C in the period between 15 March 2007 and 24 September 2007).
- As for the defendant Ali Xerxa the indictment was confirmed as to the counts 2.3 and 2.4.

Special Prosecutor and the defense counsels of Lulzim Thaqi and Sadik Thaqi appealed against the ruling on confirmation of the indictment. The appeal of the prosecutor was rejected as ungrounded through the ruling of the three-judge panel KAQ.nr.198/08 dated 21.10.2008. The appeal of the defense counsels was considered as not admissible by the three-judge panel through the ruling KAQ.nr.198/08 dated 14.01.2009. Therefore, the confirmed indictment became final.

On the 28 January the main trial started.

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 KCCP, District Courts shall have jurisdiction to adjudicate at first instance criminal offences punishable by imprisonment of at least five years or by long-term imprisonment.

In the present case the accused were charged with Trafficking in Persons in Complicity contrary to Articles 139 par. 1 and 3 in conjunction with Art. 23 of CCK, offence punishable by a fine up to 500,000 € and by imprisonment of seven to twenty years; Money Laundering contrary to the Art. 11.2 items a, b, d and e of UNMIK Regulation no. 2004/2, (as amended by section 1 item k of UNMIK/REG/2005/9 and as renumbered by item h, last sentence of UNMIK/REG/2006/53) and Art. 23 of CCK, offence punishable by imprisonment up to ten years and a fine three times the value of the property that is subject of a criminal offence; and Facilitating Prostitution contrary to article 201 par. 3 and 1, and article 23 of CCK, offence punishable by imprisonment from one to eight years.

The criminal offences, according to the indictment, were committed in Gjakova, which is in the territory of the District of Peja, thus in accordance with article 27 par. 1 of KCCP, the District Court of Peja has the territorial jurisdiction to adjudicate with the present case.

Therefore, it is undisputable that the District Court of Peja/Pec has the subject matter jurisdiction to adjudicate the present case.

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

Since the present case was investigated and indicted by the Special Prosecutor of Kosovo, therefore the Trial Panel of the District Court of Peja/Pec was correctly composed of a mixed panel of two EULEX Judges and one Local Judge in accordance with the article 4.7 of LoJ. Neither remarks nor objections have been raised by the parties regarding the competence of the court and the composition of the panel.

2. The Main Session

The main trial was held in public on 28, 29 January, 03, 04, 19, 23, 24, 25 February, 16 and 30 March 2009, in the presence of the accused Lulzim Thaqi, Sadik Thaqi, Shqiprim Uka and Ali Xerxa, their defense counsels Teki Bokshi, Orhan Basha, Mustafe Kastrati, Mybijene Sedefi, the Special Public Prosecutor Raze Loshaj, the legal representative of the injured party Merita Baloku.

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

C. SUMMARY OF EVIDENCE PRESENTED

1. During the proceedings of the main trial, the following witnesses were heard:

- a) [redacted] as witness and injured party on 29 January 2009
- b) [redacted] as witness and injured party on 29 January 2009
- c) [redacted] as witness on 03 February 2009
- d) [redacted] as witness on 04 February 2009
- e) [redacted] as witness on 04 February 2009
- f) [redacted] as witness on 04 February 2009
- g) [redacted] as witness on 19 February 2009

1. a) [redacted] in her testimony given in front of the panel, stated that she had arrived in Kosovo in 2005, to work in a club as a waitress. The job was offered to her by a friend named [redacted]. When she arrived in Kosovo, a man called Luli was waiting for her at the airport.

Her salary was 150 € a month and her working hours were from 19:00 until 00:00. Afterwards she was free and no one forced her to work after that and she never asked permission to anyone to leave the club. While she was working in the club, another five girls worked there, but she didn't remember their names. The club she worked was named Vala, afterwards it was renamed to Alaska while the owner was Lulzim Thaqi.

When the club was renamed to Macuba, the owner of the club was Sadik Thaqi. When she was arrested, on 30 January 2008, she was at hotel Adora alone. She denied that she had worked in the above mentioned clubs as a prostitute.

1. b) [redacted] in her testimony given in front of the panel, stated that she had arrived in Kosovo 3 years ago, on 09 March 2006. She was offered to work in Kosovo, through a friend named [redacted], who was already working there. An employment contract was sent to her, in Moldova, by fax from her boss Sadik Thaqi who also waited for her at the airport when she came to Kosovo. She started working in Kosovo the following day as a barmaid; she stated that her salary was 150 € per month, but that she also earned more money from the tips and treats of the customers. Her working hours were from 19:00 until 00:00; outside the working hours she was free to do what she desired. She used to send money to her family in Moldova through Western Union. She denied that she had worked in the above mentioned clubs as a prostitute.

1. c) [redacted], in his testimony given in front of the panel, explained that, on the day when he visited club Macuba, he was with his cousin [redacted] and both of them were under the influence of alcohol. He was impressed by one of the waitresses and asked her to leave the club with him, but she replied that she had to ask her boss in order to be allowed to go out with him; she provided him with the phone number of Sadik Thaqi on which number he called the day after and spoke to Sadik Thaqi and arranged to take a girl for one hour. The witness, in front of the panel, after he was shown a picture by the prosecutor, identified the girl as [redacted]. Afterwards he took the girl and went to hotel Amsterdam where he paid 25 euros for the room and, after having had sex with the girl, he gave to her 100 Euros.

During his examination the witness was confronted with his previous statement given to the police as follows (minutes of 3.2.2009):

: I did offer her a drink or a meal, a "treat".

Judge Gianfranco Gallo: When you went to the hotel, did you give her some money or not?

: I paid for the room at the reception.

Judge Gianfranco Gallo: Just for the room, or also for the girl?

: I "treated" the girl, but I am not sure how much.

Judge Gianfranco Gallo: We must be accurate. "Treating" is offering some meal or something, if I understand the local phrase. The question is, did you pay anything for the sexual services of the girl?

Orhan Basha: Please, he answered the question already. He said he "treated" her.

Judge Gianfranco Gallo: The translation is not clear, so I am asking him again.

No.

Judge Gianfranco Gallo: Because now I must confront you with your previous statement, given to the Public Prosecutor on the 8th April 2008, in which you say (quotes) "I just paid the 25 Euros for the room and gave 100 Euros for the girl. I left the hotel after 1 hour." So this is your statement?

: Yes, it says there that I gave her 100 Euros.

Judge Gianfranco Gallo: For her sexual services?

With one word, I say that I "treated" her.

Judge Gianfranco Gallo: Yes, but we must know this exactly. Please answer the question.

: What was the question?

Judge Gianfranco Gallo: Did you pay 100 Euros for her sexual services.

Orhan Basha: I object to the manner in which the question is being asked. Why don't you ask him why he gave her the money? Otherwise the Minutes are inadmissible. They will be compiled in contradiction of Article 89 of the PCPCK.

Presiding Judge: Please reply to the question. Did you pay 100 Euros for sexual services or not?

: I "treated" the girl.

Presiding Judge: I ask, did you have sexual acts with this girl or not?

: Yes, of course.

Presiding Judge: And did you give 100 Euros or not?

: Yes

Judge Gianfranco Gallo: Very well. Before asking the boss, did you talk to anyone else regarding the permission to go out with the girl " ". Did you talk to anyone else regarding permission?

Mendim Rama: No, I spoke to the girl.

Judge Gianfranco Gallo: So I confront you with your previous statement given, to the Prosecutor on the 8th April 2008, in which after the question (quotes) "Did you have to ask anyone else except the chief to take the girl for sexual services?" you answered (quotes) "Yes, I asked the security guard of the bar. He told me that I can't take without the chief's permission", I clarify that this is the English version I have here, (quotes) "but come later and see the chief because he is not here." This was your answer. So, you said that you first asked the security guard. Now that I remind you of this, do you remember better?

: Yes, I said earlier you can read the statement and I stand by the statement that I gave.

Furthermore, during the examination of the _____, the Prosecutor made the witness hear a phone call occurred on 14 October 2007, at 14:21, between the telephone bearing the number 044 348405 and the telephone bearing the number 044386666: during the telephone call, two men are clearly speaking about the hiring of a girl for sexual services: it is exactly the phone call the witness was talking about when he said that the girl he chose told him that he had first to speak with her boss.

During the examination, and after also having been confronted with his previous statement, the witness somehow admitted that the voice of the person calling was his (minutes of 3.2.2009):

Judge Gianfranco Gallo: You kept saying that you were drunk that night, but today you are not?

: No.

Judge Gianfranco Gallo: So, today can you recognise your own voice in that conversation, since you are not drunk today?

: Yes, it appears it was my voice.

Judge Gianfranco Gallo: Appears, or it is?

: I am not sure.

Judge Gianfranco Gallo: So, I confront you with your previous statement given to the Public Prosecutor on the 8th February 2008, in which it is said that the recording of the interception is played to the witness and he states it is the conversation he had with the boss of the coffee bar Sadik Thaqi. So it is clear, when you were heard by the Public Prosecutor you stated that was the conversation you had with Sadik Thaqi, you recognised your voice and said that was the conversation. So which is your answer now?

: I do not know what to say; maybe it is my voice.

1. d) _____, in his testimony given in front of the panel, explained that he knew the defendants only as citizens of Gjakova and that he repaired the cars of Lulzim and Sadik Thaqi. On one occasion he was asked by Lulzim Thaqi to transfer an amount of money, through Western Union, to Germany, since his sister had died in Germany and he was not in town to send the money himself. So, when he went to the Western Union office he just told them that he came for a money transfer on behalf of Lulzim Thaqi: the employees gave him some forms to sign and he didn't have to give any money, since everything was arranged by Lulzim himself. He didn't know the amount of the money he had to send since he was only asked to sign the forms. He did this as a favor for Lulzim. He visited the clubs Alaska and Macuba only after he sent the repaired cars back to Lulzim or Sadik and when he was asked to repair the generator of the club. He knew that in the club there were women working only as waitresses.

1. e) _____ in his testimony given in front of the panel, stated that he, together with _____ i, had stopped for a drink to the bar Makuba by chance, at approximately 10:00 or 11:00 p.m. From the statement given by the witness in front of the police, it can be inferred that the date was on 6.11.2007. In the club they were served by a waitress. After they had finished with their drinks they went home. During the testimony the witness was confronted by the prosecutor in relation to the statement given by the witness to the police (minutes of 4.2.2009):

Public Prosecutor: Yes, just want to clarify whether he paid or his colleague paid. Did you go to hotel Adora that night?

: No.

Public Prosecutor: Where did you go after bar Makuba?

I went to my house and he went to his own house.

...

Public Prosecutor: "did you take any women that night....., answer was, I have taken a girl I did not pay and I did not have a relationship with her". The question was "who paid" and the answer is "it was . . .".

It is not true that I said that _____ paid or that we took girls. You might have mixed this with payment of drinks.

International Judge: This is a statement signed by you.

: I never said that and it is not true that I took a female.

Public Prosecutor: The other question "was how did you chose the girls", answer was "we did not choose them, we only went to Hotel Adora and they then came".

I'm sorry perhaps you are reading _____'s statement.

Public Prosecutor: No this is your statement.

_____ : I did not say I went to Adore, we paid 20 Euros for our drinks. No I didn't say that.

Presiding Judge may I suggest to you to show his statement in the part that you contest and his signature.

...

Local Judge: In the statement at the Prosecutions Office at page 3 (citing), "I left the bar and went to the car, whereas _____ stayed in the bar to pay for the girls which we asked for and as far as I remember he told me that he paid 300 Euros" this is what you said in your statement.

_____ : These words you read the prosecutor.

International Judge: You are not allowed to do this, just answer the questions

_____ : I did not say these words.

Local Judge: "We did not choose these girls even though, then went to Adora....." questions was "did you paid anything". Answer was "I don't know they didn't ask me for ID either". Did you go to hotel Adora or not?

_____ : I was not there.

Local Judge: You said we stayed in Adora until 1.35am.

_____ : I did not say this.

Local Judge: Did you give the statement in Albanian?

_____ : Yes in Albanian.

Local Judge: Have you heard what was being written in the minutes.

_____ : Its different what you hear and what is written.

Local Judge: So the minutes are different?

_____ : Correct, it is not identical to what I said.

Local Judge: Did you hold the minutes in your hand to sign it?

: Yes I stood up and went to the table and signed it. I did not actually hold it and it was not given to me where I was sitting.

Local Judge: Did any body prohibit you from reading it?

It didn't cross my mind to read what I just said.

1. f) in his testimony given in front of the panel stated that he had gone to Macuba club with his friend to have a drink. They were served by a woman with whom he had a chat, but he couldn't remember what happened afterwards since he was drunk. Three days later he went there again alone and spoke to the same woman, they went to town and later to a hotel, she asked money from him and he gave her the money. One week after he gave the statement to the prosecutor, someone called him on the phone and threatened him because of the Thaqi case. From the statement given by the witness to the police during the investigation, it appears that he went to Makuba the first time on 6.11.2007 together with and the second time ten days later. During the examination the witness was confronted many times with his previous statement given to the police (minutes of 4.2.2009):

Local Judge: Where did you go with this girl?

: We went downtown then in hotel; do not know in which hotel.

Local Judge: Where was this hotel?

: I do not know.

International Judge: On the first or the second time?

: Second.

Local Judge: Who paid for the hotel?

: Myself.

Local Judge: You made another statement or do you want me to remind that to you?

: I do not know.

Local Judge: I gave 200 Euros and she told me to go to Hotel Adora and when I went to the hotel I informed them that I came from Makuba and the receptionist gave me the keys and I did not pay the money in the hotel. Who booked the room? Answer: owners of Makuba. Is this true?

... : No. I was in the hotel with the girl.

Local Judge: You told Public Prosecutor that the girl had to ask for permission from her boss. Is this true?

... : No she called me.

Local Judge: You identified the boss by the picture and you said it was Sadik Thaqi. Is it true?

... : No.

Local Judge: Has anyone threatened you after you gave the statement to the Public Prosecutor?

... : No.

Local Judge: A week after the statement given to the Public Prosecutor someone gave me a call at 19hrs and 20 minutes with no number and said that what you stated and what you said about some people you have no other choice, you either return where you came from or otherwise. Did someone threaten you on the phone?

... : Yes.

Local Judge: Do you know who threatened you?

... : No.

International Judge: Can you explain to the panel, why there are so many differences between the previous statements and the one being given to us? Because in front of the Public Prosecutor you said in the second time, before going with the girl, you asked for permission from her boss. Why are you denying this?

You know that you are obliged to tell the truth and you know that lying is criminal offence. Did you remember better before or do you remember better now?

... : Look, what I remember and know now; in that bar I was twice the first time with my friend and the second I was alone.

International Judge: So you do not remember if you asked for permission to go out with the girl?

... : I do not remember.

International Judge: So you can't remember.

I can't remember because I have not spoken to the boss.

International Judge: One thing is to say I can remember what happened and another thing is to say that that specific thing did not happen. So, I am asking you again, do you remember or not?

No.

International Judge: When you were heard in front of the Public Prosecutor you remembered far better than now and you said that before going out with the girl, I am reading, I am at the page 3, given to the Public Prosecutor on 21st of April, I was asked if she wanted to come with me and she said that she had to ask her boss about that.

: She spoke to her boss; I did not speak to her boss.

International Judge: I am saying that you told the Public Prosecutor that she asked the boss.

: To make things clear, I spoke directly to the girl I do not know about the boss.

International Judge: You don't know or you do not remember?

: I do not know.

International Judge: I am confronting you with the Article 364 because in this statement you said that she had to ask her boss.

Is it clear what you said to the Public Prosecutor?

: I repeat all the information that in my statement are: I went there twice.

International Judge: This is not my question; I am saying that you said different things in the previous statement.

I do not know if she asked the boss.

International Judge: Why did you then, tell Public Prosecutor, that she asked her boss?

I do not know that I said that.

International Judge: Is it likely that you remembered better in front of Public Prosecutor rather than now?

: I remember better now.

...
Presiding Judge: It is not true because before the Public Prosecutor you said that this girl asked for the permission from her boss and now you are saying that you can not remember. These are two different things.

: I do not know if she asked her boss or not.

Presiding Judge: In this moment your answer is I do not know but you can not tell us that what you said to the Public Prosecutor and what you are saying now are the same. They are not the same. The two statements are the same.

I can say that I was there in that bar. I was asked by the police and Public Prosecutor and I answered, I can do that today as well. I did not write that statement.

International Judge: Before going out on the second time with this girl did you text someone?

That woman gave me a missed call and I texted her.

International Judge: I confront you with the previous statement at page 3, that you gave to the Public Prosecutor on the 21st of April 2007: before going there, I sent a message at number 585 765 which number I got from . . . and this number that I wrote was not returned to me. Are you denying also this circumstance?

Yes. I sent this sms.

International Judge: Did . . . give you the number?

: Yes.

International Judge: About this phone number, I'm not expecting you to know them by heart but what you declared that to the Public Prosecutor. Is it correct?

: I do not remember what I said.

International Judge: When I read your declaration, when I read your statement. I'm interested in the number to which you sent the sms.

Can't remember.

International Judge: You said to the Public Prosecutor the number, now do you stand by to this part of the statement of this part of the number?

: I do not understand.

International Judge: When you answered to the Public Prosecutor, you told her the number. So, at that time, you did remember the number I suppose?

: When I was in the front of Public Prosecutor, the Public Prosecutor gave me the number and asked me if the number was sent to you and I checked my phone and I confirmed it.

International Judge: Okay. So, this is how it went regarding this number?

The Public Prosecutor showed me the number.

International Judge: I am talking about the first time in the hotel Adora. Were you alone or with your friend?

: I can't remember. I think I was in Makuba bar. I remember going to the toilet but afterwards I can't recall anything, just waking up in the hotel.

International Judge: Again I am at page 2, when you left Makuba, where did you go because you said that: we left Makuba and went in town to drink coffee and told me to go to Xerx, in hotel Adora and then they are going to bring us females and when we went there the receptionist gave us the room keys and around 1.15 a women entered my room.

Now that I have refreshed your memory, do you remember better?

: No.

International Judge: So, you think that what you stated in front of Public Prosecutor was the truth?

: I have been summoned here to give a statement. I remember everything that I said.

International Judge: So you are standing by to all the statement that you gave to Public Prosecutor?

: I am saying again that I was there on the first time with my friend, and when I woke up I found myself in the hotel.

International Judge: Where? In Macuba, Adora or where? With.

: In Macuba and the rest I can't recall.

International Judge: In front of Public Prosecutor you said that you were together with at Makuba, did you lie did you tell the truth?

: I do not remember.

International Judge: What don't you remember, that you said the truth?

... : *I can't remember.*

International Judge: I can tell you what you said in front of Public Prosecutor. You declared that you were together with your friend. ... at hotel Adora. Did you tell the truth or not?

... : *No.*

International Judge: No, what?

... : *I did not say the truth.*

International Judge: So you lied in front of the Public Prosecutor?

... : *I do not know and I do not remember.*

1. g) ! ..., in his testimony given in front of the panel, stated that on that night he was in the hotel Pashtrik during the evening and afterwards he went to this club by chance. Inside there were waitresses serving and he liked one of them and asked another girl whether he can spend the night with the one he liked. He was told that he had to pay 100 euros for the woman and he agreed. He gave the money to the bartender and was told to go to the hotel by the girl he gave the money. He went to the hotel Amsterdam and waited until the girl came and had sex with her. He paid 30 euro's for the hotel, but he didn't leave any documents, since he had none with himself. During the examination he recognized in a picture ... as the girl who he paid for her sexual services (minutes of 19.2.04, pag. 4). From the statement given to the police during the investigation, it results that he went to the club on 30.1.2007.

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

2. a) Documentary evidence and reports

During the main trial, the following documents were read as evidence:

- Report regarding the content of text messages;
- Medical Report nr. 1059 dated 31.01.2008 of ...
- Record of the names of clients in Adora Motel from 01.01.2008 to 31.01.2008
- Certificate of temporary seizure of Sadik Thaqi's items dated 31.01.2008;
- Certificate of temporary seizure of ... items dated 31.01.2008;

- Certificate of temporary seizure of [redacted] items dated 31.01.2008;
- Transcriptions of the interceptions taken from the CD embedded in the case file;
- Interoffice Memorandum dated 19.12.2007;
- Information on the financial Western Transactions made in The Financial Union Office in Pristina dated n. 29.2.2008, n. 84;
- Record of the search of a flat and persons dated 31.1.08;
- Diagram of the different cash transfer;
- Registration Certificate of Makuba Restaurant dated 17.10.2005;
- Record of registration of the individual business company dated 29.10.2003;
- Record of a new registration of the individual business company dated 29.10.2003;
- Power of attorney dated 11.3.2004;
- Power of attorney dated 13.11.2003;
- Employments contracts;
- Summary report dated 6.5.2008 on finance investigation;
- Criminal Report dated 2.2.2008;
- Interoffice Memorandum dated 16.8.2007;

2. b) Statements of injured parties and witnesses

Pursuant to the KCCP, Art. 368, par. 1, subpar. 1, the following statements were read out as evidence during the main trial, since the appearance before the court of the witnesses was impossible. In fact as to the injured parties their current whereabouts were not known and, as to the witness [redacted], the police report stated that he was currently working somewhere in Iran as professional football player.

Statement of [redacted] given to the Prosecutor on 04.03.2008.

She stated that she had come to Kosovo on June 2004 and that she had been invited by a friend named [redacted] who had been already in Kosovo. It was the girl named [redacted] that explained to [redacted] the job that she had to perform in 'Alaska' club. The work contract was sent to her through [redacted] by the manager of the club. On the contract it was emphasized the type of job (waitress), the monthly payment (150 € plus the tips from the drinks). The employer, according to the contract, was Lulzim Thaqi.

When she arrived in Kosovo she was awaited by Lulzim Thaqi at the airport and they went directly to bar Alaska. In the bar she used to work as a stripper and her working hours were from 19:00 until 00:00, afterwards she was free and was never asked by Lulzim to give sexual services to the clients. In the bar, except for Lulzim that was the owner, there was Shqiprim Uka that worked as a bartender and other girls who worked during the day as waitresses and during the night as strippers.

She used to send money to Moldavia to her sister [redacted] to her brother [redacted] and to her friend [redacted], but she denied she had sent an amount of 7500 €.

During the time she worked at the bar, she hanged out with a person from Tirana named . She met him in the bar Macuba, when it was run by Sadik Thaqi. She used to go out with him after the working hours and was not obliged to ask her boss for the permission. She was never threatened, scared or forced to do anything against her will; if she ever asked for permission from her boss to go out of town, she did it as an expression of respect.

Statement of . given to the Prosecutor on 22.02.2008.

She stated that she had come to Kosovo on 28.11.2005, through whose surname she did not know. She met her while she visited her father, since he was a priest and she used to consult him. She offered her to go either to Cyprus or to Kosovo. She was told that she would work in a restaurant named VALA, that the working hours would be from 10:00 to 17:00 and that her salary would be a percentage of the drinks taken by the clients. In the job contract she received by fax in Moldova, it was written that her salary was 250 €.

When she arrived in Kosovo she was waited at the airport by Sadik and another person who drove the car, and they went directly to the restaurant Vala. During the time she worked there, Sadik was the owner and there were also security employees, the bartender and 8 – 10 girls.

She stated that she met Lulzim when started seeing Shqiprim, since they were related.

During the time she worked at the club she was free only for two hours a day, which was usually used for shopping and, once a week, they could go wherever she wanted, also out of town. She was never told to give sexual services to the clients. On one occasion, she asked Sadik if she could go out with a person named and she was allowed since this person spent much money in this bar and she would get a profit from it.

She used to go to hotel Adora and Evropa with . They went there with a taxi, sometimes Sadik would drive them there and sometimes with the car of . When Sadik would drive them, he would go back and pick them up later on. Sometimes there would be 2 or 3 girls going with this person because he liked to spend money, while Sadik would drive them to the hotel.

In the bar there was Shqiprim who helped Sadik organizing the work, also and , who always kept the cash.

When she went to Moldova Shqiprim send her money for travel expenses.

She was completely free to go out with anybody and sometimes she would ask Sadik where she can buy condoms for protection. She used to go out with other people in order to make Shqiprim jealous and for her pleasure, but she wasn't forced by anybody.

Statement of . given to the Prosecutor on 22.02.2008.

She stated that she had arrived in Kosovo four years ago. She asked a friend of her, named , if she could come to Kosovo and the latter asked her boss, who said that she could come if she liked. The contract was sent to her via fax just for her to read it, but it was not signed and when she came to Kosovo she found out that her boss was Lulzim.

In the beginning she worked as a waitress and then later she started working as a dancer as well. She worked until 12:00 pm, and afterwards she was free to do whatever she wanted, but she needed to inform her boss whether she was going to be late and where she was going, but just for safety reasons.

When she started working her boss was Lulzim and the name of the restaurant was Vala and the bar-café's name was Alaska. Later Lulzim asked her if she wanted to work in another bar and have another boss or if she wanted to go home to Moldova. She agreed to change the boss and then the bar was named Makuba, they received new contracts and the new boss became Sadik, then Lulzim rarely visited the club, only when someone of them used to have birthday or some other occasions.

When she would go out with somebody and they would give her money, they did so just to help her and not to pay her. She was also free to go out or leave for Moldova whenever she wanted.

Statement of _____ given to the Prosecutor on 04.03.2008.

She stated that she had come to Kosovo in March 2006 to work as a waitress, invited by her sister who was already in Kosovo. When she arrived at Prishtina Airport she was waited by Sadik and _____

In the club where she worked, there was also Shqiprim working as a bartender. She knew Lulzim through other girls who said that he would be the future chief of the bar. In the bar she used to have drinks and sit with guests, while, after 12:00 pm, she was free to go out with the guests if she wished so.

She lived in the bar where she worked, but, on some occasions, it happened that she slept in a hotel and when she did so, she informed Sadik only for a matter of respect, but she was not obliged to do so.

When she was arrested she was in Hotel Adora. She went there by taxi, while her friend _____ and her boyfriend, together with another friend, whose name she did not know, were waiting for her.

She remarked that she did not consider herself as a victim.

Statements of _____ given to the Police and given to the Prosecutor on 29.04.2008.

On December 2007 he was in Gjakova to sign a contract with a football team of "Vllaznimi". After signing the contract he went to club Macuba together with his friend named _____ and the brother of the president of the football team, _____ who, after speaking to a person in the bar, told them that if they wanted any girl they could pick them up. _____ chose _____ while _____ chose another girl and then _____ told them to go to hotel Adora and to wait for the girls. They went to the hotel and the girls arrived at approximately 00:30 hrs, but he did not see who took them. He had sexual intercourse with _____ and the following morning, at 07:15 hrs, she left the hotel. On the second occasion he went there with another friend named _____ and asked the boss of the bar to have sex with _____. He replied that there would be no problem but

he had to pay 120 euros. When he paid the money the boss told him to go to Hotel Adora and wait for the girl. _____ went to the hotel, paid for the room and, after some time, _____ arrived.

The witness gave a second statement to the Prosecutor repeating the same version he already stated to the police. In addition he was asked to identify the defendants Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka in a photo, but he could not identify them.

2.c). Statements of the defendant which have been read out

- Statement of the defendant Shqiprim Uka given to the police, dated 01.02.2008;

In his statement the defendant affirmed that on 2005, one day after Lulzim Thaqi had been released from prison, a job was offered to him by the latter; the offer was for a job as a bartender in Club Alaska, for a salary of 200 € and working hours from 12:00 until 00:00. He agreed and started working on 25.06.2005; also Sadik was working in the club and he would stay mostly in the bar and took care of it. Afterwards, 2 or 3 months later, the name of the bar was changed from Alaska to Macuba. When he started working, there were 14 girls from Moldova working there, aged 21 – 25 years. Some of the girls were working as dancers in the poles and some others as waitresses. The dancers used to dance wearing their underwear. Some of the girls were working in the restaurant during the day until 16:00 and after 19:00 all of them would go down in the club and work there.

He worked there longer than one year and a half and earned 50 € a week.

The girls working for Lulzim and Sadik were free to go out whenever they wanted, but some of the girls were restricted because they would get drunk and create problems in town. He stated that he had no knowledge whether the girls were forced to have sexual relations with clients, but he pointed out that some of the girls had their boyfriends.

He said that Sadik once had asked him for his ID card in order to send some money to _____ in Moldova and when he had returned his ID card, Sadik had told him that he sent 500 €. On one other occasion Shqiprim sent money to his girlfriend _____ in an amount of 700 €. He denied to have sent money to _____ on three other occasions for an amount of 2000 € on 18.08.2007, an amount of 500 € on 31.08.2007 and an amount of 1500 € on 22.09.2007 when he was confronted by the police officers on the point.

During the time he worked in Makuba the owner was Sadik, but when Sadik was not around he would ask Lulzim for permission if he wanted to drink a beer or go home.

As to the text message sent from his telephone on 27.8.2007 *"I took the money from them. 100 per. Reserve the rooms. Ok you will have to pay the hotel"* he denied to have sent such a message since he did not dare to speak for these things, as Sadik had told him that he had his own job to deal with.

Furthermore, in the interview he was asked by the police regarding several text messages he sent to _____ in which he asked the same question: "who is your client?". The defendant replied that by the word "client", he meant a customer who asked a girl to sit with him and pays 100 € or 200 € for the drinks and if the girl wanted to they could leave the club and go to a hotel.

- Statement of the defendant Shqiprim Uka given to the Prosecutors Office, dated 31.03.2008.

In his statement the defendant confirmed that he had started working in Makuba as a bartender, two and a half years ago; the club's manager was Sadik Thaqi. He worked in two shifts, from 12:00 until 17:00 and from 19:00 until 00:00 for a salary of 200 €. He worked there only with Sadik, while Lulzim visited the bar only as a guest, more often during the night. According to Shqiprim, the property where the bar was belonged to Lulzim's father, Sahit Thaqi, while the firm was in Sadik's name.

In the club, the number of girls working there varied from 6, 8 up to 14. The girls had to inform Lulzim and Sadik to go out when they wanted, since previously when they went out they made problems, they got drunk and would not come back for 2 or 3 days.

His girlfriend was _____ who he brought her to Sadik in Kosovo on 2006, and paid the trip ticket for her in an amount of 700 €. He also sent often money to Moldova to Lulzim's girlfriend _____ through Western Union, by Lulzim's request. The amount of money he sent varies from 500 €, 300 €, 200 € and also 2000 €. He admitted that he owned a Nokia phone the number of which is 044 432 235.

He used to ask permission from Lulzim if he wanted to drink a beer, since he is his uncle and takes care of him.

On further questions he exercised his right to remain silence.

- Statement of the defendant Sadik Thaqi given to the Prosecutors Office dated 14.03.2008.

The defendant stated that he had opened a restaurant named Macuba in 2005. The restaurant was taken over from his brother's son Lulzim Thaqi. In 2003 he had another restaurant named "Arditi". He paid a rent of 300 euro's a month for the bar Macuba. In the bar together with him there were Shqiprim Uka and _____ working as bartenders and six female employees. Almost all of the women that were working in his club were already in Kosovo, except for _____ and _____, who came after he took over the club. _____ and _____ came to Kosovo through him, since _____

_____s sister was already working in Kosovo and they informed each other. He sent the contracts for them via fax to Moldova, according to which the monthly salary was 150 euro's, for the work as waitresses and dancers. The travel expenses were covered by him in an amount of 500-600 € for each ticket. At the airport, he was waiting for the girls.

Many guests visited the bar, mainly in the evening. When they wanted they could ask some of the girls to dance. In the bar he only controlled the situation, supplies the bar and goes out in the clubs with the girls

He used to pay the girls cash up front or later and took care of the money. During the day the waitresses kept the money, but in the evening they gave the money to him along with the register. The girls were free to leave the club, but during the working hours they needed to ask for his permission. But also when they wanted to go for coffee or to a hairdresser they had to inform Sadik.

He admitted that on some occasions Lulzim sent money in his name to Moldova, but no other people that worked in the bar did so.

He denied to have sent women in the hotels for sexual services.

He admitted that he owned a phone number 044 386 666. Confronted by the prosecutor regarding a text message sent by his number on 25.06.2007 at 00:03, ("*Marsha is with a client in Amsterdam. The money is with . . .*"), he did not recall the message.

Furthermore, he was confronted with another message sent on 28.07.2007 from the number 044 432 235 belonging to Shqiprim Uka ("*I got the money from them, 100 Euros each, reserve the rooms and you will pay for the hotel*") but he denied to have received the message.

Again he was confronted by the prosecutor regarding another message sent to him ("*If . . . is free, bring her to Adora hotel. On my way back from Prizren, I'll wait for her. Once I get there, let me know*") but he denied to have received such a message.

The defendant stated also that, during the time he had managed the bar, he used to send money to Moldova only to the women who were working for him in the bar. He also added that all of the employees working in his bar had an employment contract.

3. Statements of the accused given to the Panel

In the main trial two of the defendants, namely Lulzim THAQI and Ali XERXA gave their testimonies, while two others, Sadik THAQI and Shqiprim UKA exercised their right to remain silent therefore their previous statements were read out.

1. Lulzim Thaqi gave his statement in front of the court on 24 February 2009. He stated that he had started his business on 2003, opening Restaurant VALA together with his girlfriend . . . plus a friend and the sister of the latter, while his brother . . . opened the club ALASKA. After his brother passed away as a result of a heart attack, he took over the club. One year after, he had to serve four months in prison because of breaking traffic rules, after that he closed down the club. The girls that were working there expressed their will to work at his uncle's Sadik place, in the club named Macuba. He admitted having sent money to Moldova, but he did so as the girls asked him to do so, because they were afraid of carrying big amount of money with themselves when traveling to Moldova.

He denied having carried out the activity of procurer.

During the examination he was confronted by the Prosecutor regarding the fact that he had paid the travel expenses for all the women who were working with him and that he had often booked rooms at hotel Amsterdam (minutes of 24.2.09)

Public Prosecutor: Who was at the airport waiting for the girls?

Lulzim Thaqi: When are you referring to?

Public Prosecutor: The time you were the owner of Alsaka.

Lulzim Thaqi: Sometimes I went there to wait for them. Other times girls themselves went there to wait for their sisters or cousins.

Public Prosecutor: Who paid their travels?

Lulzim Thaqi: Sometimes I did the payment, but also they paid for their sisters, relatives, and cousins.

Public Prosecutor: Why did you state earlier that all of the girls who worked for you, why did you earlier state that "I made the payment of all the travels that the girls did"? I quote, "for all the girls I paid the travel expenses".

Presiding Judge: Can you tell us the date of that statement?

Public Prosecutor: 31st January 2008, before the police.

Presiding Judge: You read the statement?

Public Prosecutor: Yes.

Lulzim Thaqi: I don't know how many tickets I paid, but it is not true that I paid all of the tickets.

...

Public Prosecutor: Did you ever book any rooms?

Lulzim Thaqi: It might have happened once or twice when I went there with a friend of mine and again for myself and my friend.

Public Prosecutor: Were you, did you go, often to that place? Or did you make any reservations or bookings?

Lulzim Thaqi: 3 or 4 times, maximum 4 times.

Public Prosecutor: If you are saying 2 or 3 times can you recall the dates?

Lulzim Thaqi: I don't remember the dates.

Public Prosecutor: The booking, the reservations registered at Motel Dora, we have evidence of a considerable number of reservations made by you.

Lulzim Thaqi: What shall I say now?

Public Prosecutor: Did you do the reservations?

Lulzim Thaqi: I told you maximum 3 or 4 times.

Public Prosecutor: We have from the evidence the register book, 21st March 2007. The first reservation was that you booked the room number 5, can you remember?

Lulzim Thaqi: It was not booked, I just entered that room. I couldn't stay in the street I was there with my girl.

Public Prosecutor: Did you pay first? Can you remember how much?

Lulzim Thaqi: As far as I can remember the room was 30 Euros but we had also a few drinks so I paid for those too.

Public Prosecutor: On the 23rd March 2007, 2 days after, you booked room number 2. 23rd March 2007, room number 9 was booked. The 24th July 2007 and the 25th July two rooms. The 27th June you booked 3 rooms. Room numbers 7, 11 and 9. Why did you book three rooms for one night?

Judge Gianfranco Gallo: On the same day?

Public Prosecutor: Yes.

Lulzim Thaqi: It might have happened I went to that place with friends or my friend and each of us went to one room so I have a friend of mine and the girl who was here before the court the other day she has been dating my friend for 3 years now, we go out together and we all book rooms together.

Public Prosecutor: We have three same dates, the 10th January 2008, three rooms were booked. Rooms 14, 6 and 7. So every time you went to Motel Dora you were with friends?

Lulzim Thaqi: You have 3 occasions, you have 3 dates, when I was there with my friends. Each of us had his own room, but I couldn't stay in the street, I couldn't take the girl home.

Judge Gianfranco Gallo: Who were these friends, the names of them?

Lulzim Thaqi: I have disclosed one name while I was heard by the Public Prosecutor. I don't think it is reasonable to disclose others as they are married.

...

The defendant was also asked regarding his mobile numbers:

Public Prosecutor: You were also earlier asked about the telephone numbers during your statement at the prosecutor's office, and you admitted that telephone number 044 127

401, 044 829 797 and 044 433 394, you admitted these were your telephone numbers. Have you used them?

Lulzim Thaqi: The first I did use, 127 401, because it was mine personally. The second and third ones were the telephone numbers of the company and I used them as well as the other workers.

Public Prosecutor: From the text messages obtained by Court Order, these telephone numbers were mostly used by you. True?

Lulzim Thaqi: Perhaps also when someone did not have credit, he or she asked for my telephone.

Judge Gianfranco Gallo: "He" who?

Lulzim Thaqi: Sometimes when working at the market place someone asked and I gave my phone to them.

Judge Gianfranco Gallo: During the night too?

Lulzim Thaqi: Yes.

Judge Gianfranco Gallo: 24 hours a day, no rest for you?

Lulzim Thaqi: Yes there are guards there. When the shifts change there must always be a guard present.

2. Ali Xerxa gave his statement on 25 February 2009. He stated that he was the manager of the Western Union Office in the center of Gjakove, in the Hotel Pashtrik and that he had two employees. He explained what the procedure was in order to send money abroad: in particular he stressed out that usually it was not possible to send money on behalf of another person, but that sometimes he helped some people he knew very well, by lending them the money to be transferred. On some occasions he did so for Lulzim Thaqi, but he never transferred money if the sender was not present.

4. Additional documents submitted by the parties during the sessions of the main trial.

During the main trial, upon a request of the panel, the prosecutor submitted the following pieces of evidence which had been indicated in the indictment, but could not have been retrieved in the case file:

1. Medical report no 1059 of 31,01.08 for

2. Certificate of temporary seizure of Sadik Thaqi' items no 2008 DI 021 dated 31.01.08
3. Certificate dated 31.01.08 of items temporarily seized from the defendant
4. Certificate no 2008-DI-021 dated 31.01.08 of items seized from
5. Certificate no 2008-DI021 of House search and seizure of computers.
6. Record of the search of a flat and persons dated 31.01.08.
7. Order to release seized items dated 14 April 08.
8. Information on the financial Western Union transaction made in the financial Union Office in Pristina no 84 dared 29.02.08.
9. Record of registration of the individual business company or public partnership dated 29.10.03.
10. Record on new registration and amendments to the solo business company or public partnership dated 19.02.04.
11. Power of attorney no 988.2004 dated 11.03.04.
12. Pictures from page 288 to page 300 of the binder labeled police reports.
13. Translations of the transcriptions of the text messages.
14. Employment contracts of the women who worked in Makuba.

Furthermore, the court *ex officio* requested the criminal record of the defendants from the District Court of Peja and the Municipal Court of Gjakova. At the DC Peja there was no criminal record against the defendants, while from the MC Gjakova the following documents were retrieved:

- Copy of the Municipal Court of Gjakova judgment in the criminal case P.nr.650/03 against Lulzim Thaqi dated 07.03.2006.
- Copy of the Municipal Court of Gjakova judgment in the criminal case P.nr.256/06 against Sadik Thaqi dated 28.02.2007.

D. 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.

From the statement given by the witnesses heard during the main trial and during the investigative stage, from the telephone calls and the text messages intercepted it appears as undeniable that in Makuba Club, starting from 2007, women were hired for sexual services and that the money given for their sexual services was received by the people who run the club.

From the text messages and from the statements of Shqiprim Uka, given as read in the main trial, it emerged that, even though the formal manager of Makuba was Sadik Thaqi, Lulzim Thaqi was at least the co-owner, if not the real owner, of the club. It is worth

stressing out that even Shqiprim points out that when Sadik was not present he had to ask Lulzim for the permission to drink a beer or to leave the club.

The statements given during the investigation and the main trial by _____, clearly show that the customers of Makuba club could easily hire girls working inside the club in order to get sexual services. In particular, it must be said that when the witnesses have been confronted with their previous statements, it has always appeared that the statements given during the investigative stage (in which they admitted the hiring of girls for sexual services) were more reliable and accurate than the ones given during the main trial (in front of the court, likely due to the publicity of the main trial, many of the witnesses appeared to be embarrassed to admit they had had sex with prostitutes).

The real activity of procurers carried out by Lulzim and Sadik Thaqi, instead of club owners, emerges clearly from some text messages in which they are asked to provide girls giving sexual services in exchange of money. In some others text messages they exchange information whether the girls were busy or not, clearly in order to answer to requests of clients looking for girls giving sexual services.

As to the individuation of the owners of the telephone numbers, from the statements given during the main trial and during the investigation by the defendants, it results that the telephone numbers utilized by them were, respectively, 044127401, 044 829797, 044 433 394 (Lulzim Thaqi), 044386666 (Sadik Thaqi) and 044 432 235 (Shqiprim Uka).

The defendant Lulzim Thaqi also stated in his interview that the number 044893802 was utilized by _____

The following text messages are exemplary of the activity of procurers undertaken by Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka:

Date	Originator	Destination	Message
20/01/2008	44433394	44386666	Do not leave
21/06/2007	44386666	44127401	_____ and _____ are busy
25/06/2007	44386666	44127401	_____ is in hotel Amsterdam with a client let take off to _____
28/07/2007	44432235	44386666	I took the money from them. 100 per. Reserve the rooms. Ok you will have to _____

			pay the hotel and are busy
06/11/2007	44585767	44433394	
07/01/2008	44371935	44386666	Sadik what are you doing, are you ok, sadik I am the guy who is taking and what happened, the guy first told me that it is ok for the both then he said that only is free and no, let me know, bye
30/01/2008	44433394	44386666	Is any girl busy

Other text messages which clearly show which was the real activity performed in Makuba Club are the followings:

- the text message of 4.3.2007, sent at 2.18.37 from the telephone number 044 129 388 to the telephone number 044 127 401 (*I am +for+this+I am not+ giving+money+because+I did not+ have+sex at all+with+them+kaka*);
- the text message of 16.6.2007 sent at 22.34.47 from the telephone number 044 247 074 to the telephone number 044/127-401 (*Xik can you bring me a girl I have one for I'll give you 50 because has terms with if you can do me this favor, tell me*); it must be stressed out that Xik is Lulzim's nickname;
- the text message of 29.1.2008, sent at 23.46 from the telephone number 044 386 666 to the telephone number 044 433 394 (*Get some rubbers*);
- the text message of 18.1.08, sent at 21.03 from the telephone number 044 220 994 to the telephone number 044 386 666 (*If is free. Bring her to Adora. On the way back from Prizren I will wait for you there. Inform me with sms. All the best*);
- the text message of 25.1.2008, sent at 21.08 from the telephone number 044 798 646 to the telephone number 044 386 666 (*Sadik if is free I would like to be with her tonight. I was in the bar until now. But I did not know if she is free. If she is free inform me. I will wait for you at that place*);
- the text message of 28.12.2007, sent at 20.04 from the telephone number 044 386 666 to the telephone number 044 433 394 (*is busy and said that the man from Peja will come*);

- the text message of 17.5.2007, sent at 01:19:36 from the telephone number 044/893-802 to the telephone number 044/127-401 (*Handsome if you did not go home can you come and take me and our clients have gone*).

The text messages (which all date back to 2007 and 2008) show that the statement given by Lulzim Thaqi is false when he says that he was not at all involved in the direction of the club Makuba.

Moreover, exemplary of the activity of Sadik is the telephone call between him and [redacted], on 14 October 2007, in which the role of Sadik as one of the persons managing the sexual services provided by the girls is undeniable. Even though stubbornly denied by the defendant Sadik Thaqi, no doubts can exist about the fact that one of the voices in the above mentioned telephone call is Sadik Thaqi's one, since one of the two persons speaking is clearly called Sadik and is utilizing the telephone belonging to Sadik Thaqi.

Further evidence against the defendants is provided by the statement of [redacted] in which it is clearly said that Sadik used to drive girls to the hotels where they had sex with the clients.

Finally no reliable or logical explanation which can lead to the conclusion that they were not carrying out the activity of procurers has been provided by the defendants in their statements.

On the contrary, no evidence has been given that Lulzim Thaqi and Sadik Thaqi were involved in a criminal activity before the year 2007, since the Public Prosecutor was only able to demonstrate that, before the year 2007, Lulzim and Sadik ran two clubs, namely Vala and Makuba and that in those bars some women worked as strippers and lap dancers. As to the period before 2007, no evidence has been given that the women working in the two clubs were also available for sexual services.

And of course, it cannot be simply inferred that, since the real activity carried out by the defendants from 2007 until the arrest was the activity of procurers, also for the period preceding the year 2007 they had performed the same activity.

It also appears from the testimonies and the statements given by the injured parties and from their behavior in the main trial that the women were not obliged or somehow forced to work as prostitutes and that they could freely go back to their country. In fact no evidence has been provided by the prosecutor that, for instance, their passports were kept by the managers of the club. Therefore, the factual reconstruction of the events leads to the conclusion that no constriction was exerted by the accused on the women to make them work as prostitutes.

Furthermore, from the same statements given by the defendants, it emerges that they sent money to Moldova in order to pay for the travel expenses of the girls to be hired as prostitutes in Makuba and that the money was given back by the girls, once they had arrived in Kosovo and had started working and earning some money.

These statements are utterly confirmed by the financial data acquired during the investigation which state that the above mentioned defendants sent money to Moldova in the years 2007 and 2008 for a total amount of 25.190 Euros (see the financial data at pages from 232 to 235 of the court case file). Of these 25.190 Euros, just 5220 were sent by Shqiprim Uka and therefore he must be considered liable only for that amount, since there is no evidence that he participated in sending other sums of money to Moldova.

It appears from the above mentioned declaration of the defendants Sadik and Lulzim Thaqi that the money was sent and transferred with the purpose of promoting and facilitating the activity of procurers of women for sexual services, *id est* in order to make the women come to Kosovo from Moldova, women who were supposed to work as waitresses, but who were hired by the two Thaqis as prostitutes. The factual findings, notwithstanding the allegations of the Prosecutor, demonstrates that only the transfers made in 2007 and 2008 had the purpose of facilitating the activity of procurers carried out by Lulzim and Sadik Thaqi (in fact, as it was pointed out before, no evidence has emerged that, before 2007, the defendants had committed the criminal acts they were charged with).

As to the illegal origin of the money sent to Moldova, it must be stressed out that through the financial data acquired for the years 2006, 2007 and 2008 no other sources of income, apart from Makuba club, have been found in relation to the defendants. It is therefore undeniable that the money sent to Moldova was actually the proceeds of the earnings gained through Makuba club and therefore, since the main activity of the bar was the offer of sexual services, gained through the activity of procurers undertaken by Lulzim and Sadik Thaqi and by their accomplice Shqiprim Uka.

As to the position of Ali Xerxa, it must be said that no decisive evidence has emerged during the entire trial that he was somehow aware that the money sent to Moldova through his agency of Western Union in Djakova was the proceed of a criminal activity. Even though there are some discrepancies in the statement given by the defendant in front of the court and even though the procedure followed by the defendant in relation to the transfers made in the name of Lulzim Thaqi appears, on some occasions, not in compliance with the internal rules of Western Union, the fact that he was aware of the illegal provenience of the money utilized for the transfers has not been proven at all. Therefore, due to the structure of the criminal offence of Money Laundering, without this knowledge regarding the provenience of the money, the defendant Xerxa cannot be considered accountable for his conduct.

As to the position of Shqiprim Uka, his involvement in the activity of procurers run by Sadik and Lulzim is evident and proven: in this regard, the text message sent by Shqiprim to Sadik on 28.7.2007, in which the former informs the latter that he took the money from the clients and therefore that the rooms in the hotel could be booked, explains without any possible doubt the role of accomplice carried out by Shqiprim Uka.

The fact that Shqiprim Uka was not a mere bartender, but an accomplice of the two Thaqis fully involved in their activity of procurers is also stated by _____ who has clearly stated that Shqiprim used to help the manger to organize the work.

Since the activity of Lulzim and Sadik was the activity of procurers (and not of people who were trafficking in human beings) and since the conduct of Shqiprim was just ancillary to the conduct of the two Thaqis, the evidence emerged against the latter indicates that he just committed the criminal offence of Facilitating Prostitution. Therefore, pursuant to the KCCP, Article 386, since the court is not bound by the legal qualification of the act given by the prosecutor, in reference to Shqiprim Uka the charge of *Trafficking in Persons* must be reclassified as *Facilitating Prostitution*.

2. Motions of the Parties

The defense counsels of the defendants have repeatedly asked that proofs provided thorough application of covert measures were declared inadmissible and that the witnesses' statements collected during the pre-trial phase were declared unacceptable.

In particular the defense counsels pointed out the following:

1. according to the article 264 paragraph 3 KCCP, the judge who conducts the proceedings for the confirmation of the indictment shall review, before the indictment becomes final, the admissibility of the collected material ex officio. Against his ruling it is possible to submit an appeal to a three judge panel; in this case the confirmation judge did not issue to the defense counsels a ruling on this matter and it was not made possible for them the right to appeal;
2. the confirmation judge states in his reasoning that reports referring to articles 259, 260 and 262 KCCP and regarding the covert measures were not found in the court file, therefore interceptions of telephone were not conducted in agreement with law; the defense counsel also asks that all the pieces of evidence related to surveillance should be ruled out as inadmissible evidence, since there was not an order for surveillance issued by the prosecutor;

Furthermore the defense counsels asked repeatedly for two expertise:

- a) an expertise in order to analyze the authenticity of telephone and message surveillance, sustaining that, according to OSCE pieces of information, from October 2006 to January 2007, due to technical problems, international prosecutors could not intercept phone calls;
- b) a financial expertise, sustaining that the provision of the indictment related to the money transfer are "undefined, unclear, undecidedly";

Finally the defense counsels asked that all the statements given by the witnesses during the pre-trial phase were ruled out, because the witnesses were heard without the presence of the defendants and of their defense counsels.

Regarding these motions, the panel confirms the opinion, already expressed in the ruling issued in the hearing of 19.2.09 which is here reported:

"1. As the confirmation judge pointed out in his ruling of 16 September 2008 there is no the necessity to issue a separate ruling on the admissibility of evidence collected through covert measures.

Article 264.3 KCCP requires a written ruling on this issue, ruling which can be challenged by an appeal.

This article does not prohibit the issue of a ruling within the more general decision on the confirmation of the indictment.

Article 306.3 prescribes a separate ruling only in case some pieces of evidence are declared inadmissible.

This means that, if all pieces of evidence are recognized as admissible, the judge is no obliged to declare it with a separate ruling.

This is confirmed also by the letter of the Article 264.3 which identifies the Judge who must review the admissibility of evidence collected through covert measures in the judge "who conducts the proceedings on the confirmation of the indictment": that means the same judge for two rulings, which are complementary to each other: admissibility of evidence and confirmation of the indictment.

The conclusion is that the ruling of the confirmation judge satisfied at the same time, as to the form, both provisions of PCPCK that on the review of the admissibility of this kind of evidence (264) and that on the confirmation of the indictment.

Both of them could be challenged.

The defense counsel points out that he was not informed of the decision on the admissibility of the evidence (obtained through covert measures) and therefore could not appeal against it.

On the contrary the ruling related to article 264 PCPCK is clearly to be read in the more general ruling on the confirmation of the indictment.

It is worth noting that it is not up to the trial panel to assess whether the merits of the appeal filed against the ruling of the confirmation judge, appeal which contained some complaints regarding the evaluation of evidence, should have been examined by the three judge panel instead of a mere reject for procedural reasons.

However in this case no substantial violation of the rights of the defense can be found in the fact that the appeal of the defense counsel related to the assessment of evidence made by the confirmation judge could not have been properly considered by the three judge panel.

This is because the defense counsel has now the effective possibility to ask the trial panel to rule out evidence deemed inadmissible for the reasons stated in his appeal against the ruling issued by the confirmation judge pursuant article 264.3 PCPCK.

And this is exactly the content of the current motion of the defense in this case.

2. As to the reports on the implementation of covert measures, which, according to the PCPCK, Article 259.2 must be provided by the judicial police to the authorizing judicial officer, it must be noted that they are not present in the case file and therefore there is no

evidence that these reports were made by the police who implemented the covert measures.

The provision regarding the submission by the police of the 15 days report has the clear aim of allowing the authorizing judicial officer to check the implementation of the measure and its regularity on a time base.

But, once ascertained that there are no 15 days reports in the case file, it must be clarified which fate must be assigned to the pieces of evidence obtained through covert measures implemented without the submission of the 15 days reports.

It is clear that the lacking of the 15 days reports entails a violation of the provisions of the criminal procedure envisaged by the PCPCK, Article 259 par. 2. But it is necessary to assess which is the significance of this violation.

In fact, according to the PCPCK, Article 153 "evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when ... the law expressly so prescribe".

It must be noted that no provisions can be found which declare that, without the 15 days reports, evidence obtained through the covert measures shall be considered inadmissible. But, in order to evaluate the admissibility of evidence, also the provisions contained in the PCPCK, Article 403, must be taken in consideration. In fact, according to the par. 2 of the above mentioned article, in order to decide about the admissibility of evidence it must be checked whether a substantial violation of the provision of the criminal procedure occurred or not. And according to items 1) and 2) of the above mentioned paragraph 2, there is a substantial violation only if it was omitted to apply a provision of the present code or if the rights of the defense have been violated and this influenced or might have influenced the rendering of a lawful and proper judgment.

The provisions regarding the obligation to file the reports are related only to the executive phase of the covert measure.

This does not affect the legality of the ruling by which the pre-trial judge has granted the covert measure.

Bearing in mind that the scope of the 15 days report is to allow the authorizing judicial officer and thus the parties of the proceedings to check the implementation of the measure and its regularity, it does not appear that this violation of the procedure can violate the rights of the defense or hinder the rendering of a correct and fair judgment.

In fact in the case file, which is at disposal of the defense, it is possible to ascertain that just the telephone numbers subdued to a lawful order for covert measure were monitored and that the covert measures were implemented under the prescribed periods of time and as to the modalities with instruments which are in the legally possession of the Law Enforcement Agency.

Through the orders issued by the Pre-trial Judge and by the Prosecutor and through the conversation and text messages obtained the defense counsels had the possibility to check the lawfulness of the implementation of the covert measures.

Therefore it cannot be affirmed that the rights of the defense have been somehow violated and the evidence obtained through the covert measures of telephone interceptions and metering must be considered admissible evidence.

On the contrary, a different decision regarding the admissibility of evidence must be taken in relation to the pictures taken by the police who were monitoring some bars and hotels allegedly related to the investigation.

As to these pictures no order for surveillance can be found in the case file. The meaning of the covert measure of surveillance is explained in the PCPCK, ART. 256: surveillance is the monitoring, observing or recording of persons, of their movements or of their other activities by a duly authorized judicial police officer.

Since no order for surveillance was issued by the public prosecutor the pictures taken by the police during their activity of monitoring must be ruled out as inadmissible evidence.

3. As to the remarks proposed by the defense counsel related to the general admissibility of interceptions and to the impossibility of carrying out properly the covert measures during the period of time from October 2006 to January 2007, it must be observed that such remarks are indefinite, not related to the evidence of this case and therefore not acceptable.

4. As to the expertise aimed to ascertain who the actual users of the monitored telephones were, such an expertise is deemed by the trial panel useless in the present case. In fact the defendants Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka, in their interviews given to the prosecutor, have admitted that the telephone numbers utilized by them were, respectively, 044127401, 044 829797, 044 433 394 (Lulzim Thaqi), 044386666 (Sadik Thaqi) and 044 432 235 (Shqiprim Uka).

The defendant Lulzim Thaqi also stated in his interview that the number 044893802 was utilized by

The possibility that some other people were utilizing these telephone numbers must be excluded, because, in several text messages and telephone interceptions, are clearly indicated the names of Sadik or Lulzim or of nicknames that clearly trace back to them.

Also the content of the text messages is consistent with the statement given by the defendants regarding the fact that Lulzim, Sadik and Shqiprim had, at least, something to do with the bars involved in the investigations.

All these circumstances lead to the conclusions that the telephone numbers above mentioned, beyond reasonable doubt, belonged to the defendants and therefore that there is no need for a phonic expertise (it is worth noting that, in any case, the expertise would be useless in relation to the text messages).

5. As to the financial expertise required by the defense counsel, it must be observed that the financial data acquired by the prosecutor during the investigation explain thoroughly and accurately the dates of the money transfers, the amount of the money transferred, the destination of the money, who was the sender and who was the receiver and, therefore, there is no need for a further expertise which would be completely useless.

6. As already noticed by the confirmation judge, the rule about the hearing of witnesses during the pre-trial phase give to the prosecutor the simple faculty, without a correspondent obligation, to let defendant and defense counsel (of the defendant) be present to the act.

In this case this did not happen and no infringement of article 237 KCCP can be seen in this case.

As already pointed out in the ruling of this trial panel at the hearing of the 3 February 2009, the provisions of the articles 78 and following of the KCCP are in the interest of the injured party and not of the defendant, who has no interest to raise an issue if the representative of the injured party was or not invited to the pre-trial hearing when the injured party was interviewed by the prosecutor.

The admissibility of an evidence requires that the witness, heard by the prosecutor, must be interviewed (challenged) by the defendant or his defense counsel "during some stage of the criminal proceedings" (article 156.2 KCCP), what in this case happens at the main trial".

After the ruling of 19.2.09, the defense counsels raised new objections, but all the motions were rejected by the ruling issued in the hearing of the 24.2.09, which is reported hereby:

1. In his motion the defense counsel raises an objection to the admissibility of pieces of evidence obtained due to application of covert measures and technique of surveillance and investigations foreseen with Chapter XXIX of KCCP.

The defense counsel assumes that, according to the decision of the confirmation judge (page 14 of the decision 16 September 2008, Albanian version) the 15 days reports about the implementation of covert measure are not present in the case file and interceptions as aftermath are not been conducted in concord to the law.

According to the defense counsel, this statement of the confirmation judge had the dignity of a decision about the inadmissibility of these pieces of evidence, this decision became final (res iudicata) and the trial panel could not revoke or change it. Consequently, all these pieces of evidence should be rule out from the case file.

The trial panel does not share the point of view of the defense counsel.

The confirmation judge, (page 18 of his decision dated 16 September 2008), stating that the 15 days reports were missing in the case file and that, for this reason, the interception were not implemented in accordance with the law, added, however, that these reports could be produced by the Prosecutor till the main trial and assessed that, therefore, it was "too early to conclude to an unlawful execution of the telephone intercept".

The confirmation judge, therefore did not take any decision regarding the inadmissibility of these pieces of evidence.

Since no decision was taken on this point, subsequently, there cannot be any res iudicata.

As already noticed in the ruling of this trial panel of the 19 February 2009, the lack of the 15 days reports represents a mere irregularity in the implementation phase and not a cause of inadmissibility of the pieces of evidence obtained through the covert measure.

2. With his second objection the defense counsel recalls the content of an OSCE report about the technical problems faced by the International Prosecutors related to the implementation of telephone interception in the period from October 2006 to January 2007.

According to this report, on 31 October 2006, UNMIK Directorate of Organized Crimes informed international prosecutors about a "serious failure" of the system, without giving any details; thus, according to this report, the police were not able to implement the orders for interceptions and this flaw hindered the investigations: "Relevant authorities might have violated the local law by failing to maintain the interception system foreseen by provisions of KCCP, in regard of investigation techniques available to prosecutors".

As already noticed in the ruling dated 19 February 2009, such remarks are generic, indefinite, not related to the evidence of this case and therefore not acceptable.

Furthermore, it is worth noticing that the implementation of the covert measures in the present case (interception of the ongoing telephone calls and text messages) regards a period (from October to December 2007) which is different from the one taken in consideration in the objection raised by the defense counsel.

As to the text messages related to the period from December 2006 to July 2007, they were acquired through an order for metering aimed to collect the text messages already sent and received and therefore the abovementioned report, which points at the activity of interception, does not have any relevance on the point.

Secondly, it must be noted that the "technical problems", which might have created difficulties to the implementation of covert measures, are not specified at all.

It was already highlighted by this trial panel that "through the orders issued by the Pre-trial Judge and by the Prosecutor and through the conversation and text messages obtained the defense counsels had the possibility to check the lawfulness of the implementation of the covert measures" (ruling 19 February 2009 page 4).

No specific evidence indicates the existence, in the current case, of technical problems which can have affected the implementation of the covert measures. No proof has been provided by the defence in order to sustain the assumption that in this case the authorities "might" have violated the local law.

3. With the third objection the defense counsel challenges that covert and technique measure of surveillance and investigations can be deemed as evidence because they must be considered as investigative activities.

Furthermore, according to the defence counsel, this investigative activity had violated the right to the secrecy of correspondence, telephone and other communications, recognized by Kosovo Constitution Article 36 as invulnerable.

The trial panel shares the opinion expressed by the Confirmation Judge in his ruling (pages 16 and ff.) about the inexistence of a violation of the rights of the defendants through these covert measures and about the nature of evidence of the result of the covert measures. In fact, the KCCP, Article 263 and 264 explicitly consider the result of covert measure as pieces of evidence, while the KCCP, Article 152.2 recognizes the power of the court to assess any admissible evidence, which it deems to be relevant.

No motions have been presented by the injured party and by their representative.

E. LEGAL QUALIFICATION

1. Legal assessment of the facts by the Court

- **Count 1: Trafficking in Persons in Complicity**

The Article 139 of the KCCP, *Trafficking in Persons*, enlists a series of conducts which must be carried out by the accused in order to be convicted for the above mentioned crime.

Actually, throughout the entire proceeding, no evidence has been presented by the Public Prosecutor that the defendants Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka committed one of the actions envisaged by the KCCP, ART. 139: in fact, there is no evidence that the defendants threatened, used force or other form of coercion, or abducted the victims in order to use or procure sexual services.

In the same way, no evidence of fraud or of deception against the victims, directed to the purpose indicated in KCCP, ART. 139, has been provided by the Prosecutor.

Not even the reasoning given by the Pre Trial Judge, who recognized the abuse of power in the conducts of the defendants can be accepted on the point, since there is no evidence that the girls were originally hired in order to work as employees and that afterwards they were somehow pushed to work as prostitutes; in fact nothing can be found in the case file that can firmly lead to the conclusion that, only after their arrival in Kosovo, the victims realized that they had to work in Makuba also as prostitutes instead of working just as waitresses.

It is more than clear that the contracts of employment signed by the girls were a sort of coverage, in order to give the appearance that Makuba was a normal club and not a place where it was possible to hire women for sexual services, but it has not been proven that the victims had not been informed by the defendants, before signing the contract, that they were supposed to work also as prostitutes in Makuba.

Finally there is no evidence of a position of vulnerability of the victims: such a position could have been inferred if, for instance, it was emerged during the criminal proceeding that the victims could not leave Kosovo without the consent of their bosses or if the victims did not have the free use of their passports. But such situations, although alleged by the Prosecutor, have not been proven during the trial.

Regarding the position of Shprim Uka, as well as to Lulzim Thaqi and Sadik Thaqi, it cannot be said that he committed the crime of *Trafficking in Person*, because from the assessment of the pieces of evidenced above mentioned, it does not appear that he committed any of the conducts described in Article 139 of the CCK.

- **Count 2: Money Laundering**

The constituting elements of the criminal offence of *Money Laundering* (Section 11.2 of UNMIK Regulation No. 2004/2, Article 10.2 (d), as amended under UNMIK Regulation No. 2006/53), are amongst the others:

- the property is the proceeds of a crime;
- the knowledge or cause to know that the property is the proceeds of crime;
- the conversion or transfer of that property for one of the purposes mentioned in the law such as the promotion of the underlying criminal activity.

As to the first element, from all the pieces of evidence presented and taken in consideration during the trial, it is clear that all the money earned by Lulzim Thaqi, Sadik Thaqi and Shprim Uka through the Club Makuba must be considered as money earned exercising the activity of facilitating prostitution since in Makuba club the main activity carried out (better to say the only one, taken in consideration that the activity of serving drinks was merely accessory) was the activity of prostitution. Therefore it can be firmly inferred that all the money earned through that club must be considered as the proceeds of the crime of Facilitating Prostitution.

As to the second element, since the above mentioned defendants were involved in the activity of procurers, it is undeniable that they had the knowledge of the unlawful origin of the money.

As to the third element, the defendants have clearly admitted in their statements that they sent money to Moldova mostly in order to pay the tickets for the travel expenses of the girls to be hired (or already hired) as prostitutes in Makuba and that the money was given back by the girls once they arrived in Kosovo (or returned to Kosovo).

Therefore it has been proved that the money which was the proceed of crime was transferred with the purpose of promoting the underlying criminal activity, *id est* the activity of facilitating prostitution.

All the transfer to Moldova carried out by Lulzim Thaqi, Sadik Thaqi and Shprim Uka in the years 2007 and 2008 are analytically indicated at the pages from 232 to 235 of the court case file and give count of the sender, the receiver the destination, the amount, and the date on which the money was sent. Even though some amounts were sent by Lulzim and some others were sent by Sadik, it is pointless to distinguish among the various amounts, since they were co-managers of the club and they must be considered as responsible in complicity for all the money sent on their names to Moldova.

• Count 3: Facilitating Prostitution

The Article 201 of the KCCP, *Facilitating Prostitution*, 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, in order to be responsible for the above mentioned crime, must recruit, organize, assist another person or provide premises to another person for the purpose of prostitution. It is undisputed that, in order to commit the above mentioned criminal offence, not all the conducts enlisted in the Article 201 must be carried out, but that it is enough to perform only one of them.

In the present case, the assessment of the evidence presented during the main trial indicates beyond reasonable doubt that Lulzim Thaqi and Sadik Thaqi have willfully recruited, organized and provided premises, to at least some of the girls who were working in Makuba, for the purpose of prostitution.

It is as well undeniable that Shprim Uka aided the two Thaqis in their activity of procurers of the girls working in Makuba Club and has committed as a co-perpetrator at

least the conduct of organizing, assisting and providing premises to some of the girls working in Makuba for the purpose of prostitution. No evidence has emerged that the girls were forced or threatened in order to carry out their activity of prostitutes and therefore the legal qualification of the conduct of the defendants is to be classified under the first paragraph of the Article 201 of CCK (and not under the third paragraph).

F. 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 purposes, to prevent the offender from re-offending and to rehabilitate him.

In the present case, even though regarding the offence of Facilitating Prostitution also the punishment of a fine is envisaged, only the punishment of imprisonment can reach the above-mentioned double purpose. Of course, in relation to the criminal offence of Money Laundering the punishment shall be imprisonment plus a fine.

These were serious cases of criminal acts committed through several deeds and throughout more than one year. Regarding Lulzim Thaqi and Sadik Thaqi, the aggravating circumstances are overwhelming compared to the mitigating ones: in fact the perpetrators showed particular determination, persistence and ruthlessness in committing the criminal acts. Moreover the criminal acts required a certain preparation, planning and commitment and the degree of criminal responsibility of Sadik and Lulzim Thaqi must be considered as high since they were the persons who were running the Makuba club.

Finally both of them are recidivist convicted respectively for having committed the criminal offence of Failure to Avoid Danger, contrary to the PCCK, Art. 296, and the criminal offence of Grievous Bodily Harm, contrary to PCCK, Art. 154.

As to Shqiprim Uka it must be stressed out that his role was less important, since he was an accomplice with a lower position and therefore the degree of his criminal liability must be considered as lower. Moreover it is worth taking in consideration the age of the defendant who was just 21 when he committed the criminal offences.

Therefore, these two mitigating circumstances must be taken in consideration in order to calculate the punishment as to the defendant Shqiprim Uka.

By their deeds the accused committed two criminal acts. Pursuant to the rules of calculation of compounded sentence, the punishments shall be the followings:

as to Lulzim Thaqi:

the punishment for the criminal offence of *Money Laundering* is three years of imprisonment and a fine of 40.000 Euro;

the punishment for the criminal offence of *Facilitating Prostitution* is one year of imprisonment;

the aggregated punishment, due to the rules for punishment of concurrent criminal offences, is of three years and eight months of imprisonment and a fine of 40.000 Euros;

as to Sadik Thaqi:

Legal Remedy

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.

the punishment for the criminal offence of *Money Laundering* is three years of imprisonment and a fine of 40.000 Euro;

the punishment for the criminal offence of *Facilitating Prostitution* is one year of imprisonment;

the aggregated punishment, due to the rules for punishment of concurrent criminal offences, is three years and eight months of imprisonment and a fine of 40.000 Euros;

as to Shqiprim Uka:

the punishment for the criminal offence of *Money Laundering* is one year and eight months and a fine of 9.000 Euro;

the punishment for the criminal offence of *Facilitating Prostitution* is nine months of imprisonment;

the aggregated punishment, due to the rules for punishment of concurrent criminal offences, is two years of imprisonment and a fine of 9.000 Euros.

G. COSTS

The accused Lulzim Thaqi, Sadik Thaqi and Shqiprim Uka were pronounced guilty, they have to reimburse the costs of criminal proceedings with the exception of interpretation (KCCP, Article 102, Paragraph 1). Since they have been acquitted in relation to the criminal offence of Trafficking in Persons, they shall not be charged for the costs related to this charge if those costs can be determined separately from the total costs.

A separate ruling on the amount of the costs shall be rendered by the court when such data will be obtained.

H. COMPENSATION CLAIM

At the beginning of the main trial the injured parties have been reminded of the possibility to file a motion to realize a property claim within the criminal proceeding, pursuant to the KCCP, Article 355, Par. 2, but they declared that they did not intend to file a property claim.

Therefore the court did not have to make a specific decision on the issue.

Presiding Judge
Emilio Gatti

Reporting Judge
Gianfranco Gallo

Kosovo Judge
Elmaze Syka

Recording Clerk
Robert Abercrombie

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