

**BASIC COURT OF MITROVICË/MITROVICA**

**P. no. 127/2015**

**29 February 2016**

**IN THE NAME OF THE PEOPLE**

THE BASIC COURT OF MITROVICË/MITROVICA, in the Trial Panel composed of EULEX Judge Franciska FISER, acting as Presiding Trial Judge, EULEX Judge Iva NIKSIC and EULEX Judge Rene VAN VEEN, with EULEX Legal Officer Vera MANUELLO as Recording Officer in the criminal case against:

S.V. \_\_\_\_\_ (aka 'C. \_\_\_\_\_'), born on \_\_\_\_\_, Place of birth \_\_\_\_\_; Kosovo \_\_\_\_\_; Father's name \_\_\_\_\_; Mother's name \_\_\_\_\_; Occupation: \_\_\_\_\_; Current Address: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, Kosovo; ID no. \_\_\_\_\_;

*Indicted for the criminal offences of:*

**Count A**

- 1. Endangering United Nations and Associated Personnel, contrary to Article 142, Paragraphs (1) and (6.2.i), read in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: "CCK");*
- 2. Obstructing Official Persons in Performing Official Duties, contrary to Article 316, Paragraph (1), read in conjunction with Article 23 of the CCK;*
- 3. Attacking Official Persons Performing Official Duties, contrary to Article 317, Paragraph (1), read in conjunction with Article 23 CCK;*
- 4. Participating in a Crowd Committing a Criminal Offence, contrary to Article 320, Paragraph (1), read in conjunction with Article 23 of the CCK;*
- 5. Damage to Movable Property, contrary to Article 260, Paragraphs (1) and (2), read in conjunction with Article 23 of the CCK;*

## Count B

6. *Endangering United Nations and Associated Personnel, contrary to Article 142, Paragraphs (1) and (6.2.i), read in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: "CCK");*
7. *Obstructing Official Persons in Performing Official Duties, contrary to Article 316, Paragraph (1), read in conjunction with Article 23 of the CCK;*
8. *Attacking Official Persons Performing Official Duties, contrary to Article 317, Paragraph (1), read in conjunction with Article 23 CCK;*
9. *Participating in a Crowd Committing a Criminal Offence, contrary to Article 320, Paragraph (1), read in conjunction with Article 23 of the CCK;*
10. *Damage to Movable Property, contrary to Article 260, Paragraphs (1) and (2), read in conjunction with Article 23 of the CCK;*

*After being presented with the written guilty plea agreement dated 22 February 2016 and signed by the Chief Prosecutor, the EULEX Prosecutor of the Basic Prosecution Office Mitrovica, the Defendant S.V. \_\_\_\_\_ and his Defence Counsel Nebojša Vlajić in a hearing open to the public on 23 February 2016;*

*After having filed a written guilty plea agreement and signed by the Chief Prosecutor, the EULEX Prosecutor of the Basic Prosecution Office Mitrovica, the Defendant S.V. \_\_\_\_\_ and his Defence Counsel Nebojša Vlajić with the court on 24 February 2016;*

*After holding the main trial, open to the public, on 29 February 2016, in the presence of the Defendant S.V. \_\_\_\_\_, his Defence Counsel Nebojša Vlajić, EULEX Prosecutor Pascal Persoons;*

*Following the Trial Panel's deliberation and voting held on 29 February 2016;*

*Pursuant to Articles 359 and 366 of the Criminal Procedure Code of Kosovo (hereinafter: CPC) on 29 February 2016 in a public hearing and in the presence of the Accused, his Defence Counsel and the EULEX Prosecutor;*

*Renders the following:*

## **J U D G M E N T**

### **I.**

Under Count A1. *Endangering United Nations and Associated Personnel*

The Defendant **S.V.** \_\_\_\_\_ is found **GUILTY** because:

It was found proven that the Defendant, on \_\_\_\_ \_\_\_\_, at approximately \_\_\_\_:\_\_\_\_ am, in the centre of \_\_\_\_\_, acting jointly with another identified person and with other unknown co-perpetrators, he attacked the \_\_\_\_ vehicle by throwing stones and various objects, by spraying paint on the vehicle and its windows to block the vision of the \_\_\_\_\_ inside and by hitting the vehicle with hammers to break the windows in order to try to get inside the vehicle in order to harm its passengers.

THEREFORE, **S.V.** \_\_\_\_\_ is **CONVICTED** of having committed the criminal offence of Endangering United Nations and Associated Personnel, contrary to Article 142, Paragraphs (1) and (6.2.i) of the CCK, read in conjunction with Article 23 of the CCK.

**II.**

Under Count A2. Obstructing Official Persons in Performing Official Duties

The Defendant **S.V.** \_\_\_\_\_ is found **GUILTY** because:

It was found proven that the Defendant, on \_\_\_\_\_, at approximately \_\_:\_\_ am, in the centre of \_\_\_\_\_, acting jointly with another identified person and with other unknown co-perpetrators, he attacked the \_\_\_\_\_ vehicle by throwing stones and various objects, by spraying paint on the vehicle and its windows to block the vision of the \_\_\_\_\_ inside and by hitting the vehicle with hammers to break the windows in order to try to get inside the vehicle in order to harm its passengers.

THEREFORE, **S.V.** \_\_\_\_\_ is **CONVICTED** of having committed the criminal offence of Obstructing Official Persons in Performing Official Duties, contrary to Article 316, Paragraph (1) of the CCK, read in conjunction with Article 23 of the CCK.

**III.**

Under Count A3. Attacking Official Persons Performing Official Duties

The Defendant **S.V.** \_\_\_\_\_ is found **GUILTY** because:

It was found proven that the Defendant, on \_\_\_\_\_, at approximately \_\_:\_\_ am, in the centre of \_\_\_\_\_, acting jointly with another identified person and with other unknown co-perpetrators, he attacked the \_\_\_\_\_ vehicle by throwing stones and various objects, by spraying paint on the vehicle and its windows to block the vision of the \_\_\_\_\_ inside and by hitting the vehicle with hammers to break the windows in order to try to get inside the vehicle in order to harm its passengers.

THEREFORE, S.V. \_\_\_\_\_ is **CONVICTED** of having committed the criminal offence of Attacking Official Persons Performing Official Duties, contrary to Article 317, Paragraph (1) of the CCK, read in conjunction with Article 23 of the CCK.

**IV.**

Under COUNT A4. Participating in a Crowd Committing a Criminal Offence

The charge against the Defendant S.V. \_\_\_\_\_ is **REJECTED**.

**V.**

Under Count A5. Damage to Movable Property

The Defendant S.V. \_\_\_\_\_ is found **GUILTY** because:

It was found proven that the Defendant, on \_\_\_\_\_, at approximately \_\_: \_\_ am, in the centre of \_\_\_\_\_, acting jointly with another identified person and with other unknown co-perpetrators, he attacked the \_\_\_\_\_ vehicle by throwing stones and various objects, by spraying paint on the vehicle and its windows to block the vision of the \_\_\_\_\_ inside and by hitting the vehicle with hammers to break the windows in order to try to get inside the vehicle in order to harm its passengers.

THEREFORE, S.V. \_\_\_\_\_ is **CONVICTED** of having committed the criminal offence of Damage to Movable Property, contrary to Article 260, Paragraphs (1) and (2) of the CCK, read in conjunction with Article 23 of the CCK.

## VI.

Under COUNT B:

- B1. Endangering United Nations and Associated Personnel,*
- B2. Obstructing Official Persons in Performing Official Duties,*
- B3. Attacking Official Persons Performing Official Duties,*
- B4. Participating in a Crowd Committing a Criminal Offence, and*
- B5. Damage to Movable Property*

The charges against the Defendant **S.V.** \_\_\_\_\_ are **REJECTED**.

## VII.

1. THEREFORE, pursuant to the provisions of Article 36, Paragraph (1) of the CCK and Article 38, Paragraphs (1) and (2) of the CCK, the court imposes the following sentences:
  - **S.V.** \_\_\_\_\_ having been convicted of the said criminal offence under Count A1 is **SENTENCED** to 1 (one) year of imprisonment; and
  - **S.V.** \_\_\_\_\_ having been convicted of the said criminal offence under Count A2 is **SENTENCED** to 3 (three) months of imprisonment; and
  - **S.V.** \_\_\_\_\_ having been convicted of the said criminal offence under Count A3 is **SENTENCED** to 3 (three) months of imprisonment; and
  - **S.V.** \_\_\_\_\_ having been convicted of the said criminal offence under Count A5 is **SENTENCED** to a fine in amount of 1.000 (one thousand) euros;
  
2. Pursuant to Article 71, Paragraph (2) Sub-paragraph (2) of the CCK the court imposes the following **AGGREGATED** punishment:

**S.V.** \_\_\_\_\_ is **SENTENCED** to 1 (one) year and 2 (two) months of imprisonment and a fine in the amount of 1.000 (one thousand) euros.

## VIII.

Pursuant to Article 43 Paragraph (2) and Article 44 Paragraph (1) of the CCK, the aggregate punishment of imprisonment and fine imposed against S.V. \_\_\_\_\_ shall not be executed if he does not commit another criminal offence for the **VERIFICATION PERIOD** of 3 (three) years;

## IX.

According to Article 453, Paragraph (2) of the CPC, the costs of the criminal proceedings shall be paid from budgetary resources.

## Reasoning

### I. Procedural background

1. On 19 October 2012, the District Public Prosecution Office filed a Ruling on initiation of investigation dated 18 October 2012 in case PP. 363/2012, initiating a criminal investigation against Defendants S.S. \_\_\_\_\_ and S.V. \_\_\_\_\_ for the criminal offences of Endangering United Nations and Associated Personnel, Obstructing official persons in performing official duties, Participating in a crowd committing a criminal offence and Damage to movable property in relation to an incident that occurred on \_\_\_\_\_ involving attacks against three \_\_\_\_\_.
2. On 27 November 2013, the Mitrovicë/Mitrovica Basic Prosecution Office filed a Ruling on expansion of investigation dated 26 November 2013, in which the Prosecution extended and requalified the criminal offences as to Count A: Endangering United Nations and Associated Personnel, Obstructing Official Persons in Performing Official

- Duties, Participating in a Crowd committing a criminal offence and Damage to Movable Property, in relation to the incident that took place on \_\_\_\_\_ in \_\_\_\_\_ against Defendants S.S. \_\_\_\_\_ and S.V. \_\_\_\_\_; and as to Count B: Endangering United Nations and Associated Personnel, Obstructing Official Persons in Performing Official Duties, Participating in a Crowd Committing a Criminal Offence and Damage to Movable Property, with regard to the incident that took place on \_\_\_\_\_ in \_\_\_\_\_ against Defendants S.S. \_\_\_\_\_ and B.J. \_\_\_\_\_.
3. On 13 March 2014, the President of the Assembly of EULEX Judges issued a Decision no. 2014.OPEJ.0147-0001 dated 13 March 2014 in which criminal case PPno. 363/2012 (PPS 113/2012) was assigned into the competence and responsibility of EULEX Judges.
  4. On 23 April 2014, the Prosecution filed a Ruling on expansion of investigation dated 22 April 2014, thereby expanding the investigation against Defendants S.V. \_\_\_\_\_, B.J. \_\_\_\_\_, D.R. \_\_\_\_\_, Z.J. \_\_\_\_\_, B.D. \_\_\_\_\_ and U.B. \_\_\_\_\_ as new suspects in relation to Count B.
  5. On 16 July 2014, the Prosecution filed a Ruling on expansion of investigation dated 15 July 2014, thereby expanding the investigation against other Defendants.
  6. On 10 October 2014, the Prosecution filed an Indictment against Defendants S.S. \_\_\_\_\_, S.V. \_\_\_\_\_, B.J. \_\_\_\_\_, D.R. \_\_\_\_\_, Z.J. \_\_\_\_\_, B.D. \_\_\_\_\_, U.B. \_\_\_\_\_ and R.T. \_\_\_\_\_ for all charges in Counts A and B. Defendant S.S. \_\_\_\_\_ was also indicted under Count C, for the criminal offence of Theft on \_\_\_\_\_.
  7. On 07 November 2014, an Initial Hearing was held in case P.nr. 122/2014 against the eight defendants newly indicted.
  8. The indictment was originally presented in a narrative, unstructured form. Although it consisted of all the necessary elements listed in Article 241 of the CPC, during the initial hearing held on 7 November 2014 the Presiding Trial Judge instructed the Prosecutor to present the charges in an orderly manner.
  9. On 14 November 2014 the Prosecution filed to the Court the corrected indictment dated 12 November 2014 in writing in a structured format.
  10. On 17 November 2014, the Initial Hearing was resumed. During the hearing, all defendants pleaded not guilty to all charges.



11. Pursuant to Article 245, Paragraph (5), Article 249 and Article 250 of the CPC, following the instructions of the Presiding Trial Judge, objections to the evidence presented in the Indictment and Request for dismissal of the Indictment were timely filed by all Defense Counsels within fixed time limit.
12. On 15 January 2015, the Presiding Trial Judge issued a Decision on Defence Objections to Evidence and Request to Dismiss the Indictment. The objections to the admissibility of the evidence presented in the Indictment filed by all Defence Counsel, along with requests to dismiss the Indictment, were rejected as ungrounded except for the Request of the Defence Counsel Miodrag Brkljac for the Defendant D.R. \_\_\_\_\_ dated 9 December 2014 to dismiss the Indictment which was granted by the Presiding Trial Judge. The Presiding Trial Judge therefore dismissed the Indictment against the Defendant D.R. \_\_\_\_\_ and terminated the criminal proceedings against him.
13. The Decision on Defence Objections to Evidence and Request to Dismiss the Indictment was appealed by the Prosecution and all defendants through their Defence Counsel, except for Defendant D.R. \_\_\_\_\_.
14. By the ruling on appeals (PN 79/15) dated 02 and 03 April 2015, the Court of Appeals partly affirmed the Decision of the Presiding Trial Judge dated 15 January 2015. The Court of Appeals modified the enacting clause of the Decision of 15 January 2015 to reject as ungrounded the request of the defence counsel Miodrag Brkljac dated 9 December 2014 on behalf of the Defendant D.R. \_\_\_\_\_.
15. On 28 May 2015, the Presiding Trial Judge issued a Scheduling Order in case P.nr. 122/2014 thereby scheduling the main trial in this case on 01, 27 and 29 July 2015, 11, 12, 13, 18 and 19 August 2015.
16. On 16 June 2015, the Presiding Trial Judge issued a new Scheduling Order in case P.nr. 122/2014 thereby re-scheduling the main trial on 01, 27, 29 July 2015 and 18 and 19 August 2015.
17. On 01 July 2015, the Main Trial in case P.nr. 122/2014 opened. Although having been duly summoned, the Defendant S.V. \_\_\_\_\_ failed to appear at the Basic Court of Mitrovicë/a. On the same day, the Court was informed by Kosovo Police that the Defendant was currently abroad for temporary work.

18. By an oral ruling of the Trial Panel in case P.nr. 122/2014, the Defendant S.V. \_\_\_\_\_ was severed from the case.
19. On 02 July 2015, the Presiding Trial Judge issued an Order for Arrest against the Defendant S.V. \_\_\_\_\_.
20. Following the return of the Defendant in Kosovo and a Defence motion on revocation of arrest order dated 31 July 2015, the Court issued an Order on revocation of arrest order against S.V. \_\_\_\_\_ and imposition of the measures of promise of Defendant not to leave his place of current residence and confiscation of travel documents dated 03 September 2015.
21. Following a decision of the Trial Panel in case P.nr. 122/2014 to sever the Defendant from the case, on 07 September 2015, the Acting President of the Basic Court of Mitrovicë/a issued a Ruling GJA.nr.4/15 assigning a EULEX Judge as Presiding Trial Judge in case P.nr. 127/2015 against Defendant S.V. \_\_\_\_\_.
22. Simultaneously, the Main Trial in Case P.nr. 122/2014 continued and a verdict was rendered in that case on 23 October 2015.
23. On 29 January 2016, the Presiding Trial Judge issued a Scheduling Order thereby scheduling the main trial in case P.nr. 127/2015 on 23, 24, 25 and 29 February 2016 and 02 March 2016.
24. On 22 February 2016, the Court was presented by the Prosecution with a Guilty Plea Agreement dated 22 February 2016 in which the Defendant S.V. \_\_\_\_\_ pleaded guilty of all charges in Count A and in which the Prosecution withdrew all the charges of Count B brought against the Defendant.
25. On 23 February 2016, the Presiding Trial Judge opened the main trial in case P.nr. 127/2015. During the first Main Trial hearing, the Prosecution withdrew the charge of Participating in a crowd committing a criminal offence in Count A (A4). The Presiding Trial Judge therefore instructed the Prosecution to file the Guilty Plea with the Court.
26. On 24 February 2016, the Prosecution filed with the Registry the Guilty Plea Agreement dated 23 February 2016.
27. On 29 February 2016, the Main Trial in case P.nr. 127/2015 was resumed during which the Trial Panel officially accepted the plea agreement and offered the parties to hear their statements, if any, with regard to the sentencing. Since no statements were heard,

the Trial Panel withdrew to deliberate. On the same day, the Trial Panel announced the judgment pursuant to Articles 359 and 366 of the CPC.

## **II. Competence of the Court**

28. Pursuant to Article 11 and Article 9, Paragraph (2) of the Law on Courts, the Basic Court of Mitrovicë/Mitrovica is the competent judicial body to adjudicate this criminal case.
29. The Indictment indicated that the criminal offences that constituted the charges were committed in \_\_\_\_\_ which is in the territory of the Basic Court of Mitrovicë/Mitrovica. For this reason, pursuant to Article 29 Paragraph 1 of the CPC, this Court has territorial jurisdiction to adjudicate the case.
30. EULEX has competence over the case pursuant to the Law No. 04/L-0273 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic Kosovo (hereinafter: Law on Jurisdiction), Agreement Between the Head of the EULEX Kosovo and the Kosovo Judicial Council on Relevant Aspects of the Activity and Cooperation of EULEX Judges and Prosecutors in Kosovo dated 18 June 2014 (hereinafter: the Agreement) and Decision for the Approval of the Request from EULEX for the Continuation of Trials in Relation to Cases That Have Been Allocated to EULEX Judges Between 15 April and 30 May 2014 in the Basic Court in Mitrovica dated 2 July 2014 (hereinafter: the Decision).
31. The President of the Basic Court of Mitrovicë/a, pursuant to the law No. 04/L-0273 mentioned above issued a Decision GJA.nr.579/14 dated 13 October 2014 assigning the criminal case P.nr. 122/2014 to EULEX Judges.
32. On 23 march 2015, the Kosovo Judicial Council of the Republic of Kosovo issued a Decision for the Approval of the Request from EULEX to continue the trial of case P.nr. 122/2014 in the Basic Court of Mitrovicë/Mitrovica KJC No. 23/2015, thereby approving that the case will remain with EULEX Judges.
33. Following the severance of the Defendant **S.V.** \_\_\_\_\_ from case P.nr. 122/2014 due to his failure to appear at main trial, on 07 September 2015, the Acting President of the Basic Court of Mitrovicë/Mitrovica issued a Ruling GJA.nr.4/15 assigning a

EULEX Judge as Presiding Trial Judge in case P.nr. 127/2015 against Defendant S.V. \_\_\_\_\_.

### **III. Applicable law**

34. Pursuant to Article 539 of the CPC, the applicable procedure law during the main trial is the CPC.

### **IV. Factual Findings and Legal Reasoning**

35. Pursuant to Article 247, Paragraph (4) of the CPC a plea agreement under Article 233 of the present Code [or a guilty plea under Article 248 of the present Code] may be considered by the Court at any time prior to the closing of the main trial.
36. Pursuant to Article 233, Paragraph (12) of the CPC a written plea agreement must state every term of the agreement, must be signed by the Chief Prosecutor of the respective office, the Defense Counsel and the Defendant, and shall be binding on each party.
37. Pursuant to Article 233, Paragraph (14) of the CPC the written plea agreement was presented to the Court in a hearing open to the public, which was held on 23 February 2016.
38. Pursuant to Article 233, Paragraph (18) of the CPC the Court determined that the Defendant understood the nature and consequences of the guilty plea, the Defendant's guilty plea was voluntarily made by the Defendant after sufficient consultation with his Defense Counsel and that the Defendant has not been forced to plead guilty or coerced in any way.
39. Furthermore, the Court determined that the guilty plea is supported by the facts and material proofs of the case that are contained in the Indictment and any other evidence, such as testimony of witnesses, presented by the Prosecutor.
40. On the basis of the analysis and assessment of all pieces of evidence presented with the Indictment, the Court established the following facts: on \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ C.C. \_\_\_\_\_, M.S. \_\_\_\_\_ and M.B. \_\_\_\_\_ received a duty order to check the freedom of movement in \_\_\_\_\_. They travelled there from Mitrovicë/Mitrovica by armoured vehicles \_\_\_\_\_ type \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_. M.S. \_\_\_\_\_ was the driver. When they came to the place near the village \_\_\_\_\_, they encountered an improvised roadblock consisting of 8 to 10 male persons. The vehicle was stopped by them for a few seconds but it was immediately allowed to go through. Before the \_\_\_\_\_, driving in their vehicle, reached the centre of \_\_\_\_\_, a group of employees of the \_\_\_\_\_ Medical Centre were blocking the road in front of the \_\_\_\_\_ vehicle. After the \_\_\_\_\_ vehicle stopped, a large crowd of people gathered around the \_\_\_\_\_ vehicle, wearing hoods, ski masks and T-shirts to cover their faces. They started to attack the vehicle by throwing stones and various other objects to the vehicle. The group of unknown assailants sprayed paint on the vehicle's body and windows thus blocking the vision of the \_\_\_\_\_ inside the vehicle. One of the attackers sprayed polyurethane foam into the snorkel of the \_\_\_\_\_ vehicle; other attackers hit repeatedly the vehicle with blunt objects (hammers) and broke the left side front door armoured glass, the back door armoured glass, the outer mirrors and both rear lights of the \_\_\_\_\_ vehicle.

41. The Defendant **S.V.** \_\_\_\_\_ was identified as being part of the group of attackers by a \_\_\_\_\_ involved in the incident, C.C. \_\_\_\_\_. In his statement given to the Police on 1 June 2012, he stated that he saw the Defendant **S.V.** \_\_\_\_\_ put paint over the \_\_\_\_\_ vehicle. C.C. \_\_\_\_\_ stated he knew the Defendant, because he had been working in \_\_\_\_\_ since November 2011. In addition, the Witness C.C. \_\_\_\_\_, during his pre-trial interview on 2 October 2014, confirmed the identification of the Defendant on a photograph as one individual part of the group of attackers.
42. The Court also determined that none of the circumstances under Article 253, Paragraphs (1) and (2) of the CPC exists.
43. Pursuant to Article 233, Paragraph (21) of the CPC, the plea agreement was filed with the Court on 24 February 2016.

44. Pursuant to Article 233, Paragraph (21) of the CPC, the parties were offered their right to make their statements regarding the sentencing in a hearing which was held on 29 February 2016.
45. Based on the plea agreement, the Defendant S.V. \_\_\_\_\_ pleaded guilty for having committed the criminal offences under Count A1. Endangering United Nations and Associated Personnel, Count A2. Obstructing Official Persons in Performing Official Duties, Count A3. Attacking Official Persons Performing Official Duties and Count A5. Damage to Movable Property.
46. Based on the plea agreement, the Prosecution withdrew the charges against the Defendant S.V. \_\_\_\_\_ for the criminal offences under Count A4. Participating in a Crowd Committing a Criminal Offence, Count B1. Endangering United Nations and Associated Personnel, Count B2. Obstructing Official Persons in Performing Official Duties, Count B3. Attacking Official Persons Performing Official Duties, Count B4. Participating in a Crowd Committing a Criminal Offence and Count B5. Damage to Movable Property.

## **V. Determination of the Punishment**

47. The Trial Panel finds that the Criminal Code of the Republic of Kosovo (hereinafter: CCRK) entered into force on 1 January 2013, therefore prior to the final decision in this case.
48. Pursuant to Article 3, Paragraph (1) of the CCRK, the law in effect at the time a criminal offence was committed shall be applied to the perpetrator.
49. The Defendant was convicted for the criminal offences under Count A1, Count A2, Count A3 and Count A5. He committed the criminal offences when the applicable law was the CCK, which entered into force on 6 April 2004 under the name of Provisional Criminal Code of Kosovo and was amended on 6 November 2008 merely by changing its name to Criminal Code of Kosovo.
50. The Trial Panel observes that the plea agreement presented by the parties also includes a provision in which the parties agreed on a range of punishment.
51. Pursuant to Article 233, Paragraph (7) of the CPC:

“the state prosecutor may recommend more lenient punishment under paragraph [...] 2 sub-paragraph 2.1 [...]but only to the extent allowed under the following formulation:

[...] 7.1. for a plea agreements consummated during the main trial, a defendant may be sentenced to a minimum of ninety percent (90%) of the minimum possible imprisonment set by the appropriate provisions of the Criminal Code. [...]”.

52. According to Article 73 of the CCRK, and similarly Article 64 of the CCK, the Court shall determine the punishment of a criminal offence within the limits provided by the law for such criminal offence, taking into consideration the purpose of the punishment, the principles set out in the law and the mitigating or aggravating factors relating to the specific offence or punishment, in particular the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, and the personal circumstances of the perpetrator and his behaviour after committing a criminal offence. The punishment shall be proportionate to the gravity of the offence and the conduct and circumstances of the offender.
53. Article 74, Paragraphs (2) and (3) of the CCRK enumerates aggravating and mitigating circumstances which shall be considered when determining the punishment but expressly states that such set up circumstances are non-exhaustive. The CCK does not expressly restrict what can be considered as an aggravating or mitigating factor.
54. Based on this, when determining the punishment, the Trial Panel considered the Defendant’s entering of a plea of guilt as the main mitigating circumstance.
55. Pursuant to Article 3, Paragraph (2) of the CCRK, as well as Article 2, Paragraph (2) of the CCK, in the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply. The Trial Panel concluded that the substantive elements of all the offences the Defendant was convicted for were the same in the CCK as well in the CCRK.
56. Thereby, for each count, the Trial Panel had to consider which provision regarding the punishment and the sentencing, if any, would have been more favourable to the Defendant.

57. For the criminal offence of *Endangering United Nations and Associated Personnel*, (Count A1) Article 142, Paragraphs (3) and (6.2.i) of the CCK foresees imprisonment of one (1) to ten (10) years. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 1 (one) year of imprisonment.
58. The same criminal act is encompassed in Article 174, Paragraph (3) and (6.2.1) of the CCRK which foresees the same punishment, namely imprisonment of one (1) to ten (10) years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) of the CCRK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 1 (one) year of imprisonment.
59. When determining the punishment, the Trial Panel must carefully weight both aggravating and mitigating circumstances as foreseen in the CCK and the CCRK. The Trial Panel must also compare the punishment that the Court would have imposed against the Defendant based on the provisions of the CCK and the CCRK in light with the principle that the most favourable law to the Defendant must apply as foreseen in Article 3, Paragraph (1) of the CCRK.
60. Based on this, the Trial Panel hereby sentences the Defendant to 1 (one) year of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
61. For the criminal offence of *Obstructing Official Persons in Performing Official Duties*, contrary to Article 316, Paragraph (1) of the CCK, read in conjunction with Article 23 of the CCK (Count A2), the CCK foresees imprisonment of three (3) months to three (3) years. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 3 (three) months of imprisonment.
62. The same criminal act is encompassed in Article 109, Paragraph (1) of the CCRK, read in conjunction with Article 31 of the CCRK which foresees the same punishment, namely imprisonment of three (3) months to three (3) years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) of the CCRK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 3 (three) months of imprisonment .



63. When determining the punishment, the Trial Panel must carefully weight both aggravating and mitigating circumstances as foreseen in the CCK and the CCRK. The Trial Panel must also compare the punishment that the Court would have imposed against the Defendant based on the provisions of the CCK and the CCRK in light with the principle that the most favourable law to the Defendant must apply as foreseen in Article 3, Paragraph (1) of the CCRK. Based on this, the Trial Panel hereby sentences the Defendant to 3 (three) months of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
64. For the criminal offence of *Attacking Official Persons Performing Official Duties*, contrary to Article 317, Paragraph (1) of the CCK, read in conjunction with Article 23 of the CCK (Count A3), the CCK foresees imprisonment of three (3) months to three (3) years. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant for the criminal offence of Attacking Official Persons Performing Official Duties to 3 (three) months of imprisonment.
65. The same criminal act is encompassed in Article 410, Paragraph (1) of the CCRK, read in conjunction with Article 31 of the CCRK which foresees a punishment of imprisonment of three (3) months to three (3) years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) of the CCRK and taking into consideration the above- mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 3 (three) months of imprisonment.
66. When determining the punishment, the Trial Panel must carefully weight both aggravating and mitigating circumstances as foreseen in the CCK and the CCRK. The Trial Panel must also compare the punishment that the Court would have imposed against the Defendant based on the provisions of the CCK and the CCRK in light with the principle that the most favourable law to the Defendant must apply as foreseen in Article 3, Paragraph (1) of the CCRK.
67. Based on this, the Trial Panel hereby sentences the Defendant to 3 (three) months of imprisonment in accordance with Article 38, Paragraph (2) of the CCK.
68. For the criminal offence of *Damage to Movable Property*, contrary to Article 260, Paragraphs (1) and (2) of the CCK, read in conjunction with Article 23 of the CCK

(Count A5), the CCK foresees a fine or imprisonment up to one (1) year. Pursuant to Article 65, Paragraph (1) of the CCK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to a fine in amount of 1.000 (one thousand) euros.

69. The same criminal act is encompassed in Article 333, Paragraphs (1) and (4) of the CCRK, read in conjunction with Article 31 of the CCRK, which foresees a punishment of imprisonment up to three (3) years. Pursuant to Articles 73 and 74, Paragraphs (2) and (3) of the CCRK and taking into consideration the above-mentioned aggravating and mitigating circumstances, the Trial Panel would sentence the Defendant to 3 (three) months of imprisonment.
70. When determining the punishment, the Trial Panel must carefully weight both aggravating and mitigating circumstances as foreseen in the CCK and the CCRK. The Trial Panel must also compare the punishment that the Court would have imposed against the Defendant based on the provisions of the CCK and the CCRK in light with the principle that the most favourable law to the Defendant must apply as foreseen in Article 3, Paragraph (1) of the CCRK.
71. Based on this, the Trial Panel hereby sentences the Defendant to a fine in the amount of 1.000 (one thousand) euros in accordance with Article 38, Paragraph (2) of the CCK.
72. Pursuant to Article 71, Paragraph (2) Sub-Paragraph (2.2) of the CCK, the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of twenty years.
73. Pursuant to the rules of calculation of concurrent criminal offences provided in Article 80, Paragraph (2) Sub-Paragraph (2.2) of the CCRK, the aggregate punishment must be higher than each individual punishment, but not as high as the sum of all prescribed punishments nor may it exceed a period of twenty five years.
74. Taking into account the above-mentioned provisions regarding the rules of concurrent criminal offences, the provisions of the CCK are more favourable to the Defendant than the provisions of the CCRK.
75. Taking this into account and after giving careful weight to all general and special mitigating and aggravating circumstances, the Trial Panel imposes an aggregate

punishment of 1 (one) year and 2 (two) months of imprisonment and a fine in the amount of 1.000 (one thousand) euros.

76. Finally, pursuant to Articles 42 and 43 of the CCK, the Trial Panel assessed that the Defendant deserves a suspension of the execution of imprisonment and of the payment of the fine imposed against him. The Trial Panel assessed that the purpose of a suspended sentence in this case is fulfilled in that it gives the Defendant a reprimand which achieves the purpose of a punishment by pronouncing a sentence without executing it. Furthermore, the conditions as enumerated in Article 43 of the CCK are met.

#### **VI. Costs of the proceedings**

77. The Trial Panel based its decision on the costs of the criminal proceedings on the legal provisions related to the effect of guilty verdict on the reimbursement of the costs.
78. Pursuant to Article 453, Paragraph (4) of the CPC, the Trial Panel hereby relieves the Defendant of the duty to reimburse entirely the costs of criminal proceedings. Therefore, it has been decided that the costs shall be paid from budgetary resources.

**LEGAL REMEDY:** A Defendant, his Defence counsel, the Prosecutor or Injured Party have 15 days from service of this judgment to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.

**BASIC COURT OF MITROVICĚ/MITROVICA**  
**P. no. 127/2015**  
**29 February 2016**

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Franciska FISER

Presiding Trial Judge

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Vera MANUELLO  
Recording Officer

Drafted in English, as an authorized language