

BASIC COURT OF PRIZREN

Case number 410/13

The judgments published may not be final and may be subject to an appeal according to the applicable law.

(ENACTING CLAUSE)

On the 14 April 2016, the Basic Court of Prizren in the trial panel composed of Judge Jorge Martins Ribeiro (EULEX), as Presiding Judge, Judge Jennifer Seel (EULEX) and Judge Artan Sejrani, as panel members, in the criminal case P.no. 410/13, prosecuted by the SPRK Prosecutors Mr. Rómulo Mateus and Ms. Tiffany-Corrine Moise (EULEX)¹, pronounces in public the following:

IN THE NAME OF THE PEOPLE

The accused are:

1 – A.Ç., nickname “Sa.”, son of [parents’s names], male, single, personal identification number [Turkish passport no. with series number], Turkish nationality and citizenship, born on [date] in [city], [province], Republic of Turkey, previously resident in [city], Republic of Turkey, with address in Kosovo on [address].

He is in detention on remand since 3 February 2013.

2 – M.B., son of [parents’s names], male, married, holder of [Kosovo passport no. and personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in [city], previously resident in [city], [address].

He is in detention on remand since 13 December 2012.

3 – A.M., son of [parents’ names], male, single, [personal identification number no.], Kosovo Turkish nationality and Kosovo citizenship, born on [date] in [city], Kosovo, previously resident in [city], [address].

He is in detention on remand since 13 December 2012.

4 – M.A., son of [parents’ names], male, single, personal identification number [Turkish driving licence no. and date], Turkish nationality and citizenship, born on

¹ And others, as already mentioned.

[date] in [city], , Republic of Turkey, previously resident in [city], Turkey, and then in [address].

He was in detention on remand since 24 January 2013 until 12 April 2016. Now he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

5 – A.B., son of [parents' names], male, married, personal identification number [F.Y.R.O.M. passport no and identification card number], Macedonian Albanian nationality and F.Y.R.O.M. citizenship; he was born on [date] in Skopje F.Y.R.O.M., and he was previously resident in [address], F.Y.R.O.M.

He is in detention on remand since 13 December 2012.

6 – I.P., son of [parents' names], male, married, [personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in [city], resident in [city].

He was in detention on remand since 13 December 2012 until 12 of June 2014. Since 11 June 2014 he is subject to the measure of attendance at the police station twice a week, together with the promise of not going into hiding.

7 – A.G., son of [parents' names], male, married, [personal identification number], Kosovo Albanian nationality and Kosovo citizenship, born on [date] in Pristina, resident in [city].

The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding.

8 – T.Y., son of [parents's names], male, married, [personal identification number] (T.Y. has become a citizen of the Republic of Kosovo [no. and date], MIA – Prishtina; [Kosovo passport no.], Turkish nationality and Kosovo and Turkey citizenship, born on [date] in [city], Turkey, resident in [city], [address].

The defendant is subject to the measure of attendance at the police station once a week, together with the promise of not going into hiding.

The defendants were accused by an indictment (SPRK PPS No: 50/2011, HEP No. 108/2011), dated 11/12/2012, filed with the court by the EULEX Prosecutor Martin Hackett, pursuant to Articles 240, par. 1, 241 and 242 of the C.P.C.R.K. and Law 04/L-123.

Each of the accused is charged² for the following criminal offences³:

1 - A.Ç.:

² As said, the Prosecution has not withdrawn any charge.

³ Again, at this moment, without references to the counts.

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);
- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and
- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

2 - M.B.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);
- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and
- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

3 - A.M.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);
- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and
- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

4 - M.A.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.) and
- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.).

5- A.B.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.);

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.) and

- money laundering, pursuant to Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3 September 2010, promulgated on 18/10/2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences.

6 - I.P.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 6 C.C.R.K.) and

- organised crime, as per Article 274, paragraphs 1, 2 and 3, P.C.C.K., (currently provided for in Article 283, paragraphs 1 and 2, C.C.R.K.).

7 - A.G.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 C.C.R.K.) and

- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

8 - T.Y.:

- smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 C.C.R.K.) and

- participating in organised crime (Article 274, paragraphs 1 and 2, P.C.C.K., currently provided for in Article 283, par. 1, C.C.R.K.).

After the initial hearing took place on 30 December 2013, 29 January 2014 and 23 April 2014 and the second hearing was held on 30 May 2014, whereas the main trial sessions, open to the public, were held on 10 September 2014, 11 September 2014, 24 September 2014, 25 September 2014, 15 October 2014, 31 October 2014, 3 November 2014, 10 November 2014, 24 November 2014, 2 December 2014, 3 December 2014, 9 December 2014, 10 December 2014, 16 December 2014, 22 January 2015, 28 January 2015, 9 February 2015, 10 February 2015, 16 March 2015, 19 March 2015, 15 April 2015, 20 April 2015, 28 April 2015, 6 May 2015, 8 May 2015, 12 May 2015, 13 May 2015, 18 May 2015, 20 May 2015, 16 June 2015, 17 June 2015, 14 July 2015, 15 July 2015, 1 September 2015, 22 September 2015, 23 September 2015, 20 November 2015, 23 November 2015, 30 November 2015, 1 December 2015, 17 December 2015, 18 December 2015, 5 January 2016, 14 January 2016, 16 and 18 February, 9, 15, 16, 21 March 2016, 7 and 12 April 2016 in the presence of the Prosecution, the said

defendants⁴ and their defence counsels, and after the panel's deliberation and voting on the 12th April 2016.

And pursuant to articles 359 to 366 and 370 of the Criminal Procedure Code of the Republic of Kosovo, on this 14 April 2016, in open court and in the presence of the defendants, defence counsels and the SPRK Prosecutor, renders the following

VERDICT

Count 1: "A.Ç., M.B., A.M., A.B., I.P. and M.A. for organised crime, in violation of Article 274 paragraphs 1, 2 and 3 of the P.C.C.K., punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years (Corresponding to Article 283 paragraphs 1 and 2 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code))"

In relation to count 1, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç., M.B., A.M., A.B., I.P. and M.A. not guilty** of the criminal offence of organised crime, in violation of Article 274 paragraphs 1, 2 and 3 of the P.C.C.K., punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years (Corresponding to Article 283 paragraphs 1 and 2 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that the defendants (and now quoting the indictment): "between 1 October 2010 and 3 February 2013, A.Ç.; between 6 April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; between 5 October 2012 and 13 December 2013, I.P.; and between 21 June 2012 and 24 January 2013, M.A.; on the territory of Kosovo and other countries committed the offence of Organised Crime by: (1) organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K., C.K., E.K., L.K., O.A., B.F., F.A., A.Ç., M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., "N.", S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. ("B."), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. ("[Nickname]"), N.K., "I.?" (last name unknown), "E.?" (last name unknown), "B.?" (last name unknown), "B.?" (last name unknown), person nicknamed "K.", person nicknamed "A.P.", person nicknamed "T.", person nicknamed "L.", person nicknamed "Ar.", person nicknamed "D." and other unidentified perpetrators; (2) committing a

⁴ Except when absent from the courtroom, in accordance with the law, while co-defendants were stating the case, but always represented by the respective defence counsel (and brief on what had been said during their absence).

serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., “N.”, S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. (“B.”), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. “[nickname]”, N.K., “I.?” (last name unknown), “E.?” (last name unknown), “B.?” (last name unknown), “B.?” (last name unknown), person nicknamed “K.”, person nicknamed “A.P.”, person nicknamed “T.”, person nicknamed “L.”, person nicknamed “Ar.” person nicknamed “D.” and other unidentified perpetrators; and/or (3) actively participating in the criminal or other activities of the said organised criminal group knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit”.

Count 2: “A.G. and T.Y. for participating in organised crime, in violation of Article 274 paragraphs 1 and 2 of the P.C.C.K., punishable by imprisonment of at least seven years (corresponding to Articles 283 paragraph 1 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code)”⁵

In relation to count 2, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.G. and T.Y. not guilty** of the criminal offence of participation in organised crime, in violation of Article 274 paragraphs 1 and 2 of the P.C.C.K., punishable by imprisonment of at least seven years (corresponding to Articles 283 paragraph 1 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established beyond reasonable doubt that the defendants (and now quoting the indictment): “between 17 August 2012 and 13 December 2012, A.G.; and between 7 November 2012 and 13 December 2012, T.Y.; on the territory of Kosovo, committed the offence of Participating in Organised Crime by: (1) committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., “N.”, S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. (“B.”), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M., H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., “I.?” (last name unknown), “E.?” (last name unknown), “B.?” (last name unknown), “B.?” (last name unknown), person nicknamed “K.”, person nicknamed “A.P.”, person nicknamed “T.”, person nicknamed “L.”, person nicknamed “Ar.” person nicknamed “D.” and other unidentified perpetrators; and/or (2) actively participating in the criminal or other activities of an organised criminal group consisting of O.A., B.F., F.A., A.Ç, M.B., A.M., A.B., I.P., M.A., S.S., A.G., T.Y., N.N., “N.”, S.M., M.M., S.I., M.C., S.P-M., M.Me., I.H., M.H. (“B.”), T.H., S.B., N.P., Z.G., M.Ca., Z.M., G.N., A.V., K.V., N.M.,

⁵ The references to S.S. will be omitted.

H.M., K.H., A.By., S.A., R.V., G.B., A.Al., A.Br., B.E., D.M., T.Ha., M.Br., D.S., A.S., E.S., M.Ma., R.A., , O.S., A.C., H.Y., M.O., O.Sa., I.B., M.T., M.G., H.G., M.I., H.H., H.Ha., J.Z. [nickname], N.K., “I.?” (last name unknown), “E.?” (last name unknown), “B.?” (last name unknown), “B.?” (last name unknown), person nicknamed “K.”, person nicknamed “A.P.”, person nicknamed “T.”, person nicknamed “L.”, person nicknamed “A.” person nicknamed “D.” and other unidentified perpetrators knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit”.

Count 3: “A.Ç and A.B. for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo (P.C.C.K.)”

In relation to count 3, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç and A.B. not guilty** of the criminal offence of smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that (and quoting from the indictment): “between 25 June 2011 and 14 December 2011, A.Ç. and A.B. on the territory of Kosovo, Serbia, Former Yugoslav Republic of Macedonia, Montenegro, Croatia, Slovenia, Italy, Austria, Germany and/or other States, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter or remain in Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry, and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) -H.D., F.Y., A.S.Z. (from 25/6/2011 to 06/07/2011).

(2) -S.Ar. and T.T. (from 19/10/2011 to 23/10/2011).

(3) -M.S., R.S. and A.Sa. (from 01/10/2011 to 07/10/2011).

(4)- Z.A. and O.Y. (from 01/10/2011 to 17/11/2011).

(5)- Smuggling 4 unidentified Turkish illegal migrants from Turkey through Montenegro and Serbia to Germany (from 17/11/2011 to 20/11/2011).

(6)-Y.D., B.H.O. (from 20/11/2011 to 28/11/2011) and H.D. and M.So. (from 20/11/2011 to 28/11/2011).

(7) -"II." [and a family consisting of a mother and 5 children and a Turkish migrant named F.U. (from 28/11/2011 to 06/12/2011)].

(8) - M.Bu., A.K., B.B., "S." or "Se.", F.T., "M.", "Sel.", E.U., M.E., Family of 3, M.Ar., E.A., M.Y., A.U., R.T., S.D. and other unidentified person (from 18 August 2011 to 3 December 2011)".

Count 4: "A.Ç for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Criminal Code of Kosovo (P.C.C.K.)"

In relation to count 4, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendant **A.Ç not guilty** of the criminal offence of smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), because it has not been proven beyond reasonable doubt that the said accused has committed the acts with which he has been charged, namely, it has not been established that (and quoting from the indictment): "between 5 October 2011 and 9 October 2011, A.Ç on the territory of Kosovo, committed the offence of Smuggling of Migrants by engaging in the smuggling; procuring and providing fraudulent travel or identity documents to enable the smuggling to obtain a financial or other material benefit; and enabling persons who are not residents of Kosovo to enter Kosovo, or persons who are not nationals or permanent residents to cross a border without complying with the requirements for legal entry and remain in the State concerned without complying with the necessary legal requirements to remain by the previously-stated means or by other illegal means; and most importantly, by organizing and directing other persons to commit the same, for the following migrants:

(1) The three allegedly travelling between 5 October 2011 and 9 October 2011: A.E., M.Er. and A.Er."

Count 5: "A.Ç., M.B., A.M., A.B., I.P. and M.A. for smuggling of migrants, in violation of Article 138 paragraphs 1, 2, 3, 4, 5 and 6 of the Provisional Criminal Code of Kosovo (P.C.C.K.), in particular by organising and directing others to commit the offence, punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years with the aggravating circumstance of acting as a member of a group or in a manner that is likely to endanger the lives or safety of the migrants or that entails inhuman or degrading treatment, including exploitation, of such migrants (corresponding to Article 170 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code))"

In relation to count 5, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç., M.B., A.M., A.B., I.P. and M.A. guilty** of smuggling of migrants, in the exact terms that will be mentioned below, committed in co-perpetration:

-A.Ç according to Articles 3, 31, 81 and 170, paragraphs 1, 5, 6 and 8, C.C.R.K, engaged in smuggling of migrants, organizing and directing others and as a member of a group, in co-perpetration and in continuation;

- M.B., A.M., M.A. and A.B. according to Articles 23, 71 and 138, paragraphs 1, 6 and 7, P.C.C.K, engaged in concurrent criminal offences of smuggling of migrants as members of a group and in co-perpetration;

- I.P. according to Articles 3, 31 and 170, paragraphs 1 and 8, C.C.R.K, engaged in smuggling of migrants (being acquitted of the aggravating circumstances as the facts that are their constituent have not been established beyond reasonable doubt) and in co-perpetration.

It is so decided because⁶ it has been proven that the said accused have committed acts with which they have been charged, namely, it has been established beyond reasonable doubt the smuggling of migrants.

In this count we will address each paragraph of the count separately, name of each smuggled migrant, followed by the name of the defendants involved in each case⁷:

(1)- In the period between 23 June and 27 June 2012 smuggling the following Turkish migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Oc.: A.Ç,
T.O.: A.Ç and
M.K.: A.Ç

(2)- In the period of July 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Y.: A.Ç,
F.K.: A.Ç and
M.Sol.: A.Ç.

(3)- In the period of August 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

O.Yl.: A.Ç,
I.K.⁸: A.Ç / A.G.,

⁶ The facts in the enacting clause are only an overview to allow the understanding of the decision.

⁷ At this point only the names will be mentioned, the role of each defendant in every particular established fact of smuggling migrants will be explained in the reasoning.

⁸ For systematic reasons this individual will be mentioned again in count 6, in relation to the defendant A.G.

M.S.B.: A.Ç and

M.Ha.: A.Ç.

(4)- In the period of September 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

M.Go.: A.Ç,

R.K.G.: A.Ç,

T.Ya.: A.Ç,

D.E.: A.Ç,

S.E.: A.Ç,

E.E.: A.Ç,

H.Ce.: A.Ç,

K.C.: A.Ç,

B.C.: A.Ç,

L.D.: A.Ç,

S.K.: A.Ç,

H.K.: A.Ç,

A.Ak.: A.Ç,

G.K.: A.Ç,

M.P.: A.Ç,

E.P.: A.Ç,

M.S.D.: A.Ç,

F.U.: A.Ç / A.M.,

H.E.: A.Ç / A.M.,

U.K.: A.Ç,

I.T.: A.Ç,

E.Si.: A.Ç / A.M.,

V.Oz.: A.Ç / A.M.,

S.C.: A.Ç / A.M.,

A.Akd.: A.Ç,

C.D.: A.Ç,

D.B.: A.Ç,

S.Al.: A.Ç and

M.Ka.: A.Ç.

(5)- In the period of October 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

I.Yl.: A.Ç,

C.C.: A.Ç,

E.B.: A.Ç,

N.S.: A.Ç,

V.A.: A.Ç / A.M.,

H.Yu.: A.Ç,

D.K.: A.Ç,

A.D.: A.Ç,

L.B.: A.Ç,

I.Pol.: A.Ç,

S.Sa.: A.Ç,

S.Ba.: A.Ç,

A.Bi.: A.Ç / M.B.,

I.D.: A.Ç / A.M./ A.B.,

A.O.: A.Ç / A.M.,

A.H.Y.: A.Ç,

T.E.: A.Ç,

H.S.: A.Ç,

H.A.: A.Ç,

A.Ar.: A.Ç / A.M.,

F.G.: A.Ç,

A.Di.: A.Ç / I.P.,

H.M.K.: A.Ç / I.P.,

O.G.: A.Ç,

O.K.: A.Ç / I.P. and

A.Uz.: A.Ç.

(6)- In the period of November 2012 smuggling the following migrants by organizing their travel and enter in Kosovo as transit country to other countries as final destination:

B.G.: A.Ç / M.B. / M.A.,

H.T.: A.Ç / A.M. / M.B.,

M.P.: A.Ç / A.M. / M.B.,

R.B.⁹: A.Ç / T.Y. / M.B. / A.B.,

E.Ba.¹⁰: A.Ç / T.Y.,

Akr.A.: A.Ç / M.B.,

S.Az.: A.Ç / M.B.,

N.A.: A.Ç / M.B.,

Y.A.: A.Ç / M.B.,

D.A.: A.Ç / M.B.,

C.Ko.: A.Ç,

N.C.: A.Ç,

M.M.B.:¹¹ A.Ç / M.A. / A.B. / M.B.¹²,

⁹ For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

¹⁰ For systematic reasons this individual will be mentioned again in count 8, in relation to the defendant T.Y.

¹¹ There are data with regards another individual (the female spouse of M.M.B.) A.Bu., for instance on the BMS report and references in sms and intercepts. However, this individual is not mentioned on the indictment.

¹² M.B. with regards to the first attempt by the said couple on 13/11/2012, when they landed at Pristina International Airport, at 7.49 h. pm. (see page 275 of BMS report).

A.Gi.: A.Ç.

Accordingly: the defendant A.Ç engaged in smuggling of migrants acting as member of a group and organising and directing the activities of others and he was involved in several moments in the smuggling of 79 migrants; the defendant M.B. engaged in smuggling of migrants acting as member of a group and he was involved in 6 moments in the smuggling of 11 migrants; the defendant A.M. engaged in smuggling of migrants acting as member of a group and he was involved in 7 moments in the smuggling of 11 migrants; the defendant A.B. engaged in smuggling of migrants acting as member of a group and he was involved in 3 moments in the smuggling of 3 migrants; the defendant M.A. engaged in smuggling of migrants acting as member of a group and he was involved in 2 moments in the smuggling of 2¹³ migrants and the defendant I.P. engaged in the smuggling of migrants and he was involved in 1 moment in the smuggling of 3 migrants¹⁴.

The defendants acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the illegality of the entrances for being based on false statements to the border officials, or in some cases with the awareness and active co-operation of the latter, all aiming at enabling the smuggled individuals a onward trip to other countries, namely of the European Union.

At the time the defendants behaved in the way described above, they were able to understand and control their acts, which they desired, knowing that their acts were forbidden and punishable by law.

In this count 5 it was not established whether apart the above mentioned migrants, also the following individuals were smuggled: in paragraph (3) A.Se. and S.Baj. and, in paragraph (5) G.Ba.. Also, it was not established the contents of the paragraph (7): “Between 21 June and 2 December 2012, attempting to smuggle and or enable 59 other person who are not nationals or permanent residents, no not otherwise legally permitted to enter or remain in other States, namely, persons of Turkish or Syrian origin, from Turkey through Serbia, Kosovo, F.R.Y. of Macedonia, Montenegro, Croatia and/or Bosnia and Herzegovina to Slovenia, Italy, Hungary, Germany and /or Austria”.

Count 6: “A.G., smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3, C.C.R.K.)”

¹³ As A.Bu. is not mentioned on the indictment, otherwise would be A.Ç. 80, M.B. 12, A.B. 4, M.A. 3.

¹⁴ Despite not mentioned in this count, the defendant A.G. was involved in the smuggling of 1 migrant and the defendant T.Y. was involved in the smuggling of 2 migrants (in 2 different moments).

In relation to count 6, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendant **A.G. guilty** of engaging in smuggling of migrants, committed in co-perpetration with A.Ç, contrary to Articles 170, paragraphs 1 and 8, C.C.R.K. read together with Article 3, par. 2, and Article 31 C.C.R.K., because in the period between 17 August and 22 August 2012 the defendant A.G. engaged in the smuggling of migrants by providing a guarantee letter whose contents was false for not corresponding to the truth (which might lead to the criminal offence of legalization of false content – pursuant to Article 334, of the P.C.C.K. or Article 403 C.C.R.K.), issued on 17/8/2012 and signed by him upon request and assistance of A.Ç, letter to I.K. who travelled and landed in Kosovo with the intent of using it as transit country to other countries as final destination, being that the defendant went to the airport on 22/8/2012 in order to pick up him, as he had guaranteed for him on 17/8/2012. I.K. indeed arrived in Kosovo at Pristina Airport on 22/08/2012, at. 6.43 pm.

The defendant A.G. (engaged in the smuggling of migrants) was involved in one moment in the smuggling of 1 migrant.

The defendant acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of a person into the Republic of Kosovo, where such person is not a Republic of Kosovo National, or a person who is a Republic of Kosovo National of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the document would or at least could be used to enter Kosovo, entrance therefore based on deceit and false statements to the border officials, namely based on the guarantee letter signed by him, all aiming at enabling the smuggled individual a onward trip to other countries, namely of the European Union.

At the time the defendant behaved in the way described above, he was able to understand and control his acts, which he desired, and if not knowing that his acts were forbidden and punishable by law at least he was aware that a prohibited consequence could occur as a result of his acts and he acceded to its occurrence.

Count 7: Subject to the severance of proceedings.

Count 8: “T.Y., smuggling of migrants, as per Article 138 paragraphs 1, 2 and 3 of the P.C.C.K (currently provided for in Article 170, paragraphs 1 to 3 of the C.C.R.K.)”

In relation to count 8, pursuant to articles 359, 361, 362, par. 1, 365, and 366, and 370, par. 3, C.P.C.K, the court finds the defendant **T.Y. guilty** of engaging in smuggling of migrants, committed in continuation and in co-perpetration with A.Ç, contrary to Articles 170, paragraphs 1 and 8, C.C.R.K. read together with Article 3, par. 2, Article 31 and Article 81 C.C.R.K., because in the period between 7 November 2012

and 7¹⁵ December 2012 the defendant T.Y. engaged in smuggling the following migrants by taking part in the preparation and arrangements of their trips, who did travel and entered in Kosovo, in different days, as transit country to other countries as final destination: R.B. and E.Ba..

The defendant T.Y. (engaged in the smuggling of migrants) was involved in two moments in the smuggling of 2 migrants.

The defendant acted in such way with the intent of obtaining a financial or material benefit from the illegal entry of two persons into the Republic of Kosovo, where such persons are not a Republic of Kosovo Nationals, or persons who are Nationals of a foreign national into a State in which such person is not a permanent resident or a citizen of such state and knew the illegality of the entrances for being based on deceit and false statements to the border officials, all aiming at enabling the smuggled individuals a onward trip to other countries, namely of the European Union.

At the time the defendant behaved in the way described above, he was able to understand and control his acts, which he desired, knowing that his acts were forbidden and punishable by law.

In this count 8 it is not established: whether apart from procuring and engaging, namely by contacting the passengers and providing information related to the travel arrangements, the defendant did also produce the guarantee letters.

Count 9: “A.Ç., M.B., A.M. and A.B. for money laundering, in violation of Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3.09.2010”

In relation to count 9, pursuant to Articles 359, 361, 362, par. 1, 364, par. 1.1.3, and 370, par. 3, C.P.C.K, the court finds the defendants **A.Ç., M.B., A.M. and A.B. not guilty** of the criminal offence of money laundering, in violation of Article 32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing of 3.09.2010, promulgated on 18.10.2010, and while applicable, Section 10.2 of UNMIK Regulation No. 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, adopted on 5 February 2004, because it has not been proven beyond reasonable doubt that the said accused have committed the acts with which they have been charged, namely, it has not been established that (and quoting from the indictment): “between 1 October 2010 and 3 February 2013, A.Ç.; because between 6 April 2011 and 13 December 2012, M.B.; between 28 June 2011 and 13 December 2012, A.M.; between 4 November 2010 and 13 December 2013, A.B.; on the territory of Kosovo and other States committed the offence of Money Laundering by, knowingly or having cause to know that certain property, namely cash or other monetary means, is the proceeds of criminal activity, and which property is in fact proceeds of crime (smuggling of migrants by members of the criminal group)”.

¹⁵ Not 4.

For the above the Court imposes the following

Sentencing:

A.Ç (Count 5): for the criminal offence of smuggling of migrants in the aggravated form, of acting not only as a member of a group but also organising and directing others in the activity of smuggling migrants, in co-perpetration and in continuation, in accordance with Article 170, paragraphs 1, 5, 6 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 62, 71, 72, 73 and 81 C.C.R.K., is convicted to 7 years and 3 months of imprisonment and to pay a fine of 1000 Euros.

M.B. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 6 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years and 3 months of imprisonment.

A.M. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 7 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 5 years of imprisonment.

A.B. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 3 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 4 years of imprisonment.

M.A. (Count 5): For the criminal offence of smuggling of migrants in the aggravated form, of acting as a member of a group, in co-perpetration and in concurrency of 2 criminal offences of smuggling of migrants in the said form, in accordance with Article 138, paragraphs 1, 6 and 7, read together with Articles 23, 34, 39, 54, 62, 63, 64 and 71 P.C.C.K., is convicted to the aggregated punishment of 3 years and 6 months of imprisonment.

I.P. (Count 5): For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K, read together with Articles 3, 31, 41, 45, 46, 73 and C.C.R.K., is convicted to 2 years and 3 months of imprisonment and to pay a fine of 400 Euros.

A.G. (Count 6): For the criminal offence of engaging in the smuggling of migrants, in co-perpetration, in accordance with Article 170, paragraphs 1 and 8.1 and

8.2, C.C.R.K., read together with Articles 3, 21, par. 3, 31, 41, 45, 46, 73 and 75 C.C.R.K., is convicted to 1 year of imprisonment and to pay a fine of 200 Euros.

T.Y. (Count 8): For the 2 criminal offences of engaging in the smuggling of migrants, in co-perpetration and in continuation, in the said form, in accordance with Article 170, paragraphs 1 and 8.1 and 8.2, C.C.R.K., read together with Articles 3, 31, 41, 45, 46, 73, and 81 C.C.R.K., is convicted to the punishment of 2 years of imprisonment and to pay a fine of 400 Euros.

Credit of the period of time spent in detention on remand

Pursuant to Article 73, par. 1, P.C.C.K. or Article 83, par. 1, C.C.R.K., the period of time spent in detention on remand will be credited in the execution of the punishments of imprisonment.

Period to pay the fines

Pursuant to Article 365, par. 2, C.P.C.K. and Article 46, par. 2, C.C.R.K., the defendant A.G. has to pay the fine in the period of 1 month and the defendant T.Y. in the period of 3 months. In the event the fines have to be substituted, the manner will be in accordance with the rules set in Article 46, pars. 3 to 5, C.C.R.K.

Suspension of the imprisonment sanctions imposed to the defendants A.G. and T.Y.:

The court decides, pursuant to Articles 3, 50, 51, pars. 1, 2, 4, and 52, pars. 2 (this one read together with 170. par. 1), 3 to 5, C.C.R.K., to suspend the execution of the punishment of imprisonment of A.G. if he does not commit another criminal offence for the verification period of 2 years and of T.Y. if he does not commit another criminal offence for the verification period of 3 years. The punishments of fine are not suspended.

Pursuant to Articles 52, par. 3, and 59 C.C.R.K., the suspension also includes the obligation of refraining from changing residence without informing the probation service.

The court not applying Article 82 C.C.R.K.

The court decided not to apply such norm at this moment because, among others factors, there are no sufficient data regarding the stage of the execution of the punishment of imprisonment imposed to the defendant I.P. in the proceedings of the Basic Court of Gjilan number, PKR. no. 56/2013 and Court of Appeals (PAKR 259/14), dated 22 May 2015, by which he was sentenced for “attempted smuggling of migrants”, in accordance with article 170, paragraph 1, article 28, paragraph 3 and article 76, paragraph 1, sub paragraph 4, of C.C.R.K., with 1 (one) year and 6 (six) months imprisonment and a fine in the amount of 200 € (two hundred Euros).

Accessory punishment(s):

In relation to an accessory punishment to the defendants, the court decides to apply to two defendants who are foreign citizens with no direct family ties to Kosovo (A.Ç and A.B.) the accessory punishment of “expulsion from the territory of the Republic of Kosovo” foreseen in Article 62, par. 2.9, read together with Articles 3, 71, par. 1, C.C.R.K, for the period of 7 years to A.Ç and for the period of 4 years to A.B., commencing from the day this decision becomes final (Article 71, par. 4, C.C.R.K.).

In the case of the two other foreign citizens, the defendants M.A. and T.Y. (with dual citizenship, including Kosovar), the court will not and cannot, respectively, apply such accessory punishment.

Confiscation of objects: The objects listed in the indictment proposed to be subject to forfeiture are declared forfeited¹⁶ if not yet subject to identical decision in any other proceedings¹⁷ as they were used in the commission of acts constituent of criminal offences, pursuant to Article 60 P.C.C.K (currently Article 69 C.C.R.K.):

From **A.Ç.:**

1 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217 with SIM card, IPKO, No. 109011355198;

2 - Mobile telephone, Nokia, model 6230i, IMEI No. 353233/01421796/2 with SIM card MTS, [Tel. No.];

3 - SIM card, IPKO No. 109011298946;

4 - SIM card, VALA, No. 8937701010020489791;

5 - SIM card, IPKO No. 109011301108;

6 - SIM card, djuice, [Tel. No.];

7 - Mobile telephone, Nokia, model 2310, IMEI No. 354819/01/015797/7;

8 - SIM card, VIP, No. 8938105209070703180;

9 - SIM card, IPKO, No. 108010741091;

10 - Mobile telephone, Nokia, model 6300 IC: 661U-RM217, IMEI: 358051012922556;

¹⁶ For the reason the proceedings were severed in relation to S.S., the objects referred to him will not be mentioned here.

¹⁷ As, for example, in the case of the defendant M.B. in this case only the phone [with phone number] was used but the remaining are seized following an order issued in other criminal proceedings. Indeed, only [phone number] will be mentioned along the reasoning that will follow the established facts, and the court mentions this because not only along the trial but also in his closing speech (on 16/03/2016), the defendant M.B. insisted that the phone with [phone number] had already been seized in other proceedings, on 25/09/2011.

- 11 - SIM card, IPKO, No. 109011867774, [with phone number];
- 12 - SIM card, IPKO, 109011389055;
- 13 - SIM card, Mobi, [Tel. No.];
- 14 - SIM card, Mobi, [Tel. No.];

From **M.B.:**

- 1 - Desktop computer, HP COMPAQ, HP DC7600, MT, CEL 3066/512/40, series no. 1059262;
- 2 - Mobile telephone, Vodafone, GSM 900/1800 Mhz, IMEI No. 868955000980611, with SIM card [with phone number];
- 3 - SIM card, IPKO, No. 109011727207 [with phone number];
- 4 - Mobile telephone, NOKIA, model 2310, type RM-189, IMEI No. 358960/01/546112/5 with SIM card [Tel. No.] series number 0553626;
- 5 - SIM card, Z-mobile, No. 101005288898 [with phone number];

From **A.M.:**

- 1 - Mobile telephone, SAMSUNG, model GT-E1170, IMEI No. 358688/03/348592/3, with SIM card, IPKO, No. 109011732744 [with phone number];
- 2 - SIM card, VALA, No. 8937701010013414525;
- 3 - Mobile telephone, NOKIA, model 1650, type RM 305, IMEI No. 359565/01/710615/3;
- 4 - Mobile telephone, SIEMENS C35i, No. 449191546517141;
- 5 - Mobile telephone, SAMSUNG, model GT-E1080W, IMEI No. 359779/04/506133/6;
- 6 - DELL laptop, LBL P/N W1495 A00;
- 7 - Mobile telephone, NOKIA, model N73-1, type RM-133, IMEI No. 359568019767451;
- 8 - Mobile telephone, NOKIA, model 6230i, type RM-72, IMEI No. 357097/00/936104/4;
- 9 - San Disk Micro Chip, Micro SD;

From **M.A.:**

- 1 - SIM card, IPKO, No. 108010802656;
- 2 - Samsung mobile phone, model SGH-C130, IMEI: 359345/00/290793/5;

From **A.B.:**

- 1 - NOKIA telephone 1112, series no. IMEI 358067/01/197640/1;
- 2 - IPKO SIM card, with series no. 109011863241;
- 3 - SAMSUNG telephone SGH D900I, with IMEI no. 354890/01/275088/7;
- 4 - T-Mobile SIM card, no. 893890109022551969732.GI;

From **I.P.:**

- 1 - Mobile telephone, NOKIA, model 101, type RM-769, with two SIM cards and IMEI No. 359739/04/689510/8 and IMEI No. 359739/04/689511/8;
- 2 - SIM card, VALA, No. 8937701010020426413;
- 3 - SIM card, IPKO, No. 109011276344;

From **A.G.:**

- 1 - Mobile telephone, NOKIA, model 6300, IMEI No. 353933/01/340506/8;
- 2 - Mobile telephone, Samsung, model SGH-E900, IMEI No. 356030/01/325515/0;
- 3 - Mobile telephone, Samsung, model GT- C 3010, IMEI No. 353373/03/898337/9;
- 4 - Mobile telephone, Samsung, model GT-E 1170, IMEI No. 355049/04/406513/2;
- 5 - Mobile telephone, Samsung, model SGH-C 260, IMEI No. 358210/01/064416/2;
- 6 - Mobile telephone, Samsung, model C 3050, IMEI No. 358553/03/840340/4;
- 7 - SIM card, VALA, No. 8937701010016818185;

From **T.Y.:**

- 1 - Mobile telephone, NOKIA, model 6303ci, type RM-638, IMEI No. 352682/04/167543/9;
- 2 - SIM card, VALA, No. 8937701010016959260 [with phone number], pin code:0000;

- 3 - SIM card, VALA, No. 8937701010007220789;
- 4 - Desktop computer COMPAQ, 8110FR4Z1957.

Property claim:

There is no property claim.

The costs of the proceedings:

In accordance with Article 450 C.P.C.K., the costs of the proceedings shall be paid by the defendants. Pursuant to Article 450, par. 2.6, the scheduled amounts are 200 Euros to each of the defendants, in the total amount of 1600 Euros.

In accordance with Article 450, paragraphs 5 to 7, C.P.C.K., costs with interpretation into languages of the defendants and remuneration and necessary expenses with the defence counsels appointed, are not being included.

The court, *ex officio*, sees no need of announcement of this judgment (enacting clause) in the press or radio or television, Article 365, par. 1.1.6, C.P.C.K, to protect the values of Justice and Public Interest.

Legal remedy: Pursuant to Articles 374, par. 1.1, and 380, par. 1, an appeal against this judgment may be filed within 15 days of the day its copy has been served to the parties. The appeal should be addressed to the Court of Appeals through the Basic Court of Prizren.

Done in English (authorised language), in Prizren on the 14th April 2016,

The Presiding Judge

(EULEX Judge Jorge Martins Ribeiro)