

**DISTRICT COURT OF MITROVICA/MITROVICË**

**K. no. 81/08**

**26 March 2009**

**IN THE NAME OF THE PEOPLE**

**THE DISTRICT COURT OF MITROVICA/MITROVICË**, in the panel composed of EULEX Judge Angela Kaptein as Presiding Judge, EULEX Judges Christine Lindemann-Proetel and Hajnalka Karpati as panel members, assisted by the Recording Officer Francesco Caruso, in the criminal case against the accused:

**M.N. and V.J.**, both charged according to the Public Prosecutor Indictment KT. no. 378/07, filed with the District Court of Mitrovica/Mitrovicë on 11 June 2008 and orally amended by the EULEX Public Prosecutor during the Main Trial session on 4 March 2009, with the criminal offence of:

**Grave cases of robbery**, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) and article 23 of the Provisional Criminal Code of Kosovo (PCCK)

After having held the main trial hearings in public on 4, 5, 9, 11, 12, 25 and 26 March 2009, all in the presence of the accused **M.N.**, his Defense Counsel Rexhep Kaçaniku - unavailable on 4 March 2009 and replaced for that day and with the agreement of the accused by Mr. Miodrag Brkljać-, the accused **V.J.**, his Defence Counsel Ljubomir Pantović, the EULEX Public Prosecutor Emmanuelle Ducos, of the two injured parties, only Mr. V.V. appeared at the main trial, being present for the whole session on 4 March and during the morning session on 25 March 2009, after the panel's deliberation and voting held on 26 March 2009 based on Article 390 of PCCK, on 26 March 2009 pronounce in public and in the presence of the Accused, the Defense Counsels and the EULEX Public Prosecutor the following

**VERDICT**

The accused, **M.N.** aka "**K.**" and "**B.**", son of R.N. and S. Dj. , born on , in , Municipality, Kosovo S. , last permanent residence settlement , Municipality, Kosovo, not married, finished high school, private worker, of average economic status, in detention continuously since ;

And the accused, **V.J.** aka **C.**, son of M. J. and R. M. , born on , in N. P. , Serbia, Kosovo S. , last permanent residence , Municipality, Kosovo, married, father of daughter, primary school education, unemployed, of poor economic status, in detention continuously since

Are found

## **NOT GUILTY**

Because it has not been proven beyond reasonable doubt that, as alleged in the indictment, the two accused, **M.N.** and **V.J.**, as part of a 4 persons armed group and wearing masks, on between and hours entered the house of the two elderly injured parties, V. and D.V., and robbed, maltreated and threatened them.

Therefore the accused are acquitted for the criminal acts of:

**Grave cases of robbery**, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) and article 23 of the Provisional Criminal Code of Kosovo (PCCK)

Pursuant to article 103 PCCK, the costs of criminal proceedings under article 99 paragraph 2) subparagraph 1 to 5 PCCK, the necessary expenses of the defendant and the remuneration and necessary expenditures of the defence counsel shall be paid from the court budget.

## **REASONING**

Although none of the authorized parties announced the filing of an appeal within eight days after the announcement of the verdict, the panel will explain its verdict by a statement of grounds.

### **A. PROCEDURAL BACKGROUND**

#### **1. The Indictment**

On 11 June 2008 the District Prosecutor for Mitrovica/Mitrovicë Mr. Shyqyri Syla, filed the indictment KT no. 378/07 with the Registry of the District Court of Mitrovica/Mitrovicë. The indictment alleged that the defendants and others, in co-perpetration, had committed the criminal act of: grave case of robbery, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) of the Provisional Criminal Code of Kosovo (PCCK). According to the indictment, the criminal act was committed in the house of V. and D.V. in the of , , in the night between and .

The Confirmation Hearing pursuant to Article 314 of PCCK was held on 5 September 2008 and a decision confirming the above mentioned indictment was issued on 05 September 2008, no appeal against the decision was filed by the parties.

#### **2. The Amendments to the Indictment.**

On 4 March 2009 during the first trial session, the EULEX Public Prosecutor Emmanuelle Ducos, orally amended the indictment to renounce to two of the witnesses

originally proposed: N. and I.R., and to propose as additional evidence the documents listed under n. 29 and 45 of the police file, documents not yet listed in the indictment but already disclosed to the defence counsels.

## **COMPETENCE OF THE COURT**

### **1) Procedure and Competence of Mitrovica/Mitrovicë District Court**

The Provisional Criminal Procedure Code of Kosovo (PCPCK) entered into force on 6 April 2004. The indictment was filed on 11 June 2008, when the PCPCK was already effective. Therefore the transitional provision under Article 550 of PCPCK does not apply.

The Mitrovica/Mitrovicë District Court is the competent judicial body to hear this criminal proceeding.

Under article 23, 1-i) of the PCPCK, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the PCPCK, territorial jurisdiction is vested in the court within whose territory a crime is alleged to have been committed, that in this case is the \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, which is located within the territory over which the Mitrovica/Mitrovicë District court has jurisdiction.

Thus, the Mitrovica/Mitrovicë District Court is the competent judicial body to hear this criminal proceeding.

### **2) Composition of the Panel**

Pursuant to section 16.2 of the Law on Jurisdiction, Case Selection, Case Allocation of EULEX Judges and Prosecutors in Kosovo no. 03/L-53 (Law on Jurisdiction), the President of the Assembly of EULEX Judges decides, according to the Law on Jurisdiction, which cases handed over from UNMIK to EULEX pursuant to section 16.1 of the law on Jurisdiction fall within the jurisdiction and competence of the EULEX Judges. On 6 February, the President of the Assembly of EULEX Judges, Maria Giuliana Civinini, issued the decision n. JC/EJU/OPEJ/0233/mgc/09, retaining under the authority of the EULEX Judges in the District Court of Mitrovica/Mitrovicë the criminal case K.no. 81/08 pursuant to section 16.2 and 3.3 m) of the Law on Jurisdiction.

Pursuant to section 2.1 and in furtherance to the abovementioned decision, the international judges appointed to the District Court of Mitrovica/Mitrovicë- EULEX Judge Angela Kaptein as Presiding Judge, EULEX Judges Christine Lindemann-Proetel and Hajnalka Karpati- have jurisdiction over this criminal matter.

None of the parties objected to the composition of the panel.

### **3) The Main Session**

The main trial was open to the public, with sessions held on 4, 5, 9, 11, 12, 25 and 26 March 2009, when also the verdict was announced, all in the presence of the accused **M.N.**, his Defense Counsel Rexhep Kačaniku -unavailable on 4 March 2009 and replaced for that day and with the agreement of the accused by Mr. Miodrag Brkljać-, the accused **V.J.**, his Defence Counsel Ljubomir Pantović, the EULEX Public Prosecutor Emmanuelle Ducos and, of the two injured parties, only Mr. V.V. appeared at the main trial, being present for the whole session on 4 March and during the morning session on 25 March 2009.

In accordance with Article 15 of the PCPCK, and with the agreement of the parties, international interpreters translated court proceedings and all court documents relevant to the trial only into Serbian and English, as necessary.

### **SUMMARY AND EVALUATION OF THE EVIDENCE PRESENTED**

During the course of the proceedings at the main trial, the following witnesses were heard:

- (1) V. V. - Injured Party, 04 March 2009;
- (2) R.S. – 05 March 2009;
- (3) I.S. – 05 March 2009;
- (4) R.D. – 05 March 2009;
- (5) J.M. – 09 March 2009;
- (6) M.E. – 09 March 2009;
- (7) S.M. – 09 March 2009;
- (8) N.D. -11March 2009
- (9) V.D. – Injured Party, 12 March 2009;

During the course of the proceedings at the main trial the statements of the following witnesses and reports of police officer's were read out:

- (1) I.S. – 05 March 2009
- (2) A.V. - 12 March 2009.

### **Police Reports**

The Police reports n. 4, 5, 6, 7, 20, 21, 39, 46, 47, 48, 56, were challenged by the defence counsel Mr. Kačaniku who, during the trial hearing on 5 March 2009 submitted that this police reports should be declared inadmissible because they result from investigations that were not ordered by the Public Prosecutor and because, on a substantial level, such reports contain officers' opinions upon which the court cannot base its decision.

The Public Prosecutor submits that the reports are the result of investigative actions validly conducted by police during the preliminary phase of the investigation and such investigative actions may be conducted by police ex officio and are therefore admissible.

The panel finds that the police reports challenged by the defence counsel Kaçaniku should be considered admissible. According to the criminal procedure code police officers may, *ex officio*, conduct investigative acts for the purpose of gathering evidence and collect information which may be used in criminal proceedings (201 CPC). The CPC equally requires for the information gathered during investigation to be encompassed in one -or more- criminal reports (art. 207). For the purpose of the main trial, the criminal reports shall be considered among the documents which can be read pursuant to article 367 CPC.

As for the substantial part of the counsel objections, the law leaves to the Judges the freedom to determine the value to be attached to the single piece of evidence, and in the process of evaluating the evidence, judges are in the position to distinguish the objective findings from the subjective opinion of the reporting officers.

During the course of the proceedings of the main trial the following evidence was submitted by the International Public Prosecutor and entered into evidence:

- (1) Document n. 29 in the police file, registry of the controlled cars at the checkpoint on \_\_\_\_\_, submitted on 09 March 2009;
- (2) Document n. 45 list of controlled vehicle at the KFOR checkpoint on \_\_\_\_\_, submitted on 04 March 2009;
- (3) Statement of the suspect J., submitted on 11 March 2009;
- (4) Criminal Record of the accused N. submitted on 11 March 2009;
- (5) Police binder containing: police reports, statements, crime scene investigation, forensic reports and photographic evidence, collected pursuant to the criminal investigation n. \_\_\_\_\_.

V. V. testified on 04 March 2009, the first session of the main trial. He is one of the two injured parties and narrated how, on \_\_\_\_\_ minutes after the end of the evening news, four masked men wearing rubber gloves entered into his house through the front door, approached the witness in his kitchen where he was seating with his wife D., and two of them tied his hands with tape and immobilized him to the floor where witness received several kicks to his kidneys; eventually, witness was rolled over and his head was wrapped with tape when he finally lost consciousness.

When witness regained consciousness he saw his wife was tied up as well and a third perpetrator had placed a pistol in her mouth. Witness reacted to the threats and was again beaten losing consciousness two more times.

The four men left finally with the valuables they found, namely: about 6500 euro and about 10.000 dinars, a mobile phone and a hunting rifle. Witness eventually set himself free and reached his neighbour's house, who called the son Ivan who reported the incident to the police in \_\_\_\_\_ which reached the V.'s house 1-1,5 hours later.

During the whole time, the perpetrators were wearing masks and witness heard only that one of them was referred to by another as "R."

The panel notes that Witness could not describe, recognize or identify any of perpetrators.

V.D. testified on 12 March 2009; witness corroborated the account of the events given by her husband.                    young men wearing masks and leather gloves broke into their apartment on                    sometime after                    hrs, three of them immobilized her husband and beat him unconscious while she was also being hit several times with a pistol and ordered to hand over all the money while threatened with a pistol into her mouth.

One of the perpetrators searched the victims' house while the mistreatment was ongoing when, eventually, they found 6550 euro and 11.000 dinars and the perpetrators left taking away the money and a mobile phone. Eventually, witness's husband managed to inform their neighbour of what had happened to them and finally the police arrived.

Witness testified that she learned after the incident that, her husband's cousin S. V., had seen                    or                    masked men in their property fey days before the incident, but he scared them away. Witness precised that Mr. S. V. did not recognize any of them. Witness remembers noticing that the perpetrator wearing a t-shirt had yellow skin and that one of the perpetrators was referred to as "**R.**".

The panel notes that Witness could not further describe, identify or recognize any of the perpetrators.

R.S. testified on 05 March 2009; in his statement given to police on                    in police station, Witness stated that in the night of                    he tried to call **M.N.** several times to ask him for a lift home and when he finally managed to reach N. on the phone, N. told Witness he was not in                    but in                    with old prostitutes.

In his statement to police, Witness also refers that N. called him the day after, asking about "the rumour" that an old man had been beaten the night before and that it was alleged N. could be involved in the beating because a car similar to his had been noticed in the area; N. further remarked he was not the only one in the area owning that particular model of car.

Finally, in his statement to police, Witness refers that the accused N. once told him that "there was a small job to get done, but there was a need for one more safe man" further specifying that the job was "just go to an house and get money, nothing special"; witness refused in a way that clearly indicates that according to him the allusion was made to an illegal job.

In his testimony at the main trial, Witness partially rejects some of the statements as transcribed by the police.

The panel finds that the factual recollection as presented in the statement given to police, even if contradicting the alibi of the accused N. for the night of the                    , does not

offer any incriminatory element implicating the accused N. in the criminal act alleged in the indictment, nor it places him on the crime scene.

The allusion to a “small job”, which somehow recalls the modalities of the crime committed as the V.’s house, is too vague and general to be considered an indication of the planning of the criminal offence alleged in the indictment.

I.S. testified on 05 March 2009; in his statement this witness did not give any relevant element

R.D. testified on 05 March 2009; at the main trial Witness confirmed the statement given in \_\_\_\_\_ police station on \_\_\_\_\_ stating that on the \_\_\_\_\_ of the \_\_\_\_\_ sometime after \_\_\_\_\_, Witness saw a car with headlights off coming from the proximity of the victims’ house. Even though the night was bright, Witness found it strange that a car would proceed with the headlights off and observed the car proceeding, however, Witness could not notice the colour or any details of the car.

The panel finds that this testimony, together with the testimony given by the injured parties, provides a plausible time scope to the robbery, however, Witness could not offer any indication on the number and identity of the perpetrators or the description of their means of transport.

J.M. testified on 09 March 2009; the Public Prosecutor requested for the testimony of the witness to be given in closed session and the accused to be excluded. The prosecutor motivates the request with the fear of Witness that something may happen to him because of his testimony, and refers to the statement given by Witness to police on \_\_\_\_\_.

The panel, deciding on the prosecutor’s motion, rejects the request for closed session and with the agreement of the parties, grants taking testimony of Witness without both accused being present.

Witness commences his testimony by retreating his previous statement to the police on \_\_\_\_\_ in \_\_\_\_\_ police station and stating that he does not need protective measures anymore as the content of his statement is already public domain. Witness explains the statement dated \_\_\_\_\_ was fabricated by police.

In his statement given to police in \_\_\_\_\_ on \_\_\_\_\_, Witness declared that on \_\_\_\_\_ at around \_\_\_\_\_ hours, his friend U.L. called him on the phone and asked to be picked up on the road, after the \_\_\_\_\_ of \_\_\_\_\_, and to be driven back to Witness place to recuperate the car U. had left there on the same early evening.

Following U. request, Witness drove his \_\_\_\_\_, plate number \_\_\_\_\_, and passing \_\_\_\_\_, in an inhabited place U. came out and flagged him down. U. entered the car and occupied the front seat, while two other people whom Witness recognized by their voices as M.N. aka K. and C. (V.J.), occupied the back seat of his car. Witness remembers noticing that one of the two, he thinks C., was carrying a jacket in his hands like he was hiding something.

Witness started driving back in the direction of \_\_\_\_\_ and when on the street encountered a police car and, **K.** told him “put on the accelerator and don’t stop”, until finally, 500 metres before the bridge on the \_\_\_\_\_ river, **C.** said “stop here so we can go out, I don’t want police to catch me”, Witness stopped and the three men left the car and did not see them again on that night.

Witness stated he immediately understood something was wrong and the day after, when he learned about the robbery that had happened in \_\_\_\_\_, he confronted his friend **U.** about what had happened the night before, but **U.** told him “shut up, you did not see anything and you did not hear anything”.

During the main trial, Witness retreated his statement to the police, and in particular denied any contact between him and the accused on the night of the robbery. Witness confirmed having left his house on his \_\_\_\_\_ registered \_\_\_\_\_ on the night of the \_\_\_\_\_ after receiving a phone call from a friend, but only in order to inspect the road to **N. P.** through \_\_\_\_\_, which he intended to use to transport from **N. P.** the alcoholic beverage the friend had offered him on the phone, avoiding customs and police check points.

Witness confirms that his car was controlled on the way back from \_\_\_\_\_ at the checkpoint held in the locality of “\_\_\_\_\_”, between \_\_\_\_\_ and \_\_\_\_\_, but nothing illegal was found in his car. Witness explains to the Prosecutor that the reason why no alcohol was found in his car is that he had to turn his car back before reaching **N. P.** because the low asset of his car did not allow him to proceed when the non-asphalted road had started. However, in the course of the same testimony, Witness stated that he had turned his car back because he had seen some headlights and he thought it could be a police car, but he was unable to explain why he was afraid of police since nothing illegal was in his car.

Witness denies having met the accused that night, but he confirms having met his friend **U.** in the afternoon when he left his car in Witness’ back yard, but denies having met him afterwards, even though Witness confirms several phone conversations between him and **U.** until \_\_\_\_\_ of \_\_\_\_\_.

The panel is considering following as to the statements of this witness. According to the statement given to police, Witness was called by one of the perpetrators after the robbery, and was involved in the escape as an accessory. In fact, Witness states that at the beginning he was told by the police that he was a suspect because he “*had violated a series of laws and that [he] would be arrested at the same time as they and as accomplice*”, and that he eventually became a witness with the promise of anonymity.

During his testimony at the main trial, Witness retreats his previous request for protective measures explaining that anonymity is now useless due to the fact that the content of his testimony is already public. Witness rejects the statement given to police, stating that such statement was a pure invention of police, however, confronted with his statement,



witness confirms several facts as true, retreating only the part describing the meeting with U. and the two accused.

His account of events in the police statement offers strong circumstantial evidence against the accused: the place where U. and the two accused met him, is not far from where the robbery had happened and the behaviour of the two accused is clearly suspicious at the point that Witness himself, the day after when learning about the robbery in , immediately thinks that the three were involved and confronts his friend U. who, instead of denying the allegation, orders the witness to shut up and to erase the happenings of the night before from his memory.

Nevertheless, the panel finds that such evidence, even though it offers strong indications of a possible misbehaviour of both accused on the of , is only circumstantial and uncorroborated evidence which does not provide any direct link between the accused and the crime scene or the allegation of the indictment. There is no direct indication that the three men were, in fact, part of the armed group of four that broke into the V.'s house few hours before.

Therefore, let alone the dubious credibility of the witness J., the panel finds that Mr. J.' statement is insufficient to prove the participation of the accused and does not prove their participation to the crimes alleged in the indictment.

M.E. testified on 9 March 2009; in his statement given to the police on in police station, Witness stated that on at around , together with friends, he was driving an with no plates to pick up S.R. aka " ". Witness stated that on the way to meet R. he encountered two cars, one of which a colour he knows belonging to "M." from . After picking up R. and on the way to , Witness' car was stopped by police and controlled. On that night, at around , Witness heard S.R. talking to K. (M.N.) on the phone, and K. told R. he was not in but in , spending time with "old whores".

In his testimony at the main trial, Witness reiterated several times not to remember having stated what was written in the police statement.

The panel finds that even if the factual recollection as presented in the statement given to police is considered truthful, the evidence given by the witness corroborates the statement given by S.R. to police and contradicts the alibi of the defendant N. for the night of , but yet does not offer any element describing the responsibility of the accused for the crimes alleged in the indictment.

S.M. testified on 09 March 2009; in his statement given to police on in police station, witness stated that on he was working together with his father and V.J. until and that, on the day after, Witness and his father went to fetch J. at his house but J. was not at home.

In his testimony during the main trial, Witness stated that he does not remember if the accused J. was together with him and his father on \_\_\_\_\_, but remembers that when he went together with his father to fetch J. on the \_\_\_\_\_, the accused was not at home.

The statement of witness does not contain any indication or evidence.

N.D. testified on 11 March 2009; at the main trial Witness confirmed the statement given to police on \_\_\_\_\_ in \_\_\_\_\_ police station, stating that on \_\_\_\_\_ at about \_\_\_\_\_ hours, while driving his vehicle on the \_\_\_\_\_ road -in the direction of \_\_\_\_\_ - he saw in the proximity of \_\_\_\_\_ a car proceeding in the opposite direction at high speed. Witness could not see the driver because the car had darkened glasses. Interested by the high speed of the car, Witness looked at the car after this had passed him and noticed that the car had no registration plates.

At the main trial Witness underlines that the event he describes happened in the night and really quickly and that the car was proceeding at high speed, therefore he finds it difficult to be sure about the colour and the model of the car; nevertheless, confronted with his previous statement, Witness confirms that he told police that the car he saw on \_\_\_\_\_ could be a \_\_\_\_\_ of \_\_\_\_\_ colour, alike the one owned by N., but that he was not sure about this.

The panel finds that even if Witness were certain of the identification as reported in the statement given to police, because of the lack of registration plate on the car, the impossibility to identify the occupant/s of the vehicle, and the lack of evidence that the car encountered by the witness that night was in fact the car used by the perpetrators to reach the crime scene, it would not offer any indication about the involvement of the two accused in the facts alleged in the indictment.

#### **Read Out Statements:**

I.S., the statement of this witness was read out on 05 March 2009. In his statement given to Police on \_\_\_\_\_ in \_\_\_\_\_ police station, witness stated that he was really drunk on the \_\_\_\_\_ of \_\_\_\_\_, but he does not remember meeting the accused N. that night or the day after while witness was in N. P., but Witness states it is possible he talked by phone with the accused N. in that period.

A. V., the statement of this witness was read out on 12 March 2009. In his statement given to Police on \_\_\_\_\_ in \_\_\_\_\_ police station, witness stated that the brother of the accused V.J., S., told him his brother V. had given to him few days before 700 euro that S. wanted to use to purchase a car from Witness.

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

**Police Reports:**

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

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

The accused were only controlled on their way back from Serbia on [redacted], data compatible with the alibi of the witness.

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

It is missing from the case file the result of the comparison of the soils samples collected from the [redacted] of the accused and the crime scene, data which in principle could have indicated the presence of the accused car on the crime scene in an imprecise moment, although the samples were collected only [redacted] after the commission of the offence, as indicated in the police report [redacted] dated [redacted].

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

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

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

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

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

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

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

listed among the investigative acts requiring the Prosecutor's order (article 258 PCPCK) and therefore may be ordered by police ex officio.

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

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

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

#### **APPLICABLE LAW AND LEGAL QUALIFICATION**

Concerning the applicable law the panel considers the following:

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

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

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

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

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

Concerning the legal qualification:

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

## **COSTS**

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

## **PROPERTY CLAIMS**

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

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

## **LEGAL REMEDY**

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

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

Prepared in English, an authorized language.

**Recording Officer**  
Francesco Caruso

---

Legal Officer

**Presiding Judge**  
Angela Kaptein

---

EULEX Judge