COURT OF APPEALS

Case number: **PAKR 442/13**

Date: **2 April 2014**

THE COURT OF APPEALS OF KOSOVO in the Panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding and Reporting Judge, and Kosovo Appellate Judges Vahid Halili and Mejreme Mema as Panel Members, with the participation of Beti Hohler, EULEX Legal Officer,

in the criminal proceedings against

> **K.P.,** son of father **Z.** and mother **M.** (nee **M**.), born xxx in the village of xxx Municipality, residing in xxx, xxx by profession, of average financial situation, xxx, Albanian, citizen of Kosovo, currently serving an imprisonment sentence in xxx in case no. P 477/11 of the District Court of Peja (Judgment of DC Peja no. P 477/11 dated 24.05.2012 became final in connection with the Judgment of the Court of Appeals PaKr 1122/12 dated 25.04.2013);

convicted in first instance through the Judgment no. P 359/12 of the Basic Court of Peja/Pec dated 14 June 2013 of the criminal offence of *Abuse of Official Position or Authority* pursuant to Articles 3(2), 31 and 422(1) of the Criminal Code of the Republic of Kosovo - Law no. 04/L-082 (CCRK 2013);

***acting upon* the following appeals filed against the *Judgment no. P 359/12 of the Basic Court of Peja/Pec dated 14 June 2013* (hereinafter: Impugned Judgment):**

- **Appeal of defendant K.P., filed on 12 August 2013,**
- **Appeal of Defence Counsel Gezim Balloku on behalf of the defendant K.P., filed on 29 July 2013;**

having reviewed the Opinion of the Appellate State Prosecutor no. PPA/I 404/13 dated 19 November 2013 and filed with the Court of Appeals on 20 November 2013;

after having held a public session on 02 April 2014 in the presence of the defendant and the Appellate State Prosecutor Xhevdet Bislimi;

having deliberated and voted on 02 April 2014;

pursuant to Articles 389, 394, 398 and 402(1) of the Criminal Procedure Code - Law no. 04/L-123 (CPC);

renders the following

RULING

The appeal of Defence Counsel Gezim Balloku on behalf of the defendant K.P., filed on 29 July 2013 against the *Judgment no. P 359/12 of the Basic Court of Peja/Pec dated 14 June 2013*, is hereby rejected as unfounded.

The appeal of defendant K.P. filed on 12 August 2013 against the *Judgment no. P 359/12 of the Basic Court of Peja/Pec dated 14 June 2013*, is hereby partially accepted.

The *Judgment no. P 359/12 of the Basic Court of Peja/Pec dated 14 June 2013* against K.P. is hereby annulled and the case is returned for re-trial and decision to the Basic Court of Peja/Pec.

REASONING

I. PROCEDURAL BACKGROUND

1. The Special Prosecutor on 23 July 2012 filed the Indictment no. PPS 07/2011 with the (then) District Court of Peja. The Indictment was filed against defendant **K.P.** and defendant **A.R**. for the criminal offence of *Abusing Official Position or Authority* pursuant to Article 339 Paragraph (1) in connection with Paragraph (3) of the Criminal Code of Kosovo (CCK),[1] in connection with criminal offence of *Breach of Trust* pursuant to Article 269 Paragraph (1) as read with Paragraph (2) CCK.

2. The Confirmation Judge of the District Court of Peja on 20 September 2012 issued the Ruling no. KA 223/12. The Confirmation Judge affirmed the Indictment for both defendants (**K.P.** and **A.R.)** for the criminal offence of *Abusing Official Position or Authority* pursuant to Article 339 Paragraphs (1) and (2) CCK. The Confirmation Judge dismissed the Indictment against both defendants for the criminal offence of *Breach of Trust* pursuant to Article 269 Paragraphs (1) and (2) CCK, because the statutory limitation for the prosecution of the criminal offence had expired.

3. The main trial against both defendants commenced before the Trial Panel of the Basic Court of Peja on 29 January 2013. The Trial Panel on the same day severed the cases against both defendants.

[1] Criminal Code in force in Kosovo from 6.04.2004 until 31.12.2012.

4. The case against **K.P.** continued only on 14 June 2013, when the Trial Panel issued a Judgment against the defendant. The Trial Panel found the defendant guilty of the criminal offence of *Abusing Official Position or Authority* pursuant to Articles 3 Paragraph (2), 31 and 422 Paragraph (1) of the CCRK 2013, committed in co-perpetration with **A.R.. A.R.** was on the same day also found guilty of the same criminal offence and sentenced separately in case no. P 86/2013.[2] The Trial Panel also issued a Ruling, extending detention on remand against **K.P.** until the Judgment in the case became final.

5. The Impugned Judgment is now appealed by the Defence. The defendant himself and his Defence Counsel filed separate appeals against the Impugned Judgment.

6. Having received the case file from the Basic Court, the Court of Appeals upon review pursuant to Article 389 Paragraph (5) CPC on 26 November 2013, issued a Ruling terminating detention on remand against the defendant. The Court of Appeals found that the defendant was already serving a final imprisonment sentence in another case, therefore the conditions for continued detention on remand in *this* case were not met.

7. The Court of Appeals held a public session in the case on 2 April 2014 in the presence of the defendant, and the Appellate State Prosecutor. The defendant's Defence Counsel was duly summoned to the session but did not attend.

II. SUBMISSIONS OF THE PARTIES

8. The defendant filed an appeal on 12 August 2013 on the grounds of substantial violation of the provisions of criminal procedure and violations of the Criminal Code. He claims substantial procedural violation pursuant to Article 384 Paragraph (2) Subparagraph 2.1) CPC through the violation of Article 233 Paragraph (8) CPC. The referred Article explicitly requires that the defendant and his Defense Counsel are present during the plea negotiations. He claims that he has never been given the opportunity to participate or be present at talks with the case Prosecutor. He has signed the Minutes at the premises of the Peja Basic Court. As evidence, he attached the certificate issued by the Correctional Service Dubrava on 23 July 2013.

9. Concerning the violation of the Criminal Code, the defendant claims that pursuant to Article 106 Paragraph (1) Subparagraph 1.4) CCK, the relative statutory limitation has expired, which in his case is 5 years after the commission of the criminal offence on 14 June 2005. The ruling on initiation of investigation was issued on 16 February 2011, clearly more than 5 years later. Furthermore, Article 81 of the CCK (commission of the criminal offence in continuity) was also violated with the severance of this case from the other cases for which he was already prosecuted. This was done to the detriment of the defendant. The criminal offence in the present case was committed during the same period of time as the others against the same subject,

[2] The Court of Appeals with a Judgment no. PAKR 441/13 dated 02.04.2014 annulled the Judgment of the Basic Court against A.R. and rejected the charge against the defendant.

therefore this should have been considered and prosecuted together with the other acts. Also, the Basic Court erroneously imposed the accessory sentence of "Prohibition on Exercising Public Administration and Public Service Functions" as the profession of a xxx does not belong to the functions of public administration or services.

10. The defendant proposes to amend the Impugned Judgment and requests the Court of Appeals to acquit him from the charges or to annul the Impugned Judgment and return the case for re-trial.

11. Defense Counsel Gezim Balloku on 29 July 2013 filed an appeal on the grounds of violations of the criminal law and challenging the decision on the criminal sanction. The Defence Counsel proposes to the Court of Appeals to amend the Impugned Judgment and reject the charge due to the relative statutory limitation or to pronounce a more lenient punishment against the defendant. He submits that under the new Criminal Code the criminal offence of *Abusing Official Position or Authority* is punishable by a term of imprisonment of up to 5 years, thus the relative statutory limitation has passed since the criminal offence was committed in 2004 and 2005 and the investigation has started only in February 2011.

(Response of the Special Prosecutor)

12. The Special Prosecutor in the case did not file a response to the appeals.

(Motion of the Appellate State Prosecutor)

13. The Appellate State Prosecutor in his Motion dated 19 November 2013 proposes to the Court of Appeals to reject as ungrounded the appeals of the defendant and his Defence Counsel and to affirm the Impugned Judgment of the Basic Court of Peja.

III. COMPETENCE OF THE COURT OF APPEALS

14. The Court of Appeals is the competent court to decide on the appeals pursuant to Articles 17 and 18 of the Law on Courts - Law no. 03/L-199.

15. The Panel of the Court of Appeals is constituted in accordance with Article 19 (1) of the Law on Courts and Article 3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo - Law no 03/L-053. Pursuant to the decision of the President of the Assembly of EULEX Judges no. 2014.OPEJ.0129-0001 dated 12 March 2014, taken in accordance with Article 3.7. of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, the Panel was composed of one EULEX Judge and two Kosovo Court of Appeals Judges. No objections against the composition of the Panel were raised by the parties.

IV. FINDINGS ON THE MERITS

16. The appeals of the Defence are timely filed and admissible.

17. The appeal of the Defence Counsel is rejected as unfounded, whereas the appeal of the defendant is partially accepted.

Alleged substantial violations of criminal procedure (Article 384 CPC)

Violations of Article 233 CPC in connection with Article 384(2) CPC

18. The defendant **K.P.** in his appeal argues that he has never been given the opportunity to participate or be present at the talks with the Prosecutor concerning a plea agreement and has signed the "Minutes on the achievement of guilty plea agreement" at the premises of the Peja Basic Court.

19. The Panel at the outset remarks that the Trial Panel of the Basic Court in this proceedings showed a lack of understanding of the procedure of plea agreement pursuant to the CPC. The Trial Panel effectively accepted the document titled "Minutes on the achievement of guilty plea agreement" dated 29 January 2013 as a written plea-agreement in terms of Article 233 CPC. The Presiding Trial Judge informed the defendant that he will be sentenced in accordance with the "plea-agreement". The Trial Panel thereafter concluded the hearing. The defendant was again brought before the Trial Panel only on 14 June 2013, when the Trial Panel announced the verdict and sentenced the defendant.

20. The Basic Court committed serious violations of criminal procedure in this case. The Panel concurs with the Defence that these violations might have influenced the rendering of a lawful and fair judgment.

21. Firstly, the Panel finds that the document titled "Minutes on the achievement of guilty plea agreement" dated 29 January 2013 cannot be considered a plea-agreement in the sense of Article 233 CPC. The document is, as is evident already from its title and more so from its content, a record of the meeting held to discuss a possible plea agreement.

22. The document does not satisfy the criteria of a plea-agreement, set out in Article 233 Paragraph (12) CPC. In particular, the document does not unequivocally specify to which charges the defendant pleads guilty (this must include both the factual description and legal qualification) or the rights that may be waived.

23. What is of even more concern is the stipulation in the "Minutes on the achievement of guilty plea agreement" that if the defendant pleads guilty he will be sentenced to a certain imprisonment term. The Prosecutor cannot make such guarantees since any proposed punishment is not binding on the Court. The plea agreement namely *may* include a provision in which the parties agree on a *range* of punishment to be proposed by the Prosecutor to the Court, but does not bind the Court in any way (see Article 233(12) CPC).

24. Further, when the Court accepts the plea agreement, it must order that it is officially filed with the Court and thereafter a date must be set for the parties to make their statements regarding sentencing after which the Court imposes the punishment (Article 233(21) CPC). The parties in this case were not granted an opportunity to express their views on the sentencing, to raise mitigating or aggravating circumstances or make any other submissions.

25. The Panel also emphasizes that even in the event that the Court would disregard the plea agreement and considered that the defendant entered a guilty plea, the provisions of the CPC remain violated. Also when entering a guilty plea, the Basic Court must hear the closing statements of the parties before withdrawing for deliberations and thereafter rendering a Judgment. And this procedure was not followed at all in this case.

26. It is evident from the Record of the session on 14 June 2013 that the defendant was brought before the Court and the Trial Panel just announced the judgment.

27. The Panel finds these violations to be of such gravity that they may have impacted the rendering of a lawful and fair judgment. In particular when coupled with a number of further substantive procedural violations (as discussed below) this case must be returned for reconsideration to the Basic Court.

Violation of Article 384(1)12) CPC – the Judgment is not drafted in accordance with the requirements of Article 370 CPC and there are inconsistencies between the enacting clause of the announced and reasoned Judgments

28. Pursuant to Article 394 Paragraph (1) CPC, the Court of Appeals must, amongst other, *ex officio* examine whether a violation of the provisions of criminal procedure under Article 384 Paragraph (1) Subparagraphs 1.1.), 1.2.), 1.6.) and 1.8) through 1.12) CPC occurred in the case.

29. The Panel finds that the Impugned Judgment was not drawn up in accordance with Article 370 CPC and the violations amount to substantial violation of the provisions of criminal procedure pursuant to Article 384 Paragraph (1) Subparagraph 12) CPC.

30. Firstly, the Panel finds that the wording of the enacting clause in the reasoned Judgment is not identical to the wording of the announced Judgment of 14 June 2013. The pronouncement of punishment namely differs.

31. In relevant part concerning the imposed imprisonment sentence, the Trial Panel on 14 June 2013 announced the following:

> *"[…] therefore by reason of the aforementioned the court imposes the following sentences:*
>
> *- For the criminal offence of Abuse of Official Position committed in co-perpetration the defendant and taking into consideration his plea agreement with SPRK (an agreed*

sentence of one (1) year and six (6) months) and previous convictions, K.P. is sentenced to an aggregate term of imprisonment of eleven (11) years and six months. […]"

In the reasoned Judgment dated 14.06.2013 and served to the parties, the enacting clause in the relevant part concerning the imposed imprisonment sentence reads as follows:

"[…] Therefore by reason of the aforementioned the court imposes the following sentences:

- for the criminal offence of Abuse of Official Position committed in co-perpetration the defendant K.P. is sentenced to an aggregate term of imprisonment of one (1) year and six months".

32. The enacting clauses are therefore substantially different in this part. In the announced Judgment it would appear that the Trial Panel did not impose a sentence but merely considered the sentence in the "plea-agreement" as applicable. Thereafter the Panel appeared to have taken into consideration a previous conviction and sentence of the defendant and then imposed an aggregate sentence of eleven years and six months. In the reasoned Judgment, on the other hand, the Panel now did determine the sentence for the criminal offence under consideration to a sentence of one year and six months. There is then no mention of aggregate punishment as in the announced Judgment. However, in the reasoning part of the Impugned Judgment the Trial Panel did write that if it is empowered to make an aggregate punishment then it opts for an aggregate punishment of eleven years and six months.

33. The Trial Panel, a sit comes out from the reasoning, was unsure of its competencies. But instead of adopting an interpretation and making a decision, the Trial Panel did not do that at all but, in want of a more appropriate term, attempted to "go both ways".

34. What is more, given the discrepancy in the enacting clauses of the announced and reasoned Judgment, it is unclear what the pronounced punishment in fact was, therefore this in itself must result in the annulment of the Impugned Judgment.

35. Moreover, the Trial Panel committed a further violation in the drafting of the enacting clause, since the latter does not actually include the charge the defendant was convicted of. Article 370 Paragraph (4) CPC in connection with Article 365 Paragraph (1.1.) CPC unequivocally prescribes that the Judgment finding the accused guilty must describe the act of which the defendant has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed, and facts and circumstances on which the application of pertinent provisions of criminal law depends.

36. In the Impugned Judgment, the enacting clause does not contain *any* description of the facts of which the defendant has been found guilty of. There is nothing on when, where, how the criminal offence was committed. The enacting clause merely states *"the defendant,* ***K.P.***

participated in an illegal procedure which resulted in a loss of 71.257.40 EUR to the Insurance Assurance of Kosovo – Compulsory Insurance Unit in Pristina".

37. Essentially, when reading the enacting clause, one cannot deduce what criminal actions the defendant had committed. This is always the core of any Judgment and it also determines the parameters of formal and material *res iudicata*.

38. Since the enacting clause is drafted entirely in contradiction with Article 370 CPC and it is unclear what facts the defendant was actually found guilty of (when comparing to the alleged actions in the Indictment of 23 July 2012), the Panel has no other option but to return the case back to the Basic Court for re-trial and decision.

Alleged violation of criminal law – expiry of the statute of limitation

39. The Defence argues that the prosecution in the case is time-barred, since the investigation against the defendant was not initiated in a timely manner before the expiry of statutory limitation pursuant to Article 106 Paragraph (1) Subparagraph 1.4.) CCRK 2013.

40. The prescribed punishment for the criminal offence under Article 422 Paragraph (1) CCRK 2013 (*Abusing Official Position or Authority*) is an imprisonment term from six months to five years. Pursuant to Article 106 Paragraph (1) Subparagraph 1.4.) CCRK 2013, the statutory limitation for this criminal offence, based on the maximum prescribed punishment, is five years.

41. Article 107 Paragraph (1) CCRK 2013 stipulates that the period of statutory limitation on criminal prosecution commences on the day when the criminal offence was committed. According to the Indictment no. PPS 07/2011 dated and filed on 23 July 2012, the defendant had allegedly committed the criminal offence on 14 June 2005.[3]

42. The Panel remarks that the Court of Appeals had rejected the charge against **K.P**.'s co-defendant in the case – **A.R**., because the statutory limitation had passed by the time criminal investigation was initiated (See Judgment of the Court of Appeals, no. PaKR 441/13 dated 02 April 2014). The Panel in that case rejected the Basic Court's interpretation that because the Prosecutor started the investigation within the statutory limitation period which applied at the time the Trial Panel must only consider the absolute time bar that exists in Article 107 Paragraph (8) CPC.The Panel instead found that when there is a change in substantive law, as in this case, the Court is obliged to assess whether the criminal prosecution commenced lawfully pursuant to the *now applicable law*. If this means that the prosecution did not commence timely, the charge must be rejected.[4]

[3] See charging part of the Indictment no. PPS 07/2011 dated and filed on 23 July 2012, p. 4.
[4] See for detailed reasoning Judgment of the Court of Appeals, no. paKr 441/13 dated 02 April 2014, paras. 18-29.

43. With regard to when the "prosecution commenced", the Panel finds as follows: **Z. M**.[5] in the case filed the criminal complaint on 5 January 2011.[6] The Prosecutor issued the Ruling on initiation of investigation against **A.R.** on 16 February 2011.The Panel notes that already on 4 February 2011 the Prosecutor conducted an interview with witness **Z. M.** relating to the criminal complaint he had filed against defendants **P.** and **R**.[7] Pursuant to Article 107 Paragraph (5) CCRK 2013 the period of statutory limitation is interrupted by every act undertaken for the purpose of criminal prosecution of the criminal offence committed. The Panel considers that questioning the person who brought forward the criminal complaint was an act undertaken for the purpose of criminal prosecution and this was therefore the act that interrupted the statutory limitation and not the issuance of the Ruling on initiation of investigation. The relevant date to be considered as a start of any prosecutorial action is therefore 4 February 2011.

44. Article 106 Paragraph (6) CCRK 2013 further stipulates *that the period of statutory limitation is also interrupted if the perpetrator commits another criminal offense of equal or greater gravity than the previous criminal offense prior to the expiry of the period of statutory limitation.*

45. Defendant **K.P.** allegedly committed the criminal offence in this case on 14 June 2005. But between 12 September 2007 and 8 April 2008 the defendant also committed the criminal offence of *Issuing Unlawful Judicial Decisions* pursuant to Article 346 of the (old) CCK, which is a criminal offence of equal gravity as the one considered in this criminal case. The defendant was found guilty of this latter criminal offence with the final Judgment of the District Court Peja (Case no. P 477/11, dated 24.05.2012), as modified by the Judgment of the Court of Appeals no. PaKr 1122/12 dated 25 April 2014.[8]

46. The period of statutory limitation which started running on 15 June 2005 was therefore interrupted no later than 8 April 2008, when the defendant committed the criminal offence subject of the criminal case P 477/11 of DC Peja (Court of Appeals case PaKr 1122/12).

47. Pursuant to Article 107 Paragraph (6) CCRK 2013 the running of statutory limitation was interrupted and pursuant to Article 107 Paragraph (7) CCRK 2013 started running anew after the interruption. Accordingly, when the prosecution in this criminal offence commenced on 04 February 2011 the relative statutory limitation for the criminal offence had not elapsed.

[5] The Panel remarks that the Trial Panel throughout the proceeding erroneously considered **Z. M**. as an Injured Party. The latter does not satisfy the criteria for an Injured Party in this criminal proceeding and thus does not have this status.

[6] The Panel notes that the criminal report is dated 28.12.2010 and stamped with a receipt stamp filled in manually in handwriting with the date 05.01.2010. The Panel notes that considering the document is dated 28.12.2010, the stamp should read 05.01.2011. The reference to year 2010 is in the view of the Panel a typing error.

[7] See Minutes of the Hearing of Injured Party, PPS 07/2011, 4.02.2011, Court Case File, Binder no. I,Tab 31-1

[8] The defendant himself during the session of the Court of Appeals on 02 April 2014 referred to the reasoning of this Judgment, with regard to the legal qualification of the offence (see above).

48. In conclusion, the prosecution against **K.P.** was not time barred when it commenced on 04 February 2011. The appeal of the Defence on the issue of statutory limitation is therefore rejected.

49. The defendant also raised a challenge to the application of criminal law with regard to the pronouncement of accessory punishments and the issue of criminal offence in continuation. However, since the case is returned for re-trial the Court of Appealsw need not address these arguments, since the Judgment is annulled.

Remarks concerning the applicable criminal law

50. The Panel affirms that the applicable criminal law to this case is the new Criminal Code of Kosovo, which entered into force on 01.01.2013. Although the alleged criminal offence was committed in 2005, the new Criminal Code applies pursuant to Article 3 Paragraph (2) as the law more favorable for the defendant.

51. As correctly interpreted by the Basic Court, the prescribed punishment for the criminal offence of *Abusing Official Position or Authority*, with which the defendant is charged, is more lenient in the new CCRK 2013 - imprisonment term of up to 5 years pursuant to Article 422 Paragraph (1) CCRK 2013 as opposed to imprisonment term of up to 8 years pursuant to Article 339 Paragraph (3) of the previous Criminal Code.

52. The defendant during the session of the Court of Appeals on 2 April 2014 invoked the reasoning of the Court of Appeals in Judgment no. PaKr 1122/12 dated 25 April 2013 against the same defendant and argued that the correct legal qualification of the alleged criminal acts is that of *Issuing Unlawful Judicial Decisions* pursuant to Article 432 CCRK 2013 (previously Article 346 CCK).

53. Since the case is returned for re-trial, it will be up to the Trial Panel in the new trial to assess which legal qualification is applicable. At this stage the Panel only remarks, that the criminal offence of *Issuing Unlawful Judicial Decisions* is defined in the same terms in the new and old Criminal Code. The Panel, however, specifically points out a discrepancy in the prescribed punishment between the Albanian and English version of the Criminal Code. In the English version, under Article 432, the wording is as follows:

> *Article 432 (Issuing unlawful judicial decisions)*
>
> *A judge who, with the intent to obtain any unlawful benefit for himself, herself or another person or cause damage to another person, issues an unlawful decision shall be punished by a fine and imprisonment of six (6) months to five (5) years.*

Whereas in the Albanian version, Article 432 reads as follows:

Neni 432 (Nxjerrja e kundërligjshme e vendimeve gjyqësore)

Gjyqtari i cili me qëllim të përfitimit të kundërligjshëm të çfarëdo dobie për vete ose për personin tjetër ose për t'i shkaktuar dëm personit tjetër, nxjerr vendim të kundërligjshëm, dënohet me burgim prej gjashtë (6) muaj deri në pesë (5) vjet.

… which, translated into English, reads as follows:

Article 432 (Unlawful rendering of judicial decisions)

A judge who, with the intent of obtaining any unlawful benefit for himself, herself or another person or to cause damage to another person, issues an unlawful decision shall be punished with imprisonment of six (6) months to five (5) years.

54. Therefore, the English version of the Code would prescribe the punishment of "a fine and imprisonment of 6 (six) months to five (5) years", whereas the Albanian version would prescribe the punishment of "imprisonment of 6 (six) months". The Panel specifically turns the Basic Court's attention to this discrepancy, if the Basic Court were to qualify the criminal offence under this provision.

Direction to the Basic Court for re-trial

55. Having annulled the Impugned Judgment and returning the criminal case for re-trial to the Basic Court, the Panel notes that in the re-trial the Basic Court shall summon all parties in accordance with the CPC and start the main trial anew. The Panel notes that particular attention should be paid to who is considered the Injured Party in the case. The Trial Panel during the first trial incorrectly designated **Z. M.** and a number of other persons as Injured Parties. The CPC is clear in the definition of who is considered an injured party in the criminal proceedings thus the Basic Court should follow the law in this regard.

56. Further, as the Court of Appeals determined, the "Minutes on the achievement of guilty plea agreement" dated 29 January 2013 do not constitute a plea-agreement in terms of Article 233 CPC. Whereas the parties are free to enter into an actual plea-agreement, if they decide to do so, this must be done in full compliance with Article 233 CPC, otherwise such plea agreement cannot be valid. On a different note, the defendant is of course entitled, if he so decides, to plead guilty at the opening of the main trial. If the defendant pleads not guilty, the Basic Court will proceed by conducting a full main trial in accordance with the CPC. Any Judgment issued in the case, should comply with Article 370 CPC.

57. The Panel, as a final remark, also notes that pursuant to Article 107 Paragraph (8) CCRK 2013 read with Article 106 Paragraph (1) Subparagraph 1.4) CCRK 2013, 10 years of absolute statutory limitation will expire on 14 June 2015, after which prosecution of the case will be time-

barred. The Panel thus urges the Basic Court to schedule the start of a re-trial as soon as possible and to conduct the proceedings speedily.

58. For reasons above, the Panel pursuant to Article 402 Paragraph (1) CPC annuls the Judgment of the Basic Court of Peja no. P 359/12 dated 14 June 2013 and returns the case for retrial and decision to the respective Basic Court.

Done in English, authorized language. Reasoned Judgment completed on 14 May 2014.

Presiding Judge

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Hajnalka Veronika Karpati

EULEX Judge

Panel member	Panel member
_____	_____
Mejreme Mema	Vahid Halili
Judge	Judge

Recording Officer

_____

Beti Hohler
EULEX Legal Officer

COURT OF APPEALS OF KOSOVO
Pakr 442/13
02.04.2014