

**BASIC COURT OF PRISTINA**

**PKR.Nr. 490/15**

**15 October 2015**

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

**IN THE NAME OF THE PEOPLE**

The Basic Court of Pristina, in the trial panel composed of EULEX Judge Jennifer Seel as Presiding Judge, Kosovo Judge Naime Krasniqi Jashanica and EULEX Judge Katrien Gabriël Witteman as Panel members, assisted by EULEX Legal officer Laurentiu Dumitrica as recording officer, in the criminal case against:

1)

<b>Name:</b>	<b>S.</b>
<b>Surname:</b>	<b>Q.</b>
<b>Nickname:</b>	<b>C.</b>
<b>First name and surname of father:</b>	<b>I.Q.</b>
<b>Mother's first name / maiden name:</b>	<b>Sh. M.</b>
<b>Citizenship:</b>	<b>Kosovar</b>
<b>Date of birth:</b>	<b>xxx</b>
<b>Place of birth:</b>	<b>xxx</b>
<b>Gender:</b>	<b>Male</b>
<b>Place of residence:</b>	<b>xxx, Kosovo</b>
<b>Family status:</b>	<b>xxx, xxx</b>
<b>Occupation:</b>	<b>xxx</b>
<b>Education level:</b>	<b>xxx</b>

Charged in the Indictment of the Special Prosecution Office of the Republic of Kosovo with PPS No 40/2013 dated 15 September 2014, filed with the Basic Court of Pristina on 18 September 2014, (hereinafter "the Indictment") at the following Counts:

**Count 3:** **Participation In An Organised Criminal Group**, in violation of Article 283, paragraph 1 of the Criminal Code of Kosovo of 2012, and where applicable Article 274 paragraphs 1 and 2 of the old Criminal Code of Kosovo of 2003,

punishable by a fine of up to two hundred and fifty thousand (250,000) euros and imprisonment of at least seven years.

**Count 4:** **Smuggling of migrants**, in violation of Article 170, paragraph 1, 3, 4 and 6 of the Criminal Code of Kosovo of 2012, and where applicable Article 138 paragraphs 1, 3, 4 and 6 of the old Criminal Code of Kosovo of 2003, punishable by a fine and imprisonment of not less than five (5) years as a member of a group,

**Count 10:** **Assisting Another Person In Money Laundering**, in violation of Article 25 paragraph 1 of the Criminal Code of Kosovo (CCK) in conjunction with Article 32 of *Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing*, punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

2)

<b>Name</b>	<b>F.</b>
<b>Surname</b>	<b>K.</b>
<b>Nickname</b>	M.
<b>First name and surname of father</b>	A.K.
<b>Mother's first name / maiden name</b>	A. H.
<b>Citizenship:</b>	Kosovo
<b>Date of birth:</b>	xxx
<b>Place of birth:</b>	xxx
<b>Gender:</b>	Male
<b>Place of residence:</b>	xxx, Kosovo
<b>Family status:</b>	xxx, xxx
<b>Occupation:</b>	xxx
<b>Education level:</b>	xxx

Charged in the Indictment at the following Counts:

**Count 3:** **Participation in an organised criminal group**, in violation of Article 283, paragraph 1 of the Criminal Code of Kosovo of 2012, and where applicable Article 274 paragraphs 1 and 2 of the old Criminal Code of Kosovo of 2003,

punishable by a fine of up to two hundred and fifty thousand (250,000) euros and imprisonment of at least seven years,

**Count 5:** **Smuggling of migrants**, in violation of Article 170, paragraph 1, 3, 4 and 6 of the Criminal Code of Kosovo of 2012, and where applicable Article 138 paragraphs 1, 3, 4 and 6 of the old Criminal Code of Kosovo of 2003, punishable by a fine and imprisonment of not less than five (5) years as a member of a group, in co-perpetration pursuant to Article 31 of the CCK.

3)

<b>Name</b>	<b>L.</b>
<b>Surname</b>	<b>M.</b>
<b>Nickname</b>	
<b>First name and surname of father</b>	B. M.
<b>Mother's first name / maiden name</b>	Sh. R.
<b>Citizenship</b>	Kosovo
<b>Date of birth</b>	xxx
<b>Place of birth</b>	xxx Kosovo
<b>Gender</b>	Male
<b>Place of residence</b>	xxx Kosovo
<b>Family status</b>	xxx, xxx
<b>Occupation</b>	xxx
<b>Education level</b>	xxx

Charged in the Indictment at the following counts:

**Count 3:** **Participation in an organised criminal group**, in violation of Article 283, paragraph 1 of the Criminal Code of Kosovo of 2012, and where applicable Article 274 paragraphs 1 and 2 of the old Criminal Code of Kosovo of 2003, punishable by a fine of up to two hundred and fifty thousand (250,000) euros and imprisonment of at least seven years,

**Count 6:** **Smuggling of migrants**, in violation of Article 170, paragraph 1, 3, 4 and 6 of the Criminal Code of Kosovo of 2012, and where applicable Article 138 paragraphs 1, 3, 4 and 6 of the old Criminal Code of Kosovo of 2003, punishable by a fine and imprisonment of not less than five (5) years as a member of a group, in co-perpetration pursuant to Article 31 of the CCK.

**Count 10:** **Assisting Another Person In Money Laundering**, in violation of Article 25 paragraph 1 of the Criminal Code of Kosovo (CCK) in conjunction with Article 32 of *Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing*, punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

4)

<b>Name</b>	S.
<b>Surname</b>	S.
<b>Nickname</b>	
<b>First name and surname of father</b>	S. M.
<b>Mother's first name / maiden name</b>	F. Th.
<b>Citizenship</b>	Kosovo
<b>Date of birth</b>	xxx
<b>Place of birth</b>	xxx Kosovo
<b>Gender</b>	Male
<b>Place of residence</b>	xxx Kosovo
<b>Family status</b>	xxx, xxx
<b>Occupation</b>	xxx
<b>Education level</b>	xxx

Charged in the Indictment at the following Counts:

**Count 3:** **Participation in an organised criminal group**, in violation of Article 283, paragraph 1 of the Criminal Code of Kosovo of 2012, and where applicable Article 274 paragraphs 1 and 2 of the old Criminal Code of Kosovo of 2003, punishable by a fine of up to two hundred and fifty thousand (250,000) euros and imprisonment of at least seven years,

**Count 7:** **Smuggling of migrants**, in violation of Article 170, paragraph 1, 3, 4 and 6 of the Criminal Code of Kosovo of 2012, and where applicable Article 138 paragraphs 1, 3, 4 and 6 of the old Criminal Code of Kosovo of 2003, punishable by a fine and imprisonment of not less than five (5) years as a member of a group, in co-perpetration pursuant to Article 31 of the CCK.

**Count 10:** **Assisting Another Person In Money Laundering**, in violation of Article 25 paragraph 1 of the Criminal Code of Kosovo (CCK) in conjunction with Article

32 of Law 03/L-196 on the Prevention of Money Laundering and Terrorist Financing, punishable by imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence.

After having conducted main trial hearings on:

1, 2, 21, 23 April 2015;  
2, 3, 4, 9, 10 June 2015;  
7, 21, 22, 23 July 2015;  
16, 17 September 2015;  
13 October 2015;

After the deliberation and voting that took place on 14 and 15 October 2015;

Pursuant to Article 359 of the Criminal Procedure Code of Kosovo, on this date 15 October 2015, renders and announces in public and in the presence of the defendants, their defence counsel and the state prosecutor, the following:

## **JUDGMENT**

I. Pursuant to Article 365 of the Criminal Procedure Code of Kosovo Nr. 04/L-123 in force as of 01 January 2013, hereinafter "CPC", in relation to **Count 3** of the Indictment, the defendants **S.Q., F.K., L.M. and S.S.** are found:

## **GUILTY**

Of the criminal offence of **Participation in an organised criminal group**, in violation of Article 283, paragraphs 1 and 5 of the Criminal Code of Kosovo of 2012,

### ***Because***

**S.Q.** from 1 November 2012 to 9 December 2013, **F.K.** from 15 November 2012 to 9 December 2013, **L.M.** from 26 November 2012 to 9 December 2013 and **S.S.** from 18 December 2012 to 9 December 2013, on the territory of Kosovo and Serbia, actively took part in the activities of an organised criminal group consisting of themselves, convicted co-

perpetrator **S.Q1** and the unindicted co-perpetrators A.H., Z.V., A.H.S., A.J. O., M.L., I.B., A.L., R.R., E.P.S., Z.N., P.S., S.O., N.N.known as “N.”, “V.G.K., known as “V.””, A.C., G.I. and M.P., which acted on the territory of Kosovo, Serbia, Hungary, Austria and Italy, with the intent and with knowledge of the aim and general activity of the organized criminal group or its intention to commit one or more criminal offences which are punishable by imprisonment of at least four years, namely smuggling of migrants contrary to Article 170 of the Criminal Code of Kosovo knowing that such participation would contribute to the achievement of the group’s criminal activities, and committed the said serious crime as part of the organized criminal group, in order to obtain, directly or indirectly, a financial or other material benefit.

**II.** Pursuant to Article 365 of the CPC, in relation to **Count 4** of the Indictment, the defendant **S.Q.** is found:

## **GUILTY**

Of the criminal offence of **Smuggling of migrants** as a member of a group, in continuation, in violation of Article 170, paragraphs 1 and 6 and Article 81 of the Criminal Code of Kosovo of 2012,

### ***Because***

From around 23 January to 25 November 2013, **S.Q.**, on the territory of Kosovo, engaged in smuggling of migrants by enabling persons who are not nationals or permanent residents of a certain State 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, on the following individual accounts and in relation to the persons listed thereon:

- (1) Smuggling of migrants on or around 23-24 January 2013, in relation to a group of about seventeen (17) Kosovo citizens, from Kosovo through Serbia into Hungary, who were arrested on 24 January 2013 in xxx, Hungary for entry without legal documents: B.M. (born xxx), B.B.(born xxx), M.A.(born xxx), U.H.(born xxx), A.A.(born xxx), D.S. (born xxx), J.I.(born xxx), B.M1.(born xxx), Z.A.(born xxx), N.T.(born xxx), A.S.(born xxx), H.Z.(born xxx), N.M.(born xxx), M.B.M.(born xxx), B.T.(born xxx), A.B.(born xxx), and N.A.(born xxx), with the further intended destination being Vienna, Austria, committed as part of a group with S.Q1., A.H.S., R.R., F.K. and other unindicted co-perpetrators;

- (2) Smuggling of migrants between 20 and 28 June 2013, in relation to eleven (11) Kosovo citizens namely S.D.(born xxx, ID xxx), D.J.(born xxx, ID xxx), V.G.(born xxx, ID xxx), S.H.(born xxx, ID xxx), M.R.(born xxx, ID xxx), P.H.(born xxx, ID xxx), L.H.(born xxx), E.H.(born xxx), L.H.1.(born xxx), A.H.(born xxx) and A.D.(born xxx), from Kosovo through Serbia into Hungary, with the further intended destination being Vienna, Austria, committed as part of a group with S.Q1., M.L., I.B. and other unindicted co-perpetrators;
- (3) Smuggling of migrants between 16 July 2013 and 10 August 2013 in relation to a group of Kosovo citizens including R.R., (born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, and Udine, Italy, committed as part of a group with S.Q1., L.M. and other unindicted co-perpetrators;
- (4) Smuggling of migrants between 19 and 26 September 2013, in relation to an unspecified number of Kosovo citizens including B.B.H., D.M.(born xxx), F.R.(born xxx), T.R. (born xxx) and R.K.(born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group with S.Q1., F.K., L.M., S.S. and other unindicted co-perpetrators;
- (5) Smuggling of migrants between 7 and 25 November 2013, in relation to a group of four (4) Kosovo citizens including Sh.H.(born xxx in xxx) E.H.(born xxx in xxx) and Sh.O. (born xxx in xxx.), who were arrested in Hungary on 24/25 November 2013, from Kosovo through Serbia into Hungary, with the intended destination being Vienna, Austria, committed as part of a group with S.Q1., F.K., L.M., S.S., N.N. known as “N.”, “V.G.K. known as “V.” and other unindicted co-perpetrators.

**III.** Pursuant to Article 365 of the CPC, in relation to **Count 5** of the Indictment, the defendant **F.K.** is found:

#### **GUILTY**

Of the criminal offence of **Smuggling of migrants** as a member of a group, in continuation, in violation of Article 170, paragraphs 1 and 6 and Article 81 of the Criminal Code of Kosovo of 2012,

**Because**

From or around 23 January 2013 to 9 December 2013, **F.K.**, on the territory of Kosovo and Serbia, engaged in smuggling of migrants by enabling persons who are not nationals or permanent residents of a certain State 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, on the following individual accounts and in relation to the persons listed thereon:

- (1) Smuggling of migrants on or around 23-24 January 2013, in relation to a group of seventeen (17) Kosovo citizens, from Kosovo through Serbia into Hungary, who were arrested on 24 January 2013 in Bácsalmás, Hungary for entry without legal documents: B.M. (born xxx), B.B.(born xxx), M.A.(born xxx), U.H.(born xxx), A.A.(born xxx), D.S. (born xxx), J.I.(born xxx), B.M1.(born xxx), Z.A.(born xxx), N.T.(born xxx), A.S.(born xxx), H.Z.(born xxx), N.M.(born xxx), M.B.M.(born xxx), B.T.(born xxx), A.B.(born xxx), and N.A.(born xxx), with the further intended destination being Vienna, Austria, committed as part of a group with S.Q1., A.H.S., R.R., S.Q., and other unindicted co-perpetrators;
- (2) Smuggling of migrants on or around 9 April 2013, in relation to five (5) Kosovo citizens from Kosovo through Serbia into Hungary, who were arrested on 09 April 2013 in xxx, Republic of Hungary for entry without lawful documents: B.M.1.(xxx), V.J.(xxx) and 3 others, with the further intended destination being Vienna, Austria, committed as part of a group with S.Q1., P.S., and other unindicted co-perpetrators;
- (3) Smuggling of migrants between 19 and 26 September 2013, in relation to a number of Kosovo citizens suspected to include B., B.H., D.M.(born xxx), F.R.(born xxx) and T.R. (born xxx), R.K.(born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group with S.Q1., "A.", **S.Q., L.M., S.S.**, and other unindicted co-perpetrators;
- (4) Smuggling of migrants between 7 and 25 November 2013, in relation to a group of four (4) Kosovo citizens including Sh.H.(born xxx xxx), E.H.(born xxx xxx) and Sh.O. (born xxx xxx), who were arrested in Hungary on xxx, from Kosovo through Serbia into Hungary, with the intended destination being Vienna, Austria, committed as part of a group with S.Q1., **S.Q., L.M., S.S.**, N.N. known as "N.", "V.G.K. known as "V.", and other unindicted co-perpetrators;
- (5) Smuggling of migrants between 29 November and 9 December 2013 in relation to a group of Kosovo citizens, from Kosovo through Serbia and into Hungary and onwards to Vienna, committed as part of a group with S.Q1., **L.M., S.S.** and other unindicted co-perpetrators.

IV. Pursuant to Article 365 of the CPC, in relation to **Count 6** of the Indictment, the defendant **L.M.** is found:

#### **GUILTY**

Of the criminal offence of **Smuggling of migrants** as a member of a group, in continuation, in violation of Article 170, paragraphs 1 and 6 and Article 81 of the Criminal Code of Kosovo of 2012,

#### **Because**

From or around 7 June 2013 to 9 December 2013, **L.M.**, on the territory of Kosovo and Serbia, engaged in smuggling of migrants by enabling persons who are not nationals or permanent residents of a certain State 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, on the following individual accounts and in relation to the persons listed thereon:

- (1) Smuggling of migrants between 7 and 19 June 2013, in relation to four (4) groups of Kosovo citizens, including the named A.R.(born xxx, ID xxx), Sh.S.(born xxx, ID xxx) and R.S.(born xxx, ID xxx), the first group smuggled on or around 7 June 2013, including N.M.(born xxx), the second group smuggled on or around 13-14 June 2013, including N.A.(born xxx), the third smuggled on or around 17 June 2013 and the fourth smuggled on or around 18 June 2013, including F.K.(born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria and Udine, Italy, committed as part of a group with S.Q1., M.L., I.B., and other unindicted co-perpetrators;
- (2) Smuggling of migrants between 16 July and 10 August 2013, in relation to a group of Kosovo citizens suspected to include R.R., (born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria and Udine, Italy, committed as part of a group with S.Q1., S.Q., and other unindicted co-perpetrators;
- (3) Smuggling of migrants between 4 and 19 September 2013, in relation to a group of Kosovo citizens including F.G. and A.S., from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group With S.Q1., A.H.S., and other unindicted co-perpetrators;

- (4) Smuggling of migrants between 19 and 26 September 2013 in relation to a number of Kosovo citizens suspected to include the named B., B.H., D.M.(born xxx), F.R.(born xxx) and T.R. (born xxx), R.K.(born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group with S.Q1., **S.Q., F.K., S.S.**, and other unindicted co-perpetrators;
- (5) Smuggling of migrants between 29 September and 2 October 2013, in relation to a group of Kosovo citizens from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group with S.Q1. and other unindicted co-perpetrators;
- (6) Smuggling of migrants between 3 and 14 October 2013, in relation to Kosovo citizens A.S. and Q.S. and groups of Kosovo citizens arrested in Hungary on 8 October 2013, namely M.Th.(born xxx), L.U.(born xxx), F.M.(born xxx), H.S.(born xxx), A.I.(born xxx xxx) and A.I. 1. (born xxx xxx) and on xxx, namely, L.U.(born xxx) and F.M.(born xxx), from Kosovo through Serbia into Hungary, and where successful, onwards to Vienna, Austria, committed as part of a group with S.Q1., and other unindicted co-perpetrators;
- (7) Smuggling of migrants between 7 and 25 November 2013 in relation to a group of four (4) Kosovo citizens including Sh.H.(born xxx xxx), E.H.( xxx xxx) and Sh.O. (xxx xxx), who were arrested in Hungary on 24/25 November 2013, from Kosovo through Serbia into Hungary, with the intended destination being Vienna, Austria, committed as part of a group with S.Q1., **S.Q., F.K., S.S.**, A.C., N.N.known as “N.”, “V.G.K., known as “V.”, and unindicted co-perpetrators;
- (8) Smuggling of migrants between 29 November 2013 and 9 December 2013 in relation to a group of Kosovo citizens, from Kosovo through Serbia and into Hungary and onwards to Vienna, committed as part of a group with S.Q1., **F.K., S.S.** and other unindicted co-perpetrators;

V. Pursuant to Article 365 of the CPC, in relation to **Count 7** of the Indictment, the defendant **S.S** is found:

#### **GUILTY**

Of the criminal offence of **Smuggling of migrants** as a member of a group, in continuation, in violation of Article 170, paragraph 1 and 6 and Article 81 of the Criminal Code of Kosovo of 2012,

**Because**

From or around 16 June 2013 to 9 December 2013, **S.S.**, on the territory of Kosovo and Serbia, engaged in smuggling of migrants by enabling persons who are not nationals or permanent residents of a certain State 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, on the following individual accounts and in relation to the persons listed thereon:

- (1) Smuggling of migrants between 16 and 19 June 2013, in relation to eight (8) Kosovo citizens A.S.(born xxx, ID xxx), N.K. (born xxx, ID xxx), L.Th. (born xxx, ID xxx), L.Th.1 (born 26/11/2009), A.M. (born xxx, ID xxx), F.M. (born xxx, ID xxx), K.B. (born xxx, ID xxx and A.N. (born xxx, ID xxx) from Kosovo through Serbia into Hungary, with the further intended destination being Vienna, Austria, committed as part of a group with S.Q1., M.L., I.B., and other unindicted co-perpetrators;
- (2) Smuggling of migrants between 19 and 26 September 2013, in relation to Kosovo citizens suspected to include the named B., B.H., D.M.(born xxx), F.R.(born xxx), T.R. (born xxx), and R.K.(born xxx), from Kosovo through Serbia into Hungary and onwards to Vienna, Austria, committed as part of a group with S.Q1., **S.Q.**, **F.K.**, **L.M.**, and other unindicted co-perpetrators;
- (3) Smuggling of migrants between 7 and 25 November 2013 in relation to a group of four (4) Kosovo citizens including Sh.H.(born xxx xxx), E.H.(born xxx xxx) and Sh.O. (born xxx xxx), who were arrested in Hungary on 24/25 November 2013, from Kosovo through Serbia into Hungary, with the intended destination being Vienna, Austria, committed as part of a group with S.Q1., **S.Q.**, **F.K.**, **L.M.**, A.C., N.N.known as "N.", V.G.K., known as "V.", and other unindicted co-perpetrators;
- (4) Smuggling of migrants between 29 November and 9 December 2013, in relation to a group of Kosovo citizens, from Kosovo through Serbia and into Hungary and onwards to Vienna, committed as part of a group with S.Q1., **F.K.**, **L.M.** and other unindicted co-perpetrators.

**VI.** Pursuant to Article 364 (1.3) of the CPC , in relation to **Count 10** of the Indictment, the defendants **S.Q.**, **L.M.**, **F.K.** and **S.S.** are hereby:

**ACQUITTED**

Of committing the criminal offence of **Assisting another person in money laundering** prosecuted by Article 25, paragraph 1 CCK in conjunction with Article 32 of the Law nr. 03/L-196 on the Prevention of money laundering and terrorist financing,

***Because***

It has not been proven that the defendants have committed the act with which they have been charged in the Indictment.

**VII.** Following the above stated guilty verdicts, pursuant to Article 365, paragraph 1.3 CPC, the Court hereby imposes the following **SENTENCES**:

**S.Q.** for the commission of the criminal offence of Participation in an organised criminal group in conjunction with Smuggling of migrants as a member of a group, in continuation, in violation of Article 283, paragraphs 1 and 5, Article 170, paragraphs 1 and 6 and Article 81, of the Criminal Code of Kosovo of 2012, is hereby sentenced to **four (4) years of imprisonment** and with a **fine of one thousand (1,000) Euros**.

**F.K.** for the commission of the criminal offence of Participation in an organised criminal group in conjunction with Smuggling of migrants as a member of a group, in continuation, in violation of Article 283, paragraphs 1 and 5, Article 170, paragraphs 1 and 6 and Article 81, of the Criminal Code of Kosovo of 2012, is hereby sentenced to **four (4) years of imprisonment** and with a **fine of one thousand (1,000) Euros**.

**L.M.** for the commission of the criminal offence of Participation in an organised criminal group in conjunction with Smuggling of migrants as a member of a group, in continuation, in violation of Article 283, paragraphs 1 and 5, Article 170, paragraphs 1 and 6 and Article 81, of the Criminal Code of Kosovo of 2012, is hereby sentenced to **four (4) years of imprisonment** and with a **fine of one thousand (1,000) Euros**.

**S.S.** for the commission of the criminal offence of Participation in an organised criminal group in conjunction with Smuggling of migrants as a member of a group, in continuation, in violation of Article 283, paragraphs 1 and 5, Article 170, paragraphs 1 and 6 and Article 81, of the Criminal Code of Kosovo of 2012, is hereby sentenced to **three (3) years of imprisonment** and with a **fine of five hundred (500) Euros**.

**VIII.** Pursuant to Article 115 CPC as read in conjunction with Article 112, paragraph 1 CPC, the following items are **permanently confiscated** as objects that facilitated the commission of the criminal offence:

- Temporarily sequestered from accused **S.Q.**: one (1) mobile telephone Nokia, one (1) mobile telephone iPhone 5 with together with the attached SIM cards thereto;
- Temporarily sequestered from the accused **L.M.**: four (4) mobile telephones Nokia and one (1) mobile telephone Vodafone, with three (3) attached SIM cards and one (1) SD card;
- Temporarily sequestered from the accused Sahit **S.S.**: one (1) mobile telephone Sony Ericsson, two (2) mobile telephones Samsung, together with the attached SIM cards thereto;
- Temporarily sequestered from the accused **F.K.**: two (2) mobile telephone Nokia, one (1) mobile telephone Samsung, one (1) mobile telephone AEG, four (4) SIM cards, ten (10) phone cards and four (4) card books.

**IX.** Pursuant to Article 83 (1) CCK the time served in detention in remand and house arrest is included in the punishments of imprisonment.

**X.** Pursuant to Articles 365 (1.6), 450 (2) and 453 (1) of CPC the defendants are obliged to pay the **costs of the criminal proceedings** in the total amount of eight hundred (800) Euro divided into equal amounts of two hundred (200) Euro to be paid by each of the defendants within a period of fifteen (15) days after the judgment becomes final.

## **REASONING**

### **A. PROCEDURAL BACKGROUND**

1. On 8 May 2013 the Special Prosecutor of the Republic of Kosovo (the "Prosecutor") issued a ruling on Initiation of an Investigation into **S.Q.1** for the criminal offences of Smuggling of Migrants and Participation in, or Organization of an Organized Criminal Group. On 3 September 2013 the Prosecutor issued a Decision on Expansion of the Investigation to the defendants **L.M., S.S., F.K., S.Q.** and M.F..
2. On 9 December 2013, upon an application by the Prosecutor, the Pre-trial Judge ordered the arrest of the defendants **S.Q.1, L.M., S.S., F.K.** and **S.Q..**

3. On 11 December 2013 the Court imposed detention on remand against S.Q.1, **L.M.**, **S.S.**, **F.K.** and **S.Q.** until 9 January 2014. Several extensions of the detention on remand have been issued. On 3 June 2015 the Court ruled that the detention on remand of S.Q.1. be extended until the judgment becomes final, but no longer than the expiry of the term of punishment imposed in the judgment. As for the defendant **S.Q.**, the Presiding Trial Judge ordered house arrest on 3 October 2014. On 8 October 2014 the Presiding Trial Judge imposed house arrest on the defendants **L.M.**, **S.S.**, and **F.K.**. The house arrest against the defendants **L.M.**, **S.S.**, **F.K.** and **S.Q.** was terminated on 7 April 2015 and the security measure of attendance at a police station was ordered. The Court has ordered several extensions of the security measure of attendance at a police station, the latest one with an extension until 8 October 2015.
4. On 18 September 2014 the Prosecutor filed the indictment dated 15 September 2014 against S.Q.1, **S.Q.**, **F.K.**, **L.M.**, **S.S.** and M.F. which charged the defendants as set out in the enacting clause.
5. On 3 October 2014, an initial hearing was held. During this hearing the case was severed against the defendant **S.S.** pursuant to Articles 35 and 36 CPC, as the defendant suffered some health problems during the hearing. Subsequently, the Court imposed a deadline to the Defence Counsel to file their requests pursuant to Articles 249 and 250 CPC until 24 October 2014.
6. On 14 October 2014, an initial hearing was held regarding the defendant **S.S.**. The Court notified the Defence Counsel that the requests pursuant to Articles 249 and 250 CPC could be filed until 24 October 2014.
7. On 23 October 2014, the Defence Counsel for the defendant S.S. filed a request to dismiss the indictment and on 24 October 2014, the Defence Counsel for the defendants S.Q.1. and **S.Q.** filed requests to dismiss the indictment. Defence Counsel for the defendant **S.Q.** also requested the exclusion of certain evidence as inadmissible.
8. On 21 November 2014 the court issued a ruling addressing the requests of the Defence Counsel and decided to dismiss count 9 and 10 of the indictment. In the same time the Court decided to join all the defendants in one procedure. On 22 January 2015, deciding on the appeals of the Prosecutor, the Court of Appeals issued a ruling and reinstated counts 9 and 10 of the indictment.
9. On 2 April 2015 the Court decided to sever the case against the defendant M.F. as the latter did not appear in court after being summoned properly. An order for arrest was issued. As F.M. is on large, the proceedings against him have been severed.
10. On 8 May 2015 the Court received a guilty plea agreement negotiated by the defendant S.Q.1. and the prosecution. On 21 May 2015, after conducting a hearing pursuant to Article 233(14) CPC, the court accepted the guilty plea agreement and severed the

procedure against the defendant S.Q.1.

11. The main trial in respect of the remaining four defendants **S.Q., F.K., L.M.** and **S.S.** was held on 2,3,4, 9 and 10 June 2015, 7, 21, 22 and 23 July 2015, 16 and 17 September 2015 and 13 October 2015 with the enacting clause of the Judgment announced on 15 October 2015.

## **B. COMPETENCE OF THE COURT**

12. The offences fall within the Basic Court of Pristina's substantive and territorial jurisdiction and under the competency of a Panel of two EULEX judges and one Kosovar judge.
13. According to Article 11(1) of the Law on Courts, Law no. 03/l-199, Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law. Article 9 (2.1) of the same Law states that the Basic Court of Pristina with its principal seat in Pristina is established for, among others, the territory of the Municipality of Pristina.
14. In addition, according to article 15 (1.5) and (1.18) of the Law on Courts, the criminal offences of 'Smuggling of Migrants', and 'Organized Crime' fall within the jurisdiction of the Serious Crimes Department of the Basic Court. Therefore, the entire case was adjudicated by the Serious Crimes Department.
15. In accordance with article 15 (2) of the Law on Courts and pursuant to Law No. 03/L-053 on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo, together with Law no. 04/L-273 on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in the Republic of Kosovo, in conjunction with the Memorandum of Understanding, EULEX Judges have jurisdiction and competence over an ongoing case if a case has been assigned to EULEX Judges before 15 April 2014.<sup>1</sup> Based on article 3(2) of Law no. 04/L-273 on 22 January 2015 a request was sent to the Kosovo Judicial Council asking for the panel in this case to be composed by a majority of EULEX Judges, including a presiding EULEX Judge. No response was received within fifteen (15) days and the request is considered to be approved.
16. The case was heard by a trial panel composed by EULEX Judge Seel, acting as presiding judge, EULEX Judge Witteman and Judge Naime Krasniqi, as panel members.<sup>2</sup> None of

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<sup>1</sup> See article 1A (1.2) in conjunction with article 3(1) of Law no. 04/L-273 on amending and supplementing the laws related to the mandate of the European Union Rule of Law Mission in the Republic of Kosovo.

<sup>2</sup> During the first four hearings in this case, dated 1, 2, 21 and 23 April 2015, Judge Mikula was one of the panel members. He was later replaced by Judge Witteman. According to Article 324 CPC the main trial started only on 2 June 2015 when the new Panel was introduced and the indictment was read. See hearing minutes 2 June 2015, page 2.

the parties objected to the composition of the Trial Panel.

## **C. EVIDENCE**

### ***I. Evidence presented during the course of the Main Trial***

17. During the main trial the following witnesses gave statements (in the order of appearance at the trial):

1. G.I. on 4 June 2015.
2. L.Z. on 4 June 2015.
3. H.M. on 4 June 2015.
4. H.R. on 4 June 2015.
5. Sh.I. on 9 June 2015.
6. D.B. on 10 June 2015.
7. A.S. on 7 July 2015.
8. M.U. on 21 July 2015.
9. Q.S. on 22 July 2015.

18. During the trial it was decided that the case file would be considered as administered, after the parties were given the opportunity to raise objections.<sup>3</sup> The case file consists of 30 binders compiled by the Prosecutor containing in particular:

10. Legal Intercepts such as telephone interceptions.
11. Police Reports, including reports about surveillance operations.
12. Evidence received through international cooperation.
13. Testimonies collected exclusively by the police.

19. The evidence administered during the main trial was based on the suggestions of the Prosecution. The Defense did explicitly not request to hear any additional witnesses or to administer additional evidence.

### **I. Evaluation of Evidence**

20. The trial panel carefully reviewed the admissibility of evidence, but also evaluated to what extent the admissible evidence could be used to base facts on. The Court in particular assessed the issues raised by the Defence in its motions including in the closing statements. In regards to other issues it was evaluated *ex officio*, if and to what extent the available evidence such as police reports, protocols of interceptions of

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<sup>3</sup> Minutes of the main trial session on 22 July 2015, pages 3 and 14.

telecommunications, evidence received through ILA, and testimonies collected exclusively by the police were admissible evidence.

21. During the course of the Main Trial on 21 July 2015 the Parties agreed to have the evidence in the binders submitted by the Prosecutor to be considered as read since all parties had received the evidence as of September 2014.<sup>4</sup> The Panel found that after it was administered in the main trial and no objections were raised<sup>5</sup> all case file material was admissible evidence. Nevertheless, the Panel concluded that due to the regulations in the Criminal Procedure Code some material could not be used as direct evidence. The Panel did not use this evidence to establish the facts.

## II. Decision upon motions of the parties

### *Witness statements of police officers*

22. During the hearing of 4 June 2015 the Defence Counsel D.O. and H.Zh., supported by Defence Counsel, raised objections against the hearing of G.I. as a witness since G.I. is a police officer. The Prosecutor opposed these objections. According to the Prosecutor the fact that G.I. is an official does not prohibit him to be a witness. The Court rejected the objections raised by the Defence Counsel as it found that it is not prohibited by the CPC to hear a police officer as a witness. However, the Court emphasized that the witness should testify about his own actions.
23. The Court found that the same was applicable for the statements of the other police officers that were examined during the main trial.<sup>6</sup>

### *Admissibility of interception protocols*

24. During the session of 21 July 2015 the Defence Counsel H.Zh. filed a motion stating that the report and transcript compiled by the team of investigators is inadmissible as (i) neither of them had been signed by the people who drafted them, and (ii) certain conversations were listened by a team instead of by a certain person. The Prosecutor opposed the motion, arguing that (i) the motion was belated pursuant to article 97 (3) CPC since challenges by the defendant of evidence should be filed prior to the second hearing, and (ii) the motion was unfounded as Article 93 CPC does not require police officers to sign the transcripts and there is no provision prohibiting to carry out measures in a team.<sup>7</sup>
25. During the session of 21 July 2015 the defence counsel D.O. filed a motion to declare

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<sup>4</sup> Minutes of the main trial session on 21 July 2015, page 19.

<sup>5</sup> It is noted that objections were raised against the admissibility of the protocols of the interception of telecommunication. The Panel rejects these objections, as discussed in detail below.

<sup>6</sup> It is noted that in this regard the Defence Counsel Zh. raised an objection against the examination of witness I., but referred to his previous reasoning, see minutes of the main trial on 22 July 2015, p. 19 and 20.

<sup>7</sup> Minutes of the main trial session on 22 July 2015, page 5.

the reports of interceptions inadmissible as they would include assumptions made by the investigators.<sup>8</sup> The defendant L.M. alleged that the intercept reports were falsified. The Prosecutor opposed the motion arguing that (i) the motion was belated based on Article 97(3) CPC, (ii) reference was made by the defence counsel to family conversations whereas no family conversations were mentioned in the intercepts apart from those relating to smuggling of migrants, (iii) based on Article 93 CPC transcripts do not need to be signed by the police officers, (iv) the police officer conducting the covert measure does not have to be specified in the court order, and (v) drawing conclusions is the essence of the work of investigators<sup>9</sup>, and concluding that the interception protocols should be considered admissible evidence since they were (i) based on lawful court orders, and (ii) conducted according to legal provisions.

26. The Court held that both the motion of H.Zh. and of D.O. were not belated because even though questions of admissibility of evidence are usually discussed during the initial phase, in this case additional information was received regarding the interception and reports only during the examination of the witnesses at the main hearing.<sup>10</sup>

27. Therefore, in respect to the two motions by defence counsel H.Zh. and D.O. the Court rejects the motions as it finds that the interception protocols are admissible. The interceptions were based on lawful court orders<sup>11</sup> and were conducted in accordance with legal provisions. Furthermore, pursuant to Article 93(4) CPC the signature is not required, investigators can work in teams and several investigators can work upon instruction of a supervisor. In addition, the court notes that the conclusions of investigators are not binding for the court, but are considered “analysis” for further investigation and, thus, do not lead to inadmissibility of the intercepts and the reports.

28. Lastly, the Panel finds that the allegation of the defendant L.M. that the intercepts were falsified is not substantiated and therefore does not need evaluation by the court.

#### *Admissibility of response to ILA request*

29. On 23 July 2015 the Prosecutor requested the Court to accept new material as evidence which was given as a response to the ILA request dated 3 September 2014 filed by the Prosecutor.<sup>12</sup> This request was opposed by the defence counsel who averred that it was presented too late<sup>13</sup>.

30. The Court during the session decided that the new material was inadmissible and would not be part of the case file as: (i) it would require the translation of 1500 pages from

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<sup>8</sup> Minutes of the main trial session on 22 July 2015, pages 5 and 6.

<sup>9</sup> Minutes of the main trial session on 22 July 2015, page 7.

<sup>10</sup> Besides that, the court noted that the objections raised by the Defence would be discussed as part of the final judgment.

<sup>11</sup> See Binders 4 and 5 containing the respective Orders by the Basic Court of Pristina.

<sup>12</sup> See minutes of the main trial session on 23 July 2015, p. 2.

<sup>13</sup> See minutes of the main trial session 23 July 2015, p. 3-4.

Hungarian into English and Albanian which would take at least several months, (ii) this therefore would affect the principle to conclude the proceedings within a reasonable time, and (iii) the received document is not new evidence or a new fact pursuant to Article 329 (4) CPC as both parties were aware of the request dated 3 September 2014 and none of the parties asked to await the material.<sup>14</sup>

### III. Ex-officio evaluation of the evidence

#### ***Statements of Hungarian perpetrators***

31. No objections were made against the admittance of the statements of the Hungarian co-perpetrators which were presented by the Prosecution<sup>15</sup>. Nevertheless, the Panel finds that these statements cannot be used as direct evidence. The Court notes that these statements were conducted by Hungarian police officers, and that the individuals were examined in the capacity of defendants. It is noted that for this constellation there are no regulations in the CPC which regulate to what extent these statements can be used in the main trial against other defendants.
32. Therefore, the Panel takes into account the rationale of the procedural law of Kosovo which prohibits the direct use of statements as evidence, if the statements could not be challenged by the Defence during the interrogation. In that respect the Panel adopted an analogy to Article 123 CPC and decided that the statements of the Hungarian co-perpetrators could not be used as direct evidence; therefore the facts in this case cannot be based on these statements.

#### ***Statements of witnesses***

33. The Panel finds that based on Article 123 CPC the statements of witnesses who were not heard during the main trial shall not be used as direct evidence. But in case of discrepancies between statements made by the witnesses during the main trial and during the pre-trial interviews, the panel has the discretion to base its findings on earlier statements if it can be reasonably asserted that they were more credible.

#### ***Information from Hungarian authorities***

34. Part of the case file is information received from the Hungarian authorities. This information consists of information letters sent via Europol and reports of the Hungarian authorities. This information has not been challenged as evidence. However, the Court notes that these information letters do not meet the legal requirements set out by article 219(2) CPC. Nevertheless, taking into account article 219(6) CPC these documents can be considered as informal evidence, and since they were sent with an official letter

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<sup>14</sup> See minutes of the main trial session on 23 July 2015, p. 6.

<sup>15</sup> See protocols of the witness statements, binders 28 and 29.

they are found to be admissible. The fact that these information letters were presented in the indictment as evidence without the notice of corroboration pursuant to article 219(6) CPC does not lead to inadmissibility.

#### **D. STATEMENTS OF THE DEFENDANTS**

35. During several stages the defendants gave statements on their case; during the pre-trial stage, and during their opening- and closing statements.

36. It is to be noted, that three of the four defendants pleaded guilty to the charge of Smuggling of Migrants, but not to the charge of Participation in an Organized Criminal Group. The Criminal Procedure Code does not foresee a procedure after a guilty plea on only a part of the charges, and in case the underlying facts for both criminal offences are intermingled. The Panel decided to give the defendants the opportunity to state their case before the eventual proceedings, to give them the opportunity to fully benefit from the eventual mitigation of punishment which is foreseen in the case of a guilty plea.<sup>16</sup> The formal examination of the defendants took place after the evidentiary proceedings were closed.

37. During the proceedings the defendants stated as follows:

##### **I. S.Q.**

38. On 20 January 2014 **S.Q.** gave his pre-trial testimony in which no substantial statements were made in respect to the case.<sup>17</sup> During the course of the main trial on the second initial hearing on 2 June 2015 defendant **S.Q.** pleaded not guilty to all counts.<sup>18</sup> During his closing statement, **S.Q.** once more stated that he was innocent in respect to the criminal offences he is charged with.

##### **II. F.K.**

39. On 21 January 2014 **F.K.** mentioned in his pre-trial testimony that he did not know **L.M.** and **S.Q.**. Further, he stated that he knew **S.S.** since elementary school and **S.Q.1.** for 4-5 months. **F.K.** denied having been in contact with **S.Q.1.** or **S.S.** regarding smuggling of migrants.<sup>19</sup> However, during the main trial session on 3 June 2015 **F.K.** pleaded guilty to

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<sup>16</sup> Notwithstanding the normal procedure and the provision in Article 384 CPC the Panel decided that in this situation the rights of the defendants would be respected best if they had the opportunity to state their case and answer questions before and after the evidentiary proceedings.

<sup>17</sup> See Binder 8, pre-trial examination of the defendants.

<sup>18</sup> See minutes of the main trial on 2 June 2015.

<sup>19</sup> See binder 8, pre-trial examination of the defendants.

count 5, point 5 and 7.<sup>20</sup> He stated that he gave a lift to four persons from Rahovec to Mitrovica. These persons went to the border and returned. In addition, **F.K.** affirmed that he once took one person with a Serbian passport to Mitrovica.

40. In **F.K.'s** closing statement the Defence Counsel mentioned that it has not been confirmed that **F.K.** was participating in an organized criminal group as there was no group and there was no material benefit.<sup>21</sup>

### III. **L.M.**

41. On 23 January 2014, during his pre-trial testimony **L.M.** stated that he knew S.Q.1, but that he did not know S.S. until he was arrested. As to smuggling of migrants, **L.M.** stated that he once took a person from the Bosnian neighborhood of Mitrovica across the bridge. Furthermore, he mentioned that he was used by S.Q.1.<sup>22</sup> During the opening statements, **L.M.** pleaded not guilty to count 3, Participation in an Organized Criminal Group and count 10, Assisting another person in Money Laundering. However, as to count 6, Smuggling of Migrants, **L.M.** pleaded guilty, stating that he was involved in four to six occasions.<sup>23</sup>

42. In his closing statement, **L.M.'s** Defence Counsel raised objections against the evidence obtained through interceptions. In addition, he stated that there is no evidence that **L.M.** was part of an organized criminal group.<sup>24</sup> **L.M.** himself stated that he merely helped his distant family members to go abroad.

### IV. **S.S.**

43. On 24 January in his pre-trial testimony **S.S.** stated that he knew **F.K.**, but did not know **L.M.**<sup>25</sup> In addition, he stated that he had contacted S.Q.1. as his brother and his sister in law wanted to go abroad. However, in the end both of them did not end up going to Vienna. Further, he stated that he agreed with S.Q.1. to make arrangements for his aunt and her children to be taken to Vienna from a refugee camp in Hungary. However, he added that he was not aware that it is prohibited to help someone from the family wherever they want to go. On 13 August 2014 S.S. stated that he did meet **L.M.** once.<sup>26</sup> During the opening statements, **S.S.** pleaded not guilty to all counts, except for count 7

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<sup>20</sup> See minutes of the main trial on 3 June 2015, p. 3.

<sup>21</sup> See minutes of the main trial on 13 October 2015, page 9 and 10.

<sup>22</sup> Binder 8, Hearing of Defendants.

<sup>23</sup> See minutes of the main trial on 2 June 2015, p. 7 and 13.

<sup>24</sup> See minutes of the main trial on 13 October 2015, page 7 and 8.

<sup>25</sup> Binder 8, Hearing of Defendants.

<sup>26</sup> Binder 8, Hearing of Defendants.

point 5 and 7.<sup>27</sup> He stated that as to count 7 point 5 and 7, he smuggled four persons of whom three were family members and one a friend.<sup>28</sup>

44. In **S.S.**'s closing statement his defence counsel stated that **S.S.** only helped family members to go abroad.<sup>29</sup> Furthermore, according to his defence counsel, **S.S.** was wrongfully included in an alleged organized criminal group. In particular, it was emphasized that **S.S.** was unaware of the fact that S.Q.1. was leading an organized a criminal group.<sup>30</sup> In addition, objections were raised as to the interceptions.

## **E. ESTABLISHED FACTS**

### **I. Personal Circumstances of the defendants**

45. Regarding the personal circumstances of the four defendants the Panel established the following facts, based on the information given by the defendants themselves<sup>31</sup> and the information available in the case file, in particular the information received about the criminal records of the defendants:

#### **(1) S.Q.**

46. The defendant **S.Q.** is xxx years old. He grew up in xxx with xxx brothers and xxx sisters. His xxx xxx is the former co-defendant S.Q.1, who was convicted in June 2015 for directing an organized criminal group, after entering a plea agreement. According to his statement, **S.Q.** visited a school for twelve years and after that he was involved in physical work „around the house“, until five years ago when he started to work as a xxx. Presently he works in a xxx and earns around xxx Euro per month. The defendant is xxx; he lives together with his parents and his wife in his father's house in xxx, where he lived all his life. His wife has no income; his parents receive a pension of around 190 Euro together.

47. There are no past convictions recorded for the defendant **S.Q.**.

#### **(2) L.M.**

48. The defendant **L.M.** is xxx years old. He comes from xxx, the same village where the co-defendants **S.1** and **S.Q.** grew up. He attended a school for 12 years, after which he worked together with his brothers as a farmer. During the war in 1999 he went to xxx.

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<sup>27</sup> See minutes of the main trial on 2 June 2015, p. 7, 8 and 13.

<sup>28</sup> See minutes of the main trial on 2 June 2015, page 16.

<sup>29</sup> See minutes of the main trial on 13 October 2015, page 10.

<sup>30</sup> See minutes of the main trial on 13 October 2015, page 12.

<sup>31</sup> See minutes of the main trial session on 17 September 2015.

After his return he worked as an xxx and xxx, until he went to work abroad in xxx for the first time in 2006. According to his statement he then was returned to Kosovo several times, and until 2013 went back to xxx and xxx several times, with the intent to work there illegally.

49. The defendant is xxx; he is father of xxx children aged xxx and xxx years. His His ex-wife was working as a shop clerk, and the family lived at the house of the defendant's brother at the countryside. At the beginning of 2015 the defendant divorced. Since then the children stay with his ex-wife and her family in xxx and he has regular contact with them. He recently moved to xxx, because he found a job as a xxx. He earns xxx Euro per month. The defendant stated to have had excessive alcohol consumption during the years 2012 and 2013, but that he stopped drinking alcohol since he was released from detention on remand.

50. There are no past convictions recorded for the defendant **M**.

**(3) F.K.**

51. The defendant **F.K.** is xxx years old. He comes from xxx in Kosovo, where he grew up and lived all his life. He attended a school for eight years, and after that worked as a xxx. At the moment he is unemployed. The defendant is married and father of xxx children, xxx, xxx and xxx years old. His wife is not working, but taking care of the children and the household. The defendant lives with his family in his own house in xxx.

52. There are no previous convictions recorded for **F.K.**.

**(4) S.S.**

53. The defendant **S.S** is xxx old. He was born and grew up in xxx in Kosovo. He attended a school for eight years and after that worked as a xxx. In 1996 he went to xxx, to work for his brother's construction company. He returned to Kosovo in xxx.. Five of the defendant's six brothers still live in xxx. The family land in Kosovo was divided in 2005, the defendant owns land and a house, but he lives in his brother's house which is in better conditions.

54. The defendant is married and father of xxx children, xxx and xxx years old. He lives in xxx together with the family of his younger brother and his xxx children. He works as a farmer, but gets financial support from his brothers.

55. There are no previous convictions recorded for **S.S.**.

## **II. Smuggling of Migrants**

56. The Panel established that the four defendants in different constellations, but always in co-perpetration with S.Q.1, organized and executed at least twelve separate operations where individuals were illegally brought from Kosovo to European Union countries.<sup>32</sup>
57. All four defendants worked together with S.Q.1. and other co-perpetrators in Kosovo, Serbia, Hungary, Austria and other countries to organize the illegal migration of individuals from Kosovo to countries of the European Union. S.1. and **S.Q., M.** and **K.** started this cooperation latest in November 2012, while **S.** joined the group latest in February 2013. The group in Kosovo was led by S.Q.1, who also organized the contact with many co-perpetrators in other countries.
58. Some group members would operate as recruiters to find individuals from Kosovo who were desperate to go to Western European countries, and who were willing to pay huge amounts of money for this illegal trip. Among these recruiters was in particular **L.M.**
59. An operation would work as follows: in most cases the individuals were told to meet in Mitrovica at a certain time and place. From there they were brought to the Serbian-Hungarian border by bus, car or taxi. They were accompanied by **K.** or other Kosovar or Serbian co-perpetrators. Further co-perpetrators brought the migrants in groups by foot over the green border between Serbia and Hungary. On the Hungarian side of the boarder, the individuals were picked up by Hungarians co-perpetrators, who drove them in most cases to Vienna, sometimes to other destinations.
60. While the migrants were told to bring some cash money to pay some of the expenses during the journey, the main part of the trip was paid after the migrants arrived at their final destination. For the trip between EUR 1,500 and 2,600 were paid, an amount that not only exceeded the costs for the trip, but in many cases corresponded with several monthly incomes of the migrants. The fee for the trip was paid by family members of the migrant who stayed back in Kosovo, or sent via bank transfer.
61. The money was shared between the members of the group. The Hungarian drivers were paid via Western Union or other services. These transactions were done by S.Q.1, very often by **S.Q.**, who in many cases used the account of his wife. Also **F.K.** and **L.M.** transferred money to other countries to distribute the benefit of the smuggling operations.
62. In particular, the Panel established that the defendants organized and executed the following smuggling operations.

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<sup>32</sup> In the indictment these operations are listed separately for every defendant. To avoid repetitions in this judgement the individual operations are referred to as “Smuggling operations A to T”. These operations comprise the charges of the indictment as follows: A: count 4 (1), 5 (1), 6 (1); B: count 4 (2), 5 (2), 6 (2), 7 (1); E: count 4 (3), 5 (3), 7 (2); F: 5 (4), 7 (3); G: count 4 (4), 6 (3), 7 (4); H: 7 (5); I: count 4 (5); J: count 4 (6), 7 (6); K: count 4 (7), 5 (5), 6 (4); N: count 4 (8), 6 (5); O: count 4 (9), 5 (6), 6 (6), 7 (7); P: 6 (7); Q: 6 (8); R: 6 (9), 7 (8); S: count 4 (10), 5 (7), 6 (1), 7 (9); and T: count 4 (11), 5 (8), 6 (11), 7 (10).

### **(1) Smuggling operation E**

63. Between 23 and 24 January 2013 the defendants **F.K. and S.Q.**, together with **S.Q.1.** and other co-perpetrators, organized and executed the journey of 17 persons from Kosovo to Vienna, with the intent to materially benefit from this activity. The group consisted of B.M., B.B., M.A., U.H., A.A., D.S., J.I., B.M.1, Z.A., N.T., A.S., H.Z., N.M., M.B.M., B.T., A.B., and N.A. These people did not fulfil the necessary requirements to travel to countries of the European Union, and they paid fees to the defendants who organized the illegal border-crossing.
64. On 23 January 2013, the individuals were brought from Kosovo to the Serbian-Hungarian border; at least partly accompanied by **F.K.**. After crossing the border they were told to wait in a ruined house close to xxx in Hungary, until they would be picked up by Hungarian drivers. They were arrested together with the supposed drivers E.P.S. and R.R. by Hungarian police on 24 January 2013, and brought to a camp for asylum seekers in xxx immediately after. From there they were picked up by co-perpetrators of the group and brought to Vienna by car.
65. The Hungarian drivers were paid for their services on the 25 January 2013 via a money transfer, undertaken by **S.Q.** to A.H.S., who at that time was directing the drivers in Hungary, until she was arrested on 29 January 2013.

### **Evidence**

66. The journey of the individuals is proven by the data from the Border Management System<sup>33</sup>, which shows that all these people travelled by bus from Kosovo to Serbia and were registered at Merdare on 23 January 2013 at 12:50:15 hrs. The involvement of **K.** is proven by the fact that at the searches in his premises a bus ticket from Prizren to Belgrade on the name of **F.K.** dated 23 January 2013 was found.<sup>34</sup> The information about the arrest of these individuals together with Hungarian drivers derives from information letters from Hungarian authorities<sup>35</sup>, and they were further corroborated by the statement of witness A.S. in the main trial.<sup>36</sup> S. is a Hungarian police officer and he was a leading investigator in this case. He gave a very detailed and coherent statement about his experiences during these investigations, which the Panel found to be entirely reliable. He stated about the arrests of two Hungarian drivers, R.R. and E.P.S., which led to further investigations and arrests. The witness gave account about the course of the investigations, the structure of the group in Hungary, and the connections to Kosovo, mainly to S.Q.1.

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<sup>33</sup> Joint Investigation Team Report dated 7 June 2013, incl. Border Management System data, Binder 9, tab 8.

<sup>34</sup> Joint Investigation Team Report dated 24 January 2014, page 64, item A4-17; Binder 19, tab D.

<sup>35</sup> Report of the Hungarian National Bureau of Investigation, Counter Transnational Crime Department, Counter Illegal Immigration Unit, received via EURPOL Exchange message on 8 July 2013, Binder 10, tab 2, page 32.

<sup>36</sup> Minutes of the main trial session on 7 July 2015, pages 5 to 8.

67. This evidence is further corroborated by the results of disclosure of financial data<sup>37</sup>, which show that **S.Q.** transferred EUR 317.50 to A.H.S. on 25 January 2013, and further 109 EUR to an associate in Subotica, Serbia on 30 January 2013. These payments are suspected to consist of payments to the transporters in Hungary and Serbia for their role in the smuggling. The allegation that the defendants benefitted from the participation in this operation is supported by the purchase of a car by K. for EUR 1,500 on 6 February 2013, and the purchase of a car in the name of **H.Q.**, wife of **S.**, for EUR 2,500 on 11 March 2013 by **S.Q.**, because both defendants did not have a regular income during this period of time.

### ***(2) Smuggling operation F***

68. Around 9 April 2013 the defendant **F.K.** under the instruction of S.Q.1. and together with other co-perpetrators organized and executed the journey of five Kosovo citizens from Kosovo to Vienna, with the intent to benefit from this activity. The individuals did not fulfil the requirements to enter the countries of the European Union legally, and paid the group to organize the illegal migration.

69. The group, including B.M. and V.J, travelled from Kosovo through Serbia to Hungary, where they were brought to the same ruined house in Bácsalmás that the group used in previous operations. On 9 April 2013 they were picked up from this location by driver P.S. in a vehicle with Hungarian number plates xxx. Shortly after the five individuals and the driver were arrested by Hungarian authorities and brought to a camp for asylum seekers.

### **Evidence**

70. The journey of the individuals into Hungary is proven by the information received by the Hungarian authorities, who reported the arrests of B.M. and V.J in Kunbaja in Hungary.<sup>38</sup> They were found together with the Hungarian co-perpetrator P.S. in his car with number plates xxx. It is further corroborated by the statement of witness S. in the main trial<sup>39</sup>, who gave account of the investigations and arrests undertaken by Hungarian authorities, in particular he mentioned the circumstances of the arrest of driver P.S. on 9 April 2013.

71. The involvement of defendant **K.** is proven by the fact that at the searches in his premises bus tickets from Belgrad to Subotica dated 7 April 2013 and back from Subotica

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<sup>37</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, page 15; Binder 20, tab 5.

<sup>38</sup> Joint Investigation Team Report relating to information received from Hungarian authorities dated 20 May 2013, Binder 9, tab 3, page 41; Report of the Hungarian National Bureau of Investigation, Counter Transnational Crime Department, Counter Illegal Immigration Unit, received via EUROPL Exchange message on 8 July 2013, Binder 10, tab 2, page 32.

<sup>39</sup> Minutes of the main trial session on 7 July 2015, pages 6 to 9.

to Belgrade dated 9 April 2013 and from Belgrade to Pristina dated 9 April 2013 were found.<sup>40</sup> The involvement of **K.** in this operation is further supported by financial transactions revealed by the financial investigations<sup>41</sup>, which show that he made a number of cash deposits into his personal account in late March 2013 and early April 2013, including sums of EUR 5,000 on 13 March 2013, EUR 1,010 on 23 March 2013 and EUR 700 on 3 April 2013. As the defendant did not have any other source of income during this period, the Panel believes that the transferred sums were benefit from the smuggling activities. On 10 April 2013, the day after the operation, he deposited the sum of EUR 2,700 in his bank account. It is likely that he had received this money from migrants who paid him after a smuggling operation was successfully completed. Further, on 6 April 2013 **K.** transferred EUR 1,500 to A.F.U. in Hungary.

### ***(3) Smuggling operation G***

72. Between 7 and 18 June 2013 the defendant **L.M.**, under supervision of S.Q.1. and together with other co-perpetrators, organized and executed the journey of several Kosovars, including A.R., Sh.S., R.S., N.M., N.A. and F.K. from Kosovo to Austria, and from there to Italy, France and Germany, with the intent to benefit from this activity. The individuals did not fulfil the requirements to enter the countries of the European Union legally, and therefore they paid the group to organize the illegal migration.
73. Around 7 June 2013 the group organized the journey of a group of Kosovar citizens, including N.M., via Serbia to Hungary. Later in June the defendants organized the trip of another group of migrants from Kosovo to Serbia, where the group got stuck. Among the individuals was N.A., who left from Kosovo to Serbia on 13 June 2013, with the aim to go to Italy or France. On 18 June 2013 **L.M.** escorted F.K. from Kosovo to Serbia, so that he could meet there with the group of migrants.

### **Evidence**

74. The journey of the individuals is proven by the information that was received from the Hungarian authorities via Europol.<sup>42</sup> It is further corroborated by the statement of witness S. in the main trial<sup>43</sup>, who stated about the arrests of driver A.L. who was driving the migrants through Hungary, and gave explanation about the organisation of the group in Hungary.

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<sup>40</sup> Joint Investigation Team Report dated 24 January 2014, page 64, item A4-11; Binder 19, tab D.

<sup>41</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, Binder 20, tab 5, page 15.

<sup>42</sup> Report of the Hungarian National Bureau of Investigation, Counter Transnational Crime Department, Counter Illegal Immigration Unit, received via EURPOL Exchange message on 29 November 2013, Binder 7, tab 2.

<sup>43</sup> Minutes of the main trial session on 7 July 2015, page 9.

75. It is further corroborated by the BMS report, which shows that N.M. exited Kosovo to Serbia on 7 June 2013 at 12:45:05, N.A. went from Kosovo to Serbia on 13 June 2013 at 12:33:50, and F.K. left Kosovo to Serbia on 18 June 2013 at 21:06:29 hrs. All three individuals were identified by the police through interception of communication, because before and during their journey from Kosovo to Hungary and further on they had extensive telephone communication with S.Q.1.<sup>44</sup> In these conversations and text messages they discuss the logistics of the journey, as well as the details of the payments and issues that came up during the journey.
76. Even though the defendant K. was not indicted to have participated in this smuggling operation, the Panel notes that the evidence shows that K. was engaged in the activities of the group. He did not only deposit EUR 1,200 to his own account in the beginning of June; he also transferred EUR 1,000 to a German recipient on 11 June 2013. The financial investigation as well revealed that during June 2013 S.Q. received several money transfers from Germany, for which he did not give an explanation when asked.
77. The BMS data proves that Miftari was directly involved in this operation, as he personally guided F.K. from Kosovo to Serbia on the 18 June 2013, and returned to Kosovo the next day.<sup>45</sup> Interception shows that later on S.Q.1. called K. phone and talked to M.. The participation of M. in this operation is corroborated by the financial investigations.<sup>46</sup> According to these, on 18 June 2013 Miftari transferred EUR 1,700 to V.G. in Hungary, the wife of driver I.B.. On 8 July 2013 Miftari transferred an amount of EUR 200 to N.Z.
78. The interception of S.Q.1's phone<sup>47</sup> shows that on 19 June 2013 he instructed A.H.S. and others about the transport of the individuals from Vienna on to Italy and France. During the conversations S.Q.1. and H.S. also discussed the fees that had to be paid to the several drivers. Additionally, the interception shows that Q. had telephone conversations with the migrants during their journey, for example with A.S., whom he gave instructions how much to pay to the driver. In other conversations the defendant S.Q.1. discussed the arrest of a driver called M. together with some migrants, and they tried to solve the problems that arose after the arrests.<sup>48</sup>

#### ***(4) Smuggling operation H***

79. Between 16 and 19 June 2013 the defendant S.S. and other co-perpetrators under the instruction of S.Q.1. organized the smuggling of a group of migrants with Kosovo

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<sup>44</sup> Joint Investigation Team Report dated 3 July 2013, Binder 10, tab 2, pages 5 to 7.

<sup>45</sup> See Border Management System data, Binder 10, tab 2, page 17.

<sup>46</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, Binder 20, tab 5, page 15.

<sup>47</sup> See Analysis of lawful interceptions of S.Q.1., Binder 26, tab 2, pages 6 to 66.

<sup>48</sup> See Analysis of lawful interceptions of S.Q.1., Binder 26, tab 2, pages 44 to 64.

citizenship into countries of the European Union. The group consisted of A.S., N.K., L.Th., L.Th.1., A.M., F.M., K.B., and A.N.. These individuals did not fulfill the requirements to enter into those countries.

80. On 16 June 2013 the individuals were brought out of Kosovo. A.S. and A.N. were both taken out of Kosovo at 23:49:44 hrs. The other migrants were also taken around 16 June 2013. From the Hungarian border to Vienna, the individuals were driven by M.L. and I.B.. However, on 19 June 2013 the eight migrants together with their drivers were arrested by the Hungarian Police on Hungarian soil.

## Evidence

81. The journey of the individuals, in particular of A.S. and A.N. is proven by the data from the Border Management System and the data included in the Joint Investigation Report. In these documents it was stated that the individuals A.S., together with A.N. exited Kosovo with Erhan Trans Company bus on 16 June 2013 at 23:49 at the Medare border crossing.<sup>49</sup> Through information received from Hungarian authorities via Europol it is proven that both, along with others, were arrested in Hungary on 19 June 2013.<sup>50</sup> In addition, the witness statement by witness S. in the main trial corroborated the fact that the two drivers M.L. and I.B. who were driving the individuals, were apprehended by the Hungarian Police.<sup>51</sup>
82. The involvement of defendant **S.S.** is proven by the data from the Border Management System, from which it appears that **S.S.** entered Kosovo through the Merdare border crossing on 18 June 2013.<sup>52</sup> Furthermore, the telephone conversation between A.S. and S.Q.1. and the conversation between S.S. and S.Q.1. indicate that **S.S.** was involved in the journey. On 19 June 2013 A.S. had several telephone conversations with S.Q.1. regarding 'Opel' vehicles that would pick them up.<sup>53</sup> In that respect, **S.S.** and S.Q.1. communicated about these two migrants and about two 'Opel' vehicles to transport migrants.<sup>54</sup> Further, **S.** provided S.Q.1. with the telephone number of A.S..<sup>55</sup> On 19 June 2013 during a telephone conversation between S.Q.1. and a **M.**, the phone was handed over to A.S. to inform him of the amount of money that he needed to pay, he confirmed

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<sup>49</sup> Joint Investigation Team Report dated 3.07.2013, Binder 10, tab 2, page 2 and Border Management System data, Binder 10, tab 2, page 20 and 23. According to the Border Management System, A.N. had entered Kosovo on 16 June 2013 at 18:18:07.

<sup>50</sup> Report of the Hungarian National Bureau of Investigation, Counter Transnational Crime Department, Counter Illegal Immigration Unit, received via EURPOL Exchange message on 29 November 2013, Binder 7, tab 2.

<sup>51</sup> See minutes of the main trial on 7 July 2015, page 11.

<sup>52</sup> Border Management System data in relation to **S.S.**, Binder 10, tab 2.

<sup>53</sup> Joint Investigation Team Report dated 3.07.2013, Binder 10, tab 2, page 2.

<sup>54</sup> Joint Investigation Team Report dated 3.07.2013, Binder 10, tab 2, page 3.

<sup>55</sup> Joint Investigation Team Report dated 3.07.2013, Binder 10, tab 2, page 3.

to S.Q.1. over the phone that he can guarantee to S. [S.] that there will be no problem.<sup>56</sup> Furthermore, during the opening statements S.S. pleaded guilty to count 7 point 5 and 7 as he had smuggled four persons of which three family members and one friend. In relation to count 7 point 5 these family members are L.Th. and L.Th.1..<sup>57</sup> L.Th. and L.Th.1 belong to the group of migrants smuggled between 16 and 19 June 2013.

### ***(5) Smuggling operation J***

83. Between 20 June 2013 and 28 June 2013 the smuggling of a group of migrants with Kosovo citizenship from Kosovo, through Subotica, Serbia into Hungary was organized by S.Q.1. in co-perpetration with S.Q., and others. The individuals who were smuggled included eleven Kosovo citizens: S.D., D.J., V.G., S.H., M.R., P.H., L.H., E.H., L.H1., A.H. and A.D..
84. To arrange the journey, on 26 June 2013 S.Q.1. enlisted A.L. as a 'second driver' together with S.T. to drive 4 to 5 migrants from Hungary to Vienna. A.L. was paid EUR 1,143 by H.M.Q., the wife of S.Q.. Further, during the journey the migrants had been transported from North Mitrovica to Subotica and into Hungary by G.I. and M.P. Payments of EUR 700 each were made to them on 28 June 2013 by H.M.Q.
85. On 28 June 2013 M. L. and I. B., who would ensure transportation of the migrants from the Serbian-Hungary border to Mosonmagyaróvár were arrested by the Hungarian police together with the eleven migrants as they entered without papers. On 3 July 2013 I.H., a relative of five of the migrants, paid EUR 3,000 to S.Q., supposedly to collect the migrants from the camp and transfer them to France.

### **Evidence**

86. The fact that the eleven individuals travelled from Kosovo to Hungary and were apprehended on 28 June 2013 together with the two drivers M. L. and I. B is corroborated by the information provided in the Joint Investigation Report dated 3 December 2013 and the Europol message dated 29 November 2013.<sup>58</sup> In addition, the witness statement by A.S. confirms that the two drivers M. L. and I. B were apprehended by the Hungarian Police on 28 June 2013 on the border of Hungary and Austria.<sup>59</sup>
87. Financial information from UFP transfers indicates that H.Q., S.Q.'s wife, transferred EUR 1,143 to the 'second driver' A.L. on 3 July 2013 and EUR 700 each to the drivers M.P. and

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<sup>56</sup> Telephone Conversation between S.Q. and A.S. on 19 June 2013 at 20:09 hrs, Binder 26, Legal Interception, tab 2, no. 40.

<sup>57</sup> See minutes of the main trial session on 2 June 2015, page 16.

<sup>58</sup> Joint Investigation Report dated 3 December 2013, page 2 and Europol Message dated 29 November 2013, Binder 7, ILA Requests and Replies, tab 2.

<sup>59</sup> See minutes of the main trial session on 7 July 2015, page 10 and 11.

I.G. on 28 June 2013.<sup>60</sup> All of these money transactions were performed on or around the journey of the eleven individuals. Even though these transactions were performed in the name of H.Q. and not **S.Q.**, intercepts, such as the intercept dated 17.07.2013 at 14:44:04, indicate that the transactions were performed by or for **S.Q.** using the name of his wife.<sup>61</sup> Furthermore, the information from UFP for money transfer shows that **S.Q.** received EUR 3,000 on 3 July 2013 from I.H..<sup>62</sup> This money supposedly was transferred to **S.Q.** to take the apprehended migrants from the camp to France.

### ***(6) Smuggling operation K***

88. Between end of July 2013 and 10 August 2013 the group led by S.Q.1. organized and executed the illegal journey of a group of Kosovo citizens, from Kosovo through Serbia into Hungary and onwards. The operation was organized by S.Q.1. together with **S.Q.**, **L.M.** and others.
89. S.Q.1. engaged the two drivers G.I. and M.P. to take the migrants from north Mitrovica via Subotica to Hungary. A.H.S. and A.J.O. arranged for transport from the Hungarian Serbian border to onward countries. A.O. would collect the migrants from Vienna, after the driver A.L. had collected them from the Serbian-Hungarian border to bring them to Vienna.
90. Eventually, eight people were recruited of whom at least four illegally crossed the border to Hungary, including R.R. who exited Kosovo via Gate 31 on 9/10 August 2013 at 00.52 hrs. On 10 August 2013 the migrants crossed into Hungary.

### **Evidence**

91. The journey of the individuals is proven by the intercepted telecommunication between S.Q.1. and A.H.S., as well as between S.Q.1. and several migrants.<sup>63</sup> The fact that R.R. belonged to this group is proven by the statement of defendant **M.**, who credibly stated to have assisted and organized the travel of R., together with the data from the Border Management system.

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<sup>60</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 16, Binder 20, Police Files Financial Reports.

<sup>61</sup> Report Joint Investigation Team dated 19 July 2013, page 12 and 13, Binder 11.

<sup>62</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 6, Binder 20. It has to be noted that five of the apprehended migrants P.H., L.H2., E.H., L.H., A.H. have H. as a surname alike the person who transferred the funds. It has to be noted that from the original Albanian version of the information it is clear that **S.Q.** was the receiver of the funds sent by I.H., see page 28 and 29 of the Kosovo Police Report on disclosure of financial information dated 28 March 2014. However, the English translation of the report on page 6 of the report contains a wrong translation of the Albanian reference thus referring to the funds as 'received by I.H..

<sup>63</sup> See Analysis of lawful interceptions of **S.Q.**, Binder 26, tab 3, page 109; tab 5, pages 134 to 180.

92. It is proven that **S.Q.** was involved in the smuggling of these individuals as he took care of the financial arrangements. On 16 July 2013 H.M.Q. through UFP transferred EUR 851 to A.O.J..<sup>64</sup> In addition, on 16 July 2013 H.M.Q. transferred EUR 700 to each G.I. and M.P. through DMTH.<sup>65</sup> The intercept dated 17 July 2013 at 14:44:04 hrs. shows that these transactions were performed by or for **S.Q.** using the name of his wife.<sup>66</sup> Further, the intercepted telecommunication of **S.Q.** on 16 to 28 July 2013 shows his involvement in the smuggling activities. In these conversations he was discussing with **S.** financial issues and other issues regarding the logistics of the smuggling operation. For example, on 21 July 2013 **S.** sent an SMS to the number xxx: „R., it’s me **S.**. You will go to your in-laws in three days. I will come and let you know about the details“.<sup>67</sup>
93. The participation of **L.M.** in the smuggling of this particular group of migrants is proven as he pleaded guilty on count 6, specifically mentioning the case of R.R..<sup>68</sup> In addition, the intercept dated 17 July 2013 of a telephone conversation between S.Q.1. and **S.Q.** shows the involvement of **L.M.** in the smuggling as during the telephone conversation also **L.M.** spoke to S.Q.1. discussing money, transportation of migrants.<sup>69</sup> His account is corroborated by the Border Management System data indicating that **L.M.** crossed the border from Rudnica to Serbia on 14 July 2013.

### ***(7) Smuggling operation N***

94. Between 4 September 2013 and 18 September 2013 the group led by S.Q.1. was actively recruiting individuals who were interested to illegally travel to European Union countries, and they organized and executed the illegal journey of a group of Kosovo citizens, including F.G. and A.S. from Kosovo via Serbia into Hungary and onwards. This operation was organized by S.Q.1, with **L.M.** and others as co-perpetrators.
95. On 4 September 2013, EUR 1,350 was transferred by **L.M.** to MP. to transport the migrants from north Mitrovica up to Subotica and onwards. In addition, **L.M.** was involved in recruiting the migrants. There would be four migrants to leave on 11 September 2013. Eventually, these migrants were taken to Vienna by a driver called Sasha.
96. On 12 September 2013 another transport of four migrants was planned by S.Q.1. These migrants left Kosovo on 16 September 2013.

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<sup>64</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 16/17, Binder 20, Police Files Financial Reports.

<sup>65</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 16/17, Binder 20, Police Files Financial Reports.

<sup>66</sup> Report Joint Investigation Team dated 19 July 2013, page 13, Binder 11.

<sup>67</sup> Report Joint Investigation Team dated 21 August 2013, page 13, Binder 11, tab 3.

<sup>68</sup> See minutes of the main trial session on 2 June 2015, page 7 and 14.

<sup>69</sup> Joint Investigations Report dated 19 July 2013, page 13, Binder 11, tab 3.

## Evidence

97. It is proven from the interception of communication of defendants **Q. and M.** that the group planned to transport three migrants to Germany.<sup>70</sup> In addition a fourth migrant recruited by **L.M.** wanted to go to Germany. **L.M.** recruited a migrant to go to Vienna and he was in contact with a family member from a migrant from Prekaz whom he informed that the payment would consist of EUR 100 in advance and EUR 1,200 on the destination.
98. That the journey of at least some of the individuals, such as F.C. and A.S., actually took place is proven by legal interceptions.<sup>71</sup> Numerous intercepted telephone communications dated 18 September 2013 between S.Q.1. and among others F.C. and a driver named C shows that arrangements were made by S.Q.1. for the departure and transportation of F.C. and his travel from Vienna.<sup>72</sup> In addition, telephone interceptions dated 18 and 19 September 2013 prove that matters of transportation were discussed with A.S..<sup>73</sup>
99. Interceptions between 9 September 2013 and 12 September 2013 prove that **L.M.** recruited migrants, had meetings with co-perpetrators to discuss the transport of the migrants and dealt with financial matters. On 10 September 2013 Luan speaks to a co-perpetrator over the telephone informing him that a women and a child had been turned back.<sup>74</sup> The same day, S.Q.1. uses **L.**'s phone to discuss transport matters and another co-perpetrator **S.** calls **L.** to inform him that migrants will meet him.<sup>75</sup> On 11 September 2013 Luan has various telephone conversations with among others **S.** to discuss potential migrants.<sup>76</sup> The father of one of these potential migrants is mentioned, H.<sup>77</sup> **L.M.** has telephone conversations with this H.R. on the same day informing H.R. where to meet him.<sup>78</sup> Furthermore, the intercept from 11 September 2013 shows that four potential migrants were discussed with one of them from Prekazi.<sup>79</sup> On 12 September 2013 in one of his telephone calls **L.M.** is asked by a migrant 'hey man, do

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<sup>70</sup> See Binder 27, Legal interception of **S.Q.**, tab 7, pages 37 to 121; Joint Investigation Report on Legal Interception of **L.M.** dated 2 October 2013.

<sup>71</sup> Joint Investigation Report dated 25 September 2013, Binder12, tab 5; Binder 27, Legal interception of **S.Q.**, tab 7, pages 37 to 121.

<sup>72</sup> Joint Investigation Report dated 25 September 2013, Binder 12, tab 5, page 3.

<sup>73</sup> Joint Investigation Report dated 25 September 2013, Binder12, tab 5, page 5.

<sup>74</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 10 September 2013 at 12:25 hrs, page 3, Binder 11, tab21.

<sup>75</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 10 September 2013 at 20:23 hrs, page 3, Binder 11, tab21.

<sup>76</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, pages 4-8, Binder 11, tab21.

<sup>77</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 11 September 2013 at 18:06 hrs, page 4, Binder 11, tab21.

<sup>78</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 11 September 2013 at 18:12 hrs, page 7, Binder 11, tab21.

<sup>79</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 11 September 2013 at 17:52 hrs, page 6, Binder 11, tab21.

you have a contact number of the people that transport us on the other side during the night'. L. responds that the night before there had been problems and refers to A., the co-perpetrator in Hungary.<sup>80</sup> In addition money issues are raised. Later on, S.Q.1. informs L.M. that co-perpetrator A. has most probably been arrested.<sup>81</sup> Numerous other intercepts indicate that L.M. was actively recruiting migrants and organizing the smuggling operations.<sup>82</sup> The police intercepted a total of 48 conversations regarding smuggling of migrants from L.M.'s phone between 9 September 2013 and 18 September 2013. On 11 September 2013 at 17:56:56 S.Q.1. and L.M. also discussed the amounts that they will receive from the smuggling and possible profit.<sup>83</sup>

100. In his statement of 17 June 2014, H.R. stated that his son, F.R. with the assistance of L.M. illegally went to Italy 'sometime during September'. H.R. had met with L. to discuss the trip and the costs of EUR 2,400. H.R. took his son to L.M. in Skenderaj, he paid L.M. EUR 2,400 in instalments.<sup>84</sup> However, during the main trial H.R. stated that it was not L.M. whom he gave the money to, but another L..<sup>85</sup> Furthermore, H.R. stated that he did not remember whether he had spoken with L.M. on the telephone. Even though there are discrepancies between H.R. testimonies, the court will abide by his statement of 17 June 2014 as the content of this statement was confirmed during the testimony of police officer M.U. who conducted the interview on 17 June 2014.<sup>86</sup> Further, the Panel found it was obvious that the witness in the main trial was reluctant to directly accuse the defendants.

101. The involvement of L.M. in the smuggling operations is further proven by financial data that shows that through UFP L.M. sent EUR 1,350 to M.P. on 4 September 2013.<sup>87</sup> M.P. is one of the drivers regularly used by the group to smuggle migrants through Serbia.

102. L.M.'s involvement in the smuggling of migrants for the period 19 September 2013 is also proven as numerous telephone conversations between him and S.Q.1. were intercepted that see to the transport of migrants and in which potential migrants were discussed.<sup>88</sup> Also financial matters relating to the migrants were discussed over the telephone.<sup>89</sup>

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<sup>80</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 12 September 2013 at 17:14 hrs, page 3, Binder 11, tab21.

<sup>81</sup> Joint Investigation Report on Legal Interception dated 2 October 2013, interception 12 September 2013 at 10:17 hrs, Binder 11, tab21.

<sup>82</sup> See for example Interception dated 11 September 2013 at 13:09, 14:40:18, 17:14:50, 17:17:44, 17:23:03,17:52:07

<sup>83</sup> Legal Interception on L.M., Interception dated 11 September 2013 at 17:56:56, Binder 21, page 83.

<sup>84</sup> Witness interview H.R. dated 17 June 2014, Binder 29, tab 5.

<sup>85</sup> See minutes of the main trial session on 4 June 2015, page 34, 35.

<sup>86</sup> See minutes of the main trial session on 21 July 2015, page 12.

<sup>87</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 8, Binder 20.

<sup>88</sup> Joint Investigation Report dated 25 September 2013, Binder 12, tab 5, page 8 and 9.

<sup>89</sup> Joint Investigation Report dated 25 September 2013, Binder 12, tab 5, page 12.

### **(8) Smuggling operation O**

103. Between 17 September 2013 and 26 September 2013 a group consisting of S.Q.1, L.M., F.K., S.S. and others organized and executed the illegal journey of a group of migrants, including Kosovo citizens B., B.H., D.M., F.R., T.R., and R.K., from Kosovo to countries of the European Union.
104. On 17 September 2013 S.Q.1. started to organize a smuggling operation to transport a group of migrants from Kosovo to Hungary on 22 September 2013. In addition, another migrant would be sent to Budapest. On 20 September 2013 another migrant B.H. arrived in Budapest as arranged by S.Q.1.
105. On 20 September 2013 S.Q.1. involved S.S. in the organization of the next operation. S.S. found four migrants and arranged for a driver from Kosovo to Subotica into Hungary. It was agreed that the profits would be divided between S.Q.1. and S.S.. Together with two more migrants the group would be smuggled from ETC Mitrovica on 22 September 2013 onwards. A part of the group was sent on by S.S. from Mitrovica, and another part was taken across the bridge by F.K.. F.K.'s group was not allowed to cross the border when their papers were checked. The next day on 23 September 2013 they made another attempt which was successful. The migrants with destination Vienna arrived there around 25 September 2013.
106. S.Q.1. mostly arranged for the part of the journey that concerned the border crossing from Hungary to Austria. Once the migrants reached their final destination the final sums of money were paid by their relatives to the group.

### **Evidence**

107. The Surveillance Report dated 27 September 2013 proves that next to S.Q.1, F.K., and L.M. were involved of the smuggling operation that took place on 22 September 2013 around 20:00 hrs. starting at ETC in Mitrovica.<sup>90</sup> The latter has been corroborated by investigator D.B. who testified in court that during the surveillance at the time he saw F.K., L.M. and S.Q.1. at the parking lot of ETC Mitrovica. Mostly L.M. and S.Q.1. were interacting with the migrants at the parking lot.<sup>91</sup>
108. F.K. was involved in the operation as proven by the information from the surveillance report as well as the intercepts dated 22 to 26 September 2013 that show that F.K. was (i) in contact with migrants, for example when he talks with a women to meet in Rahovec telling here: "look be ready about six o'clock",<sup>92</sup> (ii) discusses with

<sup>90</sup> Surveillance Report dated 27 September 2013, binder 17, tab 11.

<sup>91</sup> See hearing minutes 10 June 2015, page 7 and 8.

<sup>92</sup> Legal Interception F.K., interception 22 September 2013 at 13:04:49, page 1, Binder 23, tab 1.

another co-perpetrator issues that occurred at the Serbian border on 22 September 2013 relating to a migrant that did not have a birth certificate, they decide to meet at ETC and F.K. advises him on the matter: "(...) it is better to get a new one [izvod extract], because they might turn us back again"<sup>93</sup>, (iii) advising B. on his trip in Hungary and upon entry in Switzerland B. informs F.K.: "Yes we arrived, my brother will give you the money tomorrow" upon which F.K. enquires: "what about the others, have they arrived yet (...) "<sup>94</sup>, (iv) liaising between F.K. and S.Q.1. about the operation on the evening of 22 September 2013 and the fact that one migrant is turned back<sup>95</sup>, (v) liaising between F.K. and S.Q.1. on money that was returned by the driver from the night before when the transport could not take place, and on where to collect the money: Rahovec<sup>96</sup>, (vi) discusses money related issues with S.Q.1. in respect of the journey that took place: S.: "Right, there were 5200, 100 Euros from Western Union bank, 100 for the trip..(...)", F.: "You were supposed to come. Why didn't you come but sent your brother [S.Q.]"<sup>97</sup>.

109. As to the material benefit gained, financial data show that F.K. received a cash deposit of EUR 300 on 25 September 2013.<sup>98</sup> In addition, his son F.K.1. received a cash deposit from his father of EUR 3,200 on 25 September 2013.<sup>99</sup> However, purely based on the information provided in the report no direct connection can be established between the amount and the smuggling operation, apart from the fact that both transactions were performed at the end of the smuggling operation.

110. Apart from the surveillance report referred to above, intercepts of telephone communication prove the involvement of L.M.. Intercepts from 18 and 19 September 2013 between L.M. and S.Q.1. indicate that L.M. was in contact with migrants to recruit them.<sup>100</sup>

111. Interceptions dated 20 September 2013 between S.S. and S.Q.1. prove that S.S. was involved in the planning of the smuggling operation, such as finding the migrants and then contacting S.Q.1. to arrange for transport: 'there is no chance to drive the people tonight'(...) 'and on Monday at what time should I bring them there?'.<sup>101</sup> On 22 September 2013 at 12:31 hrs. S. calls S.Q.1: "It is good tonight". S.: "Everything is all rights." "I will give them my approval right?".<sup>102</sup> Later on S.Q.1. and S.S. call to discuss the costs of transporting the migrants, S.: "A bit cheaper, make it 1.3 for me this

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<sup>93</sup> Legal Interception F.K., interception 22 September 2013 at 22:28:08, page 36, Binder 23, tab 1.

<sup>94</sup> Legal Interception F.K., interception 25 September 2013 at 01:52, page 121, 123, Binder 23, tab 1.

<sup>95</sup> Legal Interception F.K., interception 22 September 2013 at 22:38:44, page 45-47, Binder 23, tab 1.

<sup>96</sup> Legal Interception F.K., interception 23 September 2013 at 17:25, page 62, 63, Binder 23, tab 1 and Legal Interception F.K., interception 24 September 2013 at 12:05, page 84, 85, Binder 23, tab 1.

<sup>97</sup> Legal Interception F.K., interception 26 September 2013 at 11:39, page 156, Binder 23, tab 1.

<sup>98</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 13, Binder 20.

<sup>99</sup> Kosovo Police Report on disclosure of financial information dated 28 March 2014, page 13, Binder 20.

<sup>100</sup> Joint Investigation Team report dated 9 October 2013, page 8-10, Binder 12, tab 5.

<sup>101</sup> Joint Investigation Team report dated 2 October 2013, page 2 and 3, Binder 11, tab 19.

<sup>102</sup> Joint Investigation Team report dated 9 October 2013, page 2, Binder 12, tab 18.

time.”<sup>103</sup> At 22:49 hrs. on the same day S. and S.Q.1. talk about the migrants who were rejected at the border and discuss how to arrange for another trip for them on the next day.<sup>104</sup> The next day S. informs S1. that he fixed the documents for the person who was turned back.<sup>105</sup> S.Q.1. calls S.S. and S. informs him that they will be there at eight thirty.<sup>106</sup> On 24 September 2013 S. and F.K. call S.Q.1. and talk about the money that the two of them owe to S.Q.1. in relation to the migrants.<sup>107</sup>

112. The involvement of S.Q. in this operation is proven by the interception of telecommunication. The interception of the telephone number 049549593 used by F.K. shows a number of telephone conversations between F.K. and S.Q. on the 24, 25 and 26 September 2013. From these conversations it is obvious that the smuggling of a group of people, including a person named B., to Switzerland was discussed. The intercepted telephone conversations between S.Q. and K. and S. undoubtedly show that on 25 September 2013 S.Q. met with S.S. and F.K. in Klina, where S. and K handed money to S. to pass it on to S1..<sup>108</sup> Accordingly, on a conversations on 26 July 2013, 11:39 F.K. asks why S1. had sent his brother, and did not come himself.

113. Further, the defendant in the main trial stated that on this occasion he went to Klina to collect money for his brother. As far as S.Q. states to not have known what this money was for, the Panel takes into account the long period of time that S.Q. was involved and the high number of transaction that he conducted, and evaluates his statement as not credible.

### ***(9) Smuggling operation Q***

114. Between 29 September 2013 and 2 October 2013 the defendant L.M. under the instruction of S.Q.1. together with other co-perpetrators organized the journey of four persons: two women, a man and a child. This group included Kosovo citizens.

115. The group travelled from Mitrovica into Hungary via Subotica. However, at the Hungarian border a problem occurred and the migrants were taken by another driver who worked for someone else. Nevertheless, the matter was resolved and eventually the group was transported to Vienna.

### **Evidence**

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<sup>103</sup> Joint Investigation Team report dated 9 October 2013, page 2, Binder 12, tab 18.

<sup>104</sup> Joint Investigation Team report dated 9 October 2013, page 2, Binder 12, tab 18.

<sup>105</sup> Joint Investigation Team report dated 9 October 2013, page 3, Binder 12, tab 18.

<sup>106</sup> Joint Investigation Team report dated 25 September 2013, page 11 and 12, Binder 12, tab 5.

<sup>107</sup> Joint Investigation Team report dated 9 October 2013, page 3, Binder 12, tab 18.

<sup>108</sup> Joint Investigation Team Report on the interception of telephone number 049549593, Binder 7, Tab 16, pages 100, 140, 154, 155.

116. The involvement of **L.M.** in the journey of at least V.M., one of the four migrants, is proven by the intercept dated 3 October 2013 in which he agrees with H.M. to meet by the school of Drenas near the gas station to perform the payment, since V.M. has arrived in Vienna.<sup>109</sup> In addition, **L.** contacts S.Q.1. to inform him that he will go to Drenas to get the money at the gas station.<sup>110</sup>
117. It is further corroborated by the pre-trial testimony of H.M.<sup>111</sup>, who gave account of the fact that in October 2013 **L.M.** assisted his brother V.M. to travel to Austria as he did not have the required documents to enter Austria. V.M. met **L.M.** in Mitrovica. From there V.M. travelled onwards. In addition, H.M. upon arrival of his brother in Vienna paid **L.M.** a remainder of EUR 900 to 1,000 in Drenas, in the gas station Al Petrol.<sup>112</sup> Between H.M. pre-trial testimony and his statement during the main trial discrepancies exist.<sup>113</sup> However, Mrs Sh.I., the police officer who had conducted his pre-trial interview, confirmed during the main trial that H.M. had stated at the time that he had personally paid **L.M.** for the journey of his son.<sup>114</sup> It has to be noted though that Mrs Sh.I. made this statement after having been given a copy of the interview as she could not remember the interview at first.

#### ***(10) Smuggling operation R***

118. Between 3 October 2013 and 14 October 2013 the defendant **L.M.** under the instruction of S.Q.1. together with other co-perpetrators organized the journey of a group of migrants including Kosovo citizens A.S., Q.S., M.Th., L.U., F.M1., H.S., A.I., and A.I.1.
119. On 3 October 2013 a group of seven to eight persons would be transported by **L.M.** from the ETC in Mitrovica to the north of Mitrovica to meet a Serbian driver who would transport them to Hungary and onwards to Vienna. Upon the arrival of the migrants on their destination **L.M.** would collect the funds from the migrants' families.
120. Another smuggling operation was arranged by among others S.Q.1. and **L.M.**. **L.M.** ensured that a Hungarian driver Z.N. was instructed. The group of migrants, four adults and two children were caught crossing illegally into Hungary through a field.

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<sup>109</sup> Legal Interceptions dated 3 October 2013 at 21:30:59, 22:10:37 and 22:59:23, Binder 21, tab 2.

<sup>110</sup> Legal Interception dated 3 October 2013 at 21:30:59, 22:10:37 and 22:59:23, Binder 21, tab 2.

<sup>111</sup> Record on Witness Hearing H.M.dated 17 June 2014, Binder 29, tab 7.

<sup>112</sup> Record on Witness Hearing H.M.dated 17 June 2014, Binder 29, tab 7.

<sup>113</sup> See minutes of the main trial session on 4 June 2015, page 26. For example, during the main trial session H.M.declared that **L.M.** was not in Mitrovica at the time his brother was there and that he never paid the money to **L.M.**but to another person instead.

<sup>114</sup> See minutes of the main trial session on 9 June 2015, page 13.

121. On 8 October 2013 the migrants M.Th., L.U., F.M1., H.S., A.I., and A.I.1 were arrested together with the Hungarian driver Z.N.. In addition, on 9 October 2013 L.U. and F.M1 were again arrested by the Hungarian Police.
122. Furthermore, another smuggling operation was organized during the same period of time. The migrants would be guided by K.F., an Albanian residing in Germany, from north Mitrovica to Subotica in Serbia.

### Evidence

123. The journey of the migrants is proven by the statement of A.S.. S. testified that on 8 October 2013 a Hungarian police unit apprehended migrants and Z.N.. S. testified that Z.N. worked together with S.Q.1. to transport migrants. In addition, he stated that on 9 October 2013 two migrants together with R.S. were apprehended by the Hungarian Police, these two migrants had been apprehended on 8 October 2013 as well.
124. The involvement of **L.M.** in the operation on 3 October 2013 is proven by telephone interceptions that show that Miftari had several phone conversations with migrants on where to meet, the ETC in Mitrovica.<sup>115</sup> Furthermore, the telephone intercept dated 3 October 20:36 hrs. shows that Miftari was informed by S.Q.1. of the fact that one of the migrants gave up thus making the group a total of 7 persons.<sup>116</sup> On 3 October 2013 **L.M.** had been in contact with L.Z. on where to meet. L.Z. is one of the migrants who travelled on 3 October 2013.<sup>117</sup> Furthermore, interceptions of 3 October 2013 prove that **L.M.** was involved in the smuggling of A.S., whom he instructed to meet him.<sup>118</sup> The same applies to a migrant named Q.S. with whom **L.M.** was in contact on 3 October 2013 to tell him where they would meet.<sup>119</sup>
125. The latter is corroborated by the pre-trial testimony of L.Z. on 18 June 2014 in which he stated that he was in contact with S.Q.1. and that he was told to go to ETC Mitrovica where he contacted a person of around forty years old with a beard.<sup>120</sup> From ETC he was transported close to the bridge where they swapped cars after which they crossed the border Serbia-Hungary, next to him there were around eight more persons. In his statement L. did not mention the name **L.M.**. However, his telephone number seems to

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<sup>115</sup> Joint Investigation Team Report dated 21 October 2013, legal interceptions dated 3 October 2013 page 2-4 and 6, Binder 13, tab 4.

<sup>116</sup> Joint Investigation Team Report dated 21 October 2013, legal interception dated 3 October 2013 at 20:36 hrs, page 4, Binder 13, tab 4.

<sup>117</sup> Joint Investigation Team Report dated 25 November 2013, legal interception dated 3 October 2013 at 21:11 hrs, page 10, Binder 14, tab 7.

<sup>118</sup> Joint Investigation Team Report dated 25 November 2013, legal interception dated 3 October 2013 at 20:23 hrs, page 13, Binder 14, tab 7.

<sup>119</sup> Joint Investigation Team Report dated 25 November 2013, legal interception dated 3 October 2013 at 20:33 hrs, page 13, Binder 14, tab 7.

<sup>120</sup> Record on Witness Hearing **L.Z.**, Binder 29, tab 8.

match with the telephone number that called **L.M.** on 3 October 2013 at 21:11 hrs. Even though there are discrepancies between L.Z. testimony before the Court on 4 June 2015 and his pre-trial testimony, the court will abide by his statement of 17 June 2014 as the content of this statement was confirmed during the testimony of police officer D.B. who conducted the interview on 18 June 2014.<sup>121</sup>

126. Q.S. pre-trial testimony corroborates the evidence from the telephone interceptions, as S. stated that he discussed with **L.M.** the possibilities of taking his son abroad.<sup>122</sup> It was decided that **L.M.** would make arrangements and **S.** was informed that they would depart at 21:00 hrs. from ETC Mitrovica. There are certain discrepancies between Q.S. pre-trial testimony and his testimony before the Court on 22 July 2015, the court will abide by his statement of 18 June 2014 as the content of this statement was confirmed during the testimony of police officer D.B. who conducted the interview on 18 June 2014.<sup>123</sup> Further, the panel found that the witness was obviously reluctant to directly accuse the defendants during the main trial session, as he could not give an explanation for the discrepancies in his statements.
127. In his pre-trial testimony of 18 June 2014 A.S. stated that he and some other migrants left from ETC Mitrovica and entered in a grey Passat car.<sup>124</sup> This seems to corroborate with the interception dated 3 October 2013 between **L.M.** and A.S..
128. The involvement of **L.M.** in the smuggling of the four adults and two children is proven by the intercept dated 4 October 2013 in which L.M. and S.Q.1. discuss these migrants and S.Q.1. says "(...) a wife is coming with two children to Krap, the other one is coming.....".<sup>125</sup> In addition, on 5 October 2013 S. informs L. that: (...) they sent them back because their kids are not calm".<sup>126</sup>
129. Furthermore, a SMS from **L.M.** to M. indicates that **M.** was involved in arranging the Hungarian driver Z.N. to transport the migrants to Vienna: "N.Z. Wien 1.500 to take".<sup>127</sup> In addition, interceptions dated 4 October 2013 prove that **L.M.** made arrangements to transport the four adults and two children. On the question by a potential driver why **L.** did not work with 'D.': **L.** "I can't because they are four adults and they will only give 400 euro", after which it is replied: "if they would go with a car they would have problems

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<sup>121</sup> See hearing minutes 4 June 2015, page 10.

<sup>122</sup> Record on Witness Hearing Q.S., Binder 29, tab 10.

<sup>123</sup> See hearing minutes 10 June 2015, page 10.

<sup>124</sup> Record on Witness Hearing A.S., Binder 29, tab 9.

<sup>125</sup> Joint Investigation Team Report dated 21 October 2013, legal interception dated 4 October 2013 at 20:13 hrs, page 4, Binder 13, tab 4.

<sup>126</sup> Joint Investigation Team Report dated 21 October 2013, legal interception dated 5 October 2013 at 07:40 hrs, page 4, Binder 13, tab 4.

<sup>127</sup> Joint Investigation Team Report dated 21 October 2013, legal interception dated 4 October 2013 at 12:14 hrs, page 7, Binder XIII, tab 4.

because they need special seats for the kids.”<sup>128</sup> After this interception many phone calls follow in which **L.M.** arranges for the transport of the migrants.

### **(11) Smuggling operation S**

130. Between 7 and 25 November 2013 the defendants **L.M., S.Q., F.K. and S.S.** under the instruction of S.Q.1. together with other co-perpetrators organized the journey of several persons, including a group of 3 to 4 Kosovo citizens including Sh.H., E.H. and Sh.O. from Kosovo to Vienna.
131. Arrangements for the group had been made prior to 7 November 2013. On 7 November 2013 the group travelled from Mitrovica into Hungary via Subotica. In the area near the border of Hungary the group was delayed and had to continue by foot through the mountain area of Hungary on 11 November 2013, eventually making it to Germany.
132. After 11 November 2013 a smuggling operation was organized by S.Q.1, **F.K., S.S.** and **L.M.**. On 18 November 2013 six migrants left from Mitrovica to the Serbian-Hungarian border. However, on their way the migrants got stuck.
133. Furthermore on 20 November 2013 a group of migrants was transported from Kosovo into Hungary by a Serbian driver, ‘C.’. At the Hungarian border he was met by N.N., ‘N.’ to transport some of the migrants. V.G.K. ‘V.’ would transport three illegal migrants, Sh.H., E.H. and Sh.O. to Vienna. However, on 24 November 2013 they were stopped by the Hungarian Police. Thus, the migrants were not successful in crossing the border.

### **Evidence**

134. The fact that ‘V.’ and ‘N.’ were stopped by the Hungarian Police is corroborated by the witness statement of A.S. on 7 July 2015 in which he stated that “(...) the last [incident] was in November (...) when two Hungarian ladies were just checked in close vicinity of Serbian-Hungarian border when they were in close connection with S.Q.1.”<sup>129</sup>
135. The surveillance report dated 18 November 2013 drafted by police officer 836 shows that S.Q.1, **F.K.** and **S.S.** were involved in the smuggling of at least four migrants leaving from Mitrovica onwards on the evening of 18 November 2013.<sup>130</sup> The report shows that one of the migrants was taken by S.Q.1. to ETC Mitrovica where they met **F.K.** and **S.S.**. **F.K.** eventually drove at least four migrants to Mitrovica north in a grey Passat.

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<sup>128</sup> Joint Investigation Team Report dated 21 October 2013, legal interception dated 4 October 2013 at 18:38 hrs, page 4, Binder XIII, tab 4.

<sup>129</sup> See minutes of the main trial session on 7 July 2015, page 14.

<sup>130</sup> Kosovo Police Surveillance Report dated 18 November 2013, Binder 17, tab 22.

Afterwards the three men met at an Al-Petrol fuel station to have a conversation after which they left. These dates match with the operation that took place on 18 November 2013.

136. **S.Q.** was involved in the financial part of the smuggling operations. This is proven by the financial data that shows that on 18 November 2013 and 29 November 2013 through DMTH **S.Q.** received EUR 500 from A.C. in Germany.<sup>131</sup> As A.C. transported migrants to Germany it is expected that the funds transferred came from migrants who were transported by A.C. on behalf of S.Q.1. and others. In addition, interceptions dated 18 October 2013 show that **S.Q.** was in contact with A.C. about the transfer of funds, A. calls **S.** and says: "I send 500 Euros on your name **S.Q.** to Money Gram".<sup>132</sup> In addition, the interception dated 11 November 2013 between **S.Q.** and his mother indicates that he was aware of the smuggling activities that were ongoing.<sup>133</sup>
137. Apart from the data from the surveillance report of 18 November 2013, the legal interceptions of 11 November 2013 at 15:56:25 of a telephone communication between S.Q.1. and F.K. and later on S.Q.1. and **S.S.** prove that S.S. was involved in the organizing of the smuggling operation that took place on 18 November 2013 as was shown by the surveillance report.<sup>134</sup>
138. In addition to the surveillance report dated 18 November 2013 that proves the involvement of F.K. in the smuggling operation on that date, the interceptions dated 7, 8, 9 and 10 November 2013 which contain extensive telephone communications by F.K. with mainly S.Q.1. clearly prove the involvement of F.K. in the smuggling operation that took place between 7 and 11 November 2013. In an interception of 7 November 2013 F.K. also explicitly asks S.Q.1. what the 'profit' would be for him.<sup>135</sup> Moreover, interceptions dated 14, 17 and 18 November 2013 show that F.K. was involved in making arrangements for the operation on 18 November 2013.<sup>136</sup>
139. The interceptions dated 7, 8, 9 and 10 November 2013 mentioned above also show the involvement of **L.M.** in the smuggling operation that took place between 7 and 11 November 2013.<sup>137</sup> For example the interception dated 10 November 2013 at 22:44 in which **L.M.** and F.K. discuss the problems that occurred when some migrants went in a wrong vehicle.<sup>138</sup> However, there does not seem to be evidence on **L.M.** involvement in the operation that took place around 24 November 2013.

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<sup>131</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, page 6, Binder 10, tab 5.

<sup>132</sup> Joint Investigation Team report dated 28 November 2013, page 2, Binder 14, tab 9.

<sup>133</sup> Joint Investigation Team report dated 28 November 2013, page 2, Binder 14, tab 9.

<sup>134</sup> Legal Interception dated 11 November 2013 at 15:56, page 351, Binder 18, tab 3.

<sup>135</sup> Legal Interception dated 7 November 2013 at 19:00:12, Binder 23, tab 3.

<sup>136</sup> Legal Interceptions dated 14, 17 and 18 November 2013, Binder 23, tab 3.

<sup>137</sup> Joint Investigation Report dated 26 November 2013, Binder 14, tab 8.

<sup>138</sup> Legal Interception dated 10 November 2013 at 22:44 hrs, Binder 23, tab 3.

### **(12) Smuggling operation T**

140. Between end of November and 9 December 2013 the defendants **K. M.** and **S.** in co-perpetration with S.Q.1. and others organized and executed the illegal migration of several individuals from Kosovo to countries of the European Union. During end of November and beginning of December, the defendants K, and S, were active to find individuals who were interested to pay the group for the organization of the illegal trip to Austria, Italy and other countries of the European Union. All three of them found interested individuals and planned their trip, which was supposed to start on 4 December 2013 from Kosovo via Serbia and Hungary.
141. On the evening of 4 December 2013 the defendant K. met a young man of around 25 years old at the bus station in Pristina, received money from him, and accompanied him by bus to Serbia. Between 6 and 8 December 2013 the defendant organized the trip of the group through Serbia, where they were accompanied by M. and K.. S.Q.1. organized the further transport from Hungary to Austria and Germany with A.C..
142. Between 8 and 9 December 2013 the defendants brought a group of migrants from Kosovo via Serbia to Hungary, where they were picked up by a Hungarian driver on the instructions of S.Q.1. This group consisted of eight people with Kosovar citizenship who were arrested by Hungarian police shortly after they had continued their journey in Hungary.<sup>139</sup>

### **Evidence**

143. The recruiting activities of the group from end of November 2013 onwards are proven by the interception of telecommunication of all the defendants.<sup>140</sup> From these conversations it is obvious, that the defendants together with S.Q.1. recruited several individuals, organized their trip starting on 4 December 2013 and bargained about the prices the individuals had to pay. The intercepts show as well that M. and K. went to Serbia to facilitate the journey, that they encountered several problems and had arguments between each other.
144. The arrest of a group of eight Kosovars together with an Hungarian driver is proven by the statement of the witness S. in the main trial<sup>141</sup>, and corroborated by the information received from the Hungarian authorities.
145. The involvement of the defendant S. is proven by the interception of his frequent communication from the phone numbers xxx and xxx with S.Q.1, **L.M.** and F.K..<sup>142</sup> For example in a conversation between **S.** and S.Q.1. on 3 December 2013 at 18:03:47 hrs. **S.**

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<sup>139</sup> See minutes of the main trial session on 7 July 2015, page 14.

<sup>140</sup> Joint Investigation Team Report dated 13 December 2013, Binder 14, tab 26.

<sup>141</sup> See minutes of the main trial session on 7 July 2015, page 14.

<sup>142</sup> Joint Investigation Team Report dated 11 December 2013, Binder 14, tab 21.

says: “I am here dealing with one, I think he changed his mind, wants to fail, and I’ll remain only with two.”

146. The involvement of F.K. in an operation on 4 December 2013 is corroborated by the surveillance that the police carried out on this day.<sup>143</sup> K. was observed when he met an individual at the bus station in Pristina, where he received some money and together with the man entered a bus to Serbia. The arrangement of the journey thereafter is proven by the intercepts of K. phone number xxx, which show as well that during this time K. was in daily contact with the other defendants to organize the trip of the migrants.<sup>144</sup>

147. The involvement of **L.M.** is proven by the intercepted telecommunication.<sup>145</sup> On 9 December 2013 at 11:29 hrs. **M.** has a conversation with a person called S. who uses an Austrian number, with whom he discusses the transport of individuals from Subotica. In this conversation they discuss about prices as well, and **M.** mentions that he plans to go to Subotica the next day.<sup>146</sup>

### III. Structure of the Group

#### (1) Summary

148. After evaluating the available evidence the Panel established that all four defendants were members of a group which regularly facilitated the illegal migration of Kosovars to countries of the European Union. The sole aim of the group was to materially benefit from these activities. The group consisted of at least 20 individuals in Kosovo, Serbia, Hungary, Austria and Germany, and it was led by S.Q.1. who was directing the activities of the group in Kosovo.

149. The Panel found convincing evidence that all four defendants not only participated in the organization and execution of the individual smuggling operations as outlined above, but that they were members of this transnational group which was active for a period of at least a year. All four were aware of the activities of the group, of the existence and role of other group members, of the modus operandi of the group and its aim to gain benefit. The defendants were aware that benefits were shared, and they were involved in the distribution of shares.

150. S.Q.1’s brother **S.Q.** was less involved in the execution of these operations on the field, while his role was mainly to take care of financial transactions within the group or between migrants and the group. The roles of the other members in Kosovo were to

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<sup>143</sup> Kosovo Police Surveillance Report dated 11 December, Binder 17, tab 24.

<sup>144</sup> Joint Investigation Team Report dated 11 December 2013, Binder 14, tab 18.

<sup>145</sup> Joint Investigation Team Report dated 13 December 2013, Binder 14, tab 24.

<sup>146</sup> Interception dated 9 December 2013, 20:56, Binder 21, tab 5, page 419.

some extent flexible. But all three over the period of around one year were regularly engaged in the group's activities and ready to interact with the group at any time.

151. M., K. and S. were actively recruiting new individuals to be smuggled. In these cases they would receive an additional compensation. In some cases there were conflicts about these compensations. All three defendants were participating in the organization and execution of the trips, by communicating with the migrants, meeting them in Mitrovica or elsewhere, and transporting them to Northern Mitrovica or further to Serbia up to the Serbian-Hungarian border in Subotica. In many cases the groups travelled by bus, sometimes they travelled by car. If there occurred problems during the journey, the defendants would mostly report back to S.Q.1, who would then organize alternative ways.

152. In the execution of the operations the group could rely on a stable network of co-perpetrators in Serbia and Hungary. Mostly unidentified co-perpetrators brought the groups of migrants over the Serbian-Hungarian border. The migrants were told to wait at locations close to the border until they were picked up by Hungarian drivers.

153. The Hungarian co-perpetrators were coordinated by Z.V. and later by A.H.S., who were in regular contact with S.Q.1. They would assign dates and routes to individual drivers, who transported the migrants by car to Austria or other European countries. Drivers related to this group were, among others, A.H., Z.V., R.R., E.P. S., M. L., I.B. and P.S.. The Hungarian drivers received an amount between 150 and 200 EUR per person after a successful transport. This money was sent to them from Kosovo via several money transfer companies after the operations were concluded. The transactions were carried out by all defendants in Kosovo, and the money was sent directly to the drivers, or to their acquaintances.

## **(2) S.Q.**

154. The Panel found that **S.Q.**, the brother of S.Q.1, was a member of the organized criminal group from latest November 2012. His general role was to take care of financial transactions and to replace his brother when the latter was not available. In many occasions he was in charge of money transfers from the smuggled individuals after their arrivals, and to the co-perpetrators in Hungary. Further he met clients or their relatives in Kosovo to collect money, and he met with the Kosovar co-perpetrators. **S.Q.** would occasionally substitute his brother as well in meetings with other co-perpetrators, and he was involved in S.Q.1's efforts to disguise the origin of the benefit he gained.

155. The defendant was well aware of the criminal activities and the structure of the group, and he knew the other defendants and their roles within the group in Kosovo. He was aware of the objective of the group to gain benefit from illegal activities, and his intention was to support this objective.

## Evidence

156. The abovementioned factual findings regarding the defendant **S.Q.** are mainly based on financial investigations, results of lawful interception of telecommunication, in conjunction with other admissible evidence. The Kosovo Police Report on the disclosure of financial data dated 28 March 2014<sup>147</sup> shows that **S.Q.** since November 2012 carried out financial transactions for the group in more than 40 cases. He was sending amounts to group members in Hungary, or receiving payments from migrants in Austria or other countries, using bank accounts or money transfer companies. In many of those cases the relevant amounts were sent in the name of **S.Q.**'s wife H.M.Q. It is noted that the intercepted telecommunication undoubtedly shows that the defendant was using his wife's name to conduct the transfers.<sup>148</sup> In several occasions during intercepted telephone communications he discussed the issue that he was using her name, for example on 17 July 2013 on 14:44 hrs.<sup>149</sup>
157. The report on the financial disclosure<sup>150</sup> shows for example that on 13 November 2012 an amount of EUR 86 was sent via UFP from H.M. to A.H. in Hungary. Further, the investigation revealed that on 14, 16 and 26 November 2012 and on 7 December 2012 an amount in a total of EUR 1,486 was sent via UFP from H.M. to Z.V. in Hungary. On 22 November 2012 an amount of EUR 367.50 was sent via Western Union to Z.V. in Hungary on the name of H.M.. On 29 November and 19 December 2012 a total amount of EUR 186 was sent to A.H.S. in Hungary on the name of H.M.. On 20 June, 3 and 16 July 2013 amounts of EUR 1,338, 1,143 and 851 were sent to Z.S.H. and A.L. in Hungary and A.O.J. in Austria on the name of H.M.. On 28 June and 16 July 2013 a total amount of EUR 2,800 was sent to G.I. and M.P. in Serbia via DMTH, under the name of H.M... The above mentioned report further shows that during June and July 2013 Q. received via UFP several amounts in a total of EUR 4,900 from senders in Germany, Belgium and France. On 19 and 29 November 2013 he received via DMTH a total amount of EUR 1,000 from A.C., an alleged co-perpetrator who lived in Germany.
158. During his statement the defendant **Q.** stated to have conducted the transfers on behalf of his brother, without knowing the purpose of the transfers. In the light of the huge number of transactions, the period of time during which they were executed and the destinations to where the money was sent, the Panel found this statement not credible. The knowledge of the defendant of the group activities is further corroborated by interception of telecommunication. It is obvious from the intercepted communication between S.1. and **S.Q.** that **S.Q.** was sending and receiving money on behalf of his

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<sup>147</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, Binder 10, tab 5.

<sup>148</sup> See the Report of the Joint Investigation Team dated 19 July 2013, pages 13 and 14, Binder 11.

<sup>149</sup> See the Report of the Joint Investigation Team dated 19 July 2013, pages 2, 3, 12, 13, Binder 11.

<sup>150</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, page 6, Binder 10, tab 5.

brother and the group of smugglers. In several occasions S.1. told **S.** how to conduct the transfers.<sup>151</sup>

159. The involvement of **S.Q.** in the handling of the benefit is further evidenced in the fact that according to the report<sup>152</sup> an amount of EUR 5,000 in cash was deposited on the RBKO bank account of H.M., while according to the interception of telecommunication it is clear that this money belonged to S.Q.1. and was deposited by **S.Q.**. Further, according to the information gained during the financial investigations and the information obtained from the Inspectorate of Civil Registration Agency, the defendant during the period from December 2012 until September 2013 registered four different cars on his name.
160. The Panel notes that according to the financial investigation during the investigated time the defendant had no legal income, and that during the trial he did not provide any explanation for the described financial activities.
161. The fact that the defendant knew about the structure of the group is based on the result of the financial investigation as well as on the intercepts. The result of the interception of telecommunication shows that **S.Q.** knew the other Kosovar members of the group and was in contact with them. This is evidenced by the fact that other members were mentioned in conversations between S.1 and **S.Q.**, and that **S.** had direct contact with the co-perpetrators per phone or personally. For example on 17 July 2013 16:16 hrs., during a telephone conversation between **S.** and S.1, S.1 passes the phone to **L.** In another conversation on the same day 16:20 hrs. they mention the name **L.**<sup>153</sup> On 18 November 2013, 20:11 hrs. an intercepted telephone communication shows that **S.** is about to meet with Luan, and discussing this with **S.**<sup>154</sup>
162. On 15 October 2013 19:55 hrs. the lawful interception of the telephone number 0498852539 registered on F.K. revealed a conversation between two unknown females who mention the crossing of some people, and that S.1. took **S.** with him<sup>155</sup>. On 11 November 2013, 11:28 hrs. a telephone conversation between **S.Q.** and his mother show that both were very well informed about S.1. activities<sup>156</sup>.
163. The evidence shows that **S.Q.** was in contact with other defendants as well. The intercepted telecommunication shows that on 6 December 2013, 13:53 hrs. **S.S.** called **S.** and asked for S.1.. He mentions that he has some urgent problems to solve. It is obvious that **S.** understands without further explanation. He is asked to inform S.1.. after he

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<sup>151</sup> Joint Investigation Team Report on interception of telephone number 049602418, Binder 9, tab 9, page 130.

<sup>152</sup> Kosovo Police report on the disclosure of financial data dated 23 March 2014, page 16, Binder 10, tab 5.

<sup>153</sup> See the Report of the Joint Investigation Team dated 19 July 2013, pages 2 and 3, Binder 11.

<sup>154</sup> Joint Investigation Team Report on interception of telephone number 049602418, Binder 9, tab 9, page 129.

<sup>155</sup> Joint Investigation Team Report on interception of telephone number 049549593, Binder 7, tab 16, page 328.

<sup>156</sup> Joint Investigation Team Report on interception of telephone number 049602418, Binder 9, tab 9, page 129.

wakes up.<sup>157</sup> An intercepted communication on 18 October 2013, 21:12 shows that **S.S.** went to S.Q.1's house. Sami was not there, but he met **S.** who called S.1. so they could discuss.

164. The fact that **S.Q.** was in some occasions serving as a substitute for S.Q.1. is evidenced by several telephone intercepts as well. In many occasions S. was called by others who tried to speak to S.Q.1. and had difficulties, because the latter changed his phone number often. According to the interception of **S.Q.'s** phone he received messages regarding the smuggling of migrants on 7, 10, 12 and 18 October and 18 and 25 November 2013.<sup>158</sup> Intercepted telephone conversations undoubtedly show that on 25 September 2013 **S.Q.** met with **S.S.** and F.K. in Klina, to replace his brother and deal with financial transactions within the group. In a conversations on 26 July 2013, 11:39 F.K. asked why S.1. had sent his brother.<sup>159</sup> On 20 September 2013 S.Q.1. was intercepted having a phone conversation with a client called A.,; during this conversation he states that in any case A., could also contact his brother.<sup>160</sup>

### **(3) L.M.**

165. The Panel found that **L.M.** was a very active member of the group from latest November 2012 until his arrest in December 2013. He knew S.Q.1. since childhood and had a close relation to him. As shown above in the description of the smuggling incidents, **M.** had an active role in the organization and execution of smuggling operations, but he was an active recruiter of new migrants as well, and he dealt with the distribution of the material benefit. He met S.Q.1. frequently, and was also in contact with **S.Q.** and other defendants. He was meeting migrants to discuss the trip and receive the fees.

166. The defendant was well aware of the criminal activities and the structure of the group, not only in Kosovo but also in Hungary. He knew the other defendants and their roles and tasks within the group, and he did not only act on instructions but took his own decisions in the execution of the operations. His intention was to gain benefit from the criminal activities.

### **Evidence**

167. The established facts about the role of L.M. are based on interception of telecommunication, surveillance operations, financial investigations and witness examinations, as well as on his statements during the trial. The defendant admitted to

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<sup>157</sup> Joint Investigation Team Report on interception of telephone number 049602418, Binder 9, Tab 9, page 222.

<sup>158</sup> Joint Investigation Team Report dated 25 November 2013, Binder 9, tab 7, pages 70 to 72.

<sup>159</sup> Joint Investigation Team Report on the interception of telephone number 049549593, Binder 7, Tab 16.

<sup>160</sup> Joint Investigation Team Report on interception of phone number 049864936 dated 25 September 2013, Binder 8, Tab 6, page 48.

have participated in two cases of smuggling operations, but he denied to have had knowledge about the existence of a group, and to have made a considerable benefit from this activity.

168. The main evidence about the participation of the defendant Miftari in the smuggling operations was presented above. The Panel found additional evidence that prove the role of the defendant in the group, his knowledge of the group structure and his intent to gain material benefit with criminal activities.

169. The defendant stated that he was not aware of the existence of a group. In the light of the intense participation of the defendant in the operations and the content of intercepts the Panel evaluated this statement as not credible. It is very clear from the above mentioned evidence that **M.** was in regular contact with S.Q.1, but it is also proven that he was aware of the structure of the group not only in Kosovo, but abroad as well. In a telephone communication between **L.M.** and S.Q.1. on 12 September 2013 the defendants discuss the role of A.H.S. as organizer of the Hungarian drivers.<sup>161</sup> From this communication it is visible that **M.** is aware of the group's structure in Hungary, and of problems that occurred after her arrest.

170. On several occasions the defendant carried out financial transfers to co-perpetrators in Hungary. In November and December 2012 he transferred huge amounts to S.O. and Z.V.. In June 2013 he sent 1,700 EUR to V.G. in Hungary. On 4 September 2013 he transferred 1,350 EUR to M.P., an Hungarian driver<sup>162</sup>.

171. The fact that **M.** knew F. K. and cooperated with him is proven by the interception of telecommunication between the two men.<sup>163</sup> The interception shows clearly that **M.** and K. discussed about individual operations, about the structure of the group and the role of S.Q.1, and the execution of ongoing operations. In one conversation the two discussed the case when two of the migrants on the journey found another group of smugglers and decided to continue the trip with them.<sup>164</sup> Further, surveillance operations conducted by the police show that the defendant during a smuggling operation personally met with F.K. on 22 September 2013.<sup>165</sup>

172. After analyzing the interception of telecommunication the Panel finds proven that the defendant for a considerable time was engaged in the organization of illegal border crossing operations nearly on a daily basis. The interceptions show very clearly his intention to gain material benefit, and it is also proven that he did not only execute instructions of S.Q.1, but had own discretion when negotiating the fees. This is also

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<sup>161</sup> Joint Investigation Team Report on interception of phone number 049812663, Binder 11, tab 21, page 171.

<sup>162</sup> Kosovo Police report on the disclosure of financial data dated 23 March 2014, Binder 10, Tab 5.

<sup>163</sup> Legal interception of **L.M.**, Binder 21, 22; conversation on 2 November 2013 at 16:59 hrs, 7 November 2012 at 19:23 hrs, 10 November 2013 at 22:44 hrs.

<sup>164</sup> Legal interception of **L.M.**, Binder 21, 10 November 2013 at 22:44 hrs.

<sup>165</sup> Surveillance Report dated 27 September 2013, binder 17, tab 11.

proven by the statements of witnesses who stated that **M.** asked for considerable amounts of money for the organization of the illegal journeys to European Union countries. In the case of Q.S. the defendant asked for a price of around 2,800 EUR to organize the illegal migration of the witness's son.<sup>166</sup>

**(4) F.K.**

173. The Panel found that **F.K.** was a very active member of the group from latest November 2012. His role in the group was to accompany the groups of migrants from Kosovo up to the Serbian-Hungarian border, but he was also involved in the recruiting of new migrants, in the planning of the trips, and in the collection and distribution of the financial benefit.

174. The defendant was well aware of the criminal activities and the structure of the group, and he was in regular contact with S.Q.1. and **S.S.**, but as well with other Kosovar members of the group. His intention was to gain benefit from the criminal activities.

**Evidence**

175. The established facts about the role of **F.K.** are based on interception of telecommunication, items seized during searches at the defendant's premises, surveillance operations and financial investigations, as well as on his statements during the trial. The defendant admitted to have participated in smuggling operations twice, when he helped acquaintances who wanted to illegally migrate to European Union countries.

176. The main evidence about the participation of the defendant **K.** in the smuggling operations is presented above. The Panel found additional evidence that proves the role of the defendant in the group, his knowledge of the group structure and his intent to gain material benefit with criminal activities.

177. During searches in the house of **K.** a large number of bus tickets was found from Pristina or Prizren to Belgrade and further on to Subotica.<sup>167</sup> It is evident that the defendant since November 2012 very regularly travelled to Subotica, and then returned the next day. When examined during the main trial the defendant admitted to have travelled to Subotica very often during this period, and he did not give a credible explanation what he was doing there.

178. The Panel found as proven beyond reasonable doubt that the defendant was engaged in the activities of the group to materially benefit, and that he actually benefitted from the activities. The Panel took into account that the defendant during the

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<sup>166</sup> See minutes of the main trial session on 22 July 2015, in conjunction with the pre-trial statement of the witness on 18 June 2014, Binder 29, tab 10.

<sup>167</sup> Joint Investigation Team Report dated 24 January 2014; Binder 19, Tab D.

relevant time did not have any illegal income, but that he undertook many financial transactions that show that he was in the possession of large amounts of money. As outlined above in the description of evidence for the individual operations the defendant deposited huge amounts of money on his and his son's bank account in March and April, August 2013, and he carried out transactions to Hungarian co-perpetrators. Additionally, the defendant in November 2012 deposited the amounts of 1,500 EUR, 1,200 EUR and 1200 CHF on his account.<sup>168</sup> On 4 and 13 December 2012 he deposited 2,500 and 500 EUR on his account; on 25 September 2013 he deposited an amount of 3,500 EUR on his bank account.<sup>169</sup>

179. The findings about the defendant's intention and his knowledge of the group's structure are based as well on the results of the legal interception of telecommunication. From a conversation between the defendant and **S.S.** on 19 September 2013<sup>170</sup> it is clearly understandable that the two men discuss their benefits in the operations, and that they discuss the role of S.Q.1. in the organization. Other interceptions on 27 and 30 September 2013 show the defendant communicating with migrants and offering them the illegal transport to Europe or Vienna. The interceptions show as well that the defendant was in regular contact with co-defendant **L.M.**, with whom he discussed in detail the execution of the operations, including eventual problems and alternative routes, and the benefit that remained for them.<sup>171</sup>

180. The surveillance undertaken by the police on 22 September 2013 shows that **K.** and Miftari also had personal contact during the operations.<sup>172</sup>

181. The intercepted conversations also show that **K.** was involved in the organization and had a clear picture of the different roles of the co-perpetrators in Kosovo and abroad. In one phone conversation **K.** was talking to S.Q.1. who complained about **L.M.**. In a conversation between **K.** and S.Q.1. on 22 November 2013 at 10:06:16 hrs. the men discuss the price they charge for a baby to be smuggled. While S.Q.1. says that he will not charge the "half price" for a baby, **K.** answers: "you can lead them through the mountains without any payment but the Hungarians will not do it", and later on "I could never ask people to pay for small children, there were times I paid the Hungarians myself for those children".

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<sup>168</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014; Binder 20, Tab 5.

<sup>169</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014, Binder 20, Tab 5.

<sup>170</sup> Legal intercept on 19 September 2013 at 22:33 hrs, Binder 11, tab 24, page 195.

<sup>171</sup> Legal interception of Luan Miftari, Binder 21, 22; conversation on 2 November 2013 at 16:59 hrs, 7 November 2012 at 19:23, 10 November 2013 at 22:44.

<sup>172</sup> Surveillance Report dated 27 September 2013, Binder 17, tab 11.

**(5) S.S.**

182. The Panel found that **S.S.** was an active member of the group from latest February 2013. His role in the group was to recruit migrants, but as well to accompany them from Kosovo up to the Serbian-Hungarian border. He was less frequently involved in the activities of the group than the other defendants, but still he was aware of the criminal activities and the structure of the whole group. He was in regular contact with **S.Q.1.** and **F.K.**, as well as with other Kosovar members of the group, Serbian drivers and migrants. He participated in the group's activities with the intention to gain material benefit.

**Evidence**

183. The established facts about the role of **S.S.** are based on interception of telecommunication, surveillance operations and financial investigations as well as on his statements during the trial. The defendant admitted to have participated in smuggling operations twice, when he helped acquaintances who wanted to illegally migrate to European Union countries.

184. While the main evidence about the participation of the defendant **S.** in four smuggling operations is presented above, the Panel found additional evidence that proves the role of the defendant in the group, his knowledge of the group structure and his intent to gain material benefit with criminal activities. The fact that the defendant was engaged in the group from latest February 2013 is evidenced by the report on financial disclosure that shows that he undertook financial transactions for the group. On 26 February 2013 he sent EUR 100 to A.H. in Hungary.<sup>173</sup> This shows that he was aware of the international dimension of the group.

185. The finding that **S.** knew about the group's members and their activities is based on the analysis of the intercepted telecommunication. As stated by himself **S.** had a very close contact to defendant **K.**. From the communication between **S.** and **S.Q.1.** intercepted between 17 and 21 June 2013, it is visible that **S.** was actively engaged in the organization of the transnational smuggling operation, and that he was aware of the routes the migrants took, the destinations they wanted to reach, the co-perpetrators and the modus operandi of the group. In September 2013 **S.** was intercepted discussing the smuggling of migrants with **S.Q.1.** and **F.K.**.<sup>174</sup> Furthermore, it is evidenced by the police report about the surveillance operation carried out on 18 November 2013 that on this occasion **S.** was meeting personally with **S.Q.1.** and **K.** and that he was actively engaged in the transport of the migrants. In December 2013 again the police intercepted

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<sup>173</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014; Binder 20, Tab 5.

<sup>174</sup> Joint Investigation Team, Report on interception for phone number 049812663, Binder 11, Tab 19; Binder 12, tab 5 and 18.

telephone communication between **S.** and **S.Q.**, in which the two men discussed an ongoing smuggling operation.<sup>175</sup>

186. In the main trial the defendant stated that he did not benefit from helping people to illegally migrate, but that he would do this as a favour. Additionally, he complained that it could not be true that S.Q.1. would earn a lot, while he did earn nothing and would still be very poor. The Panel indeed does not find much evidence to what extent the defendant benefitted from his activities. Nevertheless, from the intercepted conversations and in the light of the overall knowledge of the group, the Panel is convinced that the only intent for the defendant to engage in the criminal activities was to earn money. In a conversation between S. and K. on 19 September 2013 S. complains about S.Q.1. mentioning that “not even 100 euros a piece will remain for us”.<sup>176</sup> This is supported by the finding that in May 2013 the defendant bought a car for 3,500 EUR, even though he did not have any legal income during this time.<sup>177</sup> Regarding the earnings for activities later that year, the Panel finds that it is reasonable to believe that the defendant’s earning are simply not trackable.

187. The fact that the defendant did not only execute orders of S.Q.1. within the group, but that he was recruiting his own “clients”, is evidenced by interceptions of telecommunication as well. The intercepted conversations in June 2012 clearly show that the defendant **S.** was worried about the fate of “his” clients.<sup>178</sup>

#### ***(6) Structure of the group in Hungary***

188. The evidence on the structure of the group in Hungary is based on the statement given by witness A.S. during the main trial<sup>179</sup>, as well as on the information available from the EUROPOL Exchange messages and from the Hungarian authorities<sup>180</sup>, in particular regarding arrests of drivers and migrants in Hungary. Information on the working of the group in regard to co-perpetrators in Serbia, Austria and Germany is based on the available information from interceptions of the defendants.<sup>181</sup>

### **F. FACTS NOT ESTABLISHED**

189. The Court considers the following facts as not proven, for the reasons described hereafter.

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<sup>175</sup> Joint Investigation Team, Report on interception for phone number 049812663, Binder 11, Tab 19, Intercept 6. December 2013

<sup>176</sup> Legal intercept on 19 September 2013 at 22:33 hrs, Binder 11, tab 24, page 195.

<sup>177</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014; Binder 20, tab 5.

<sup>178</sup> Legal intercept on 19 September 2013 at 22:33 hrs, Binder 11, tab 24, page 195

<sup>179</sup> Minutes of the main trial session on 7 July 2015.

<sup>180</sup> See Binder 26, Analysis of lawful interceptions of **S.Q.**, Hungarian numbers.

<sup>181</sup> In this regard it is noted that the information is very limited and mainly regards meeting points after the transfer of migrants and financial transactions from Austria/ Germany to Kosovo or from Kosovo to Serbia.

190. The Panel did not consider as proven that the defendants conducted a smuggling operation at the end of November 2012, as alleged in Count 4, 5 and 6 under (1) of the indictment. In this Count the Prosecution charges the defendants with “the Smuggling of migrants at the end of November 2012, including a group of Kosovo citizens from Kosovo through Serbia into Hungary and Austria, committed as part of a group (...).” The Panel found that the allegation in this Count was too vague to be proven, as it did not determine a date or the identities or even a number of persons concerned.
191. The Panel did not consider as proven the involvement of the defendants in smuggling operation B which took place on 21 December 2012 as alleged in Count 4, 5 and under (2) and Count 7 under (1) of the indictment. While the case file indicates that during this period of time members of the group in Kosovo transferred money to co-perpetrators in Hungary, no direct link between the defendants and the alleged operation is found.
192. Further, the Panel did not find enough evidence to establish beyond reasonable doubt that the defendant **S.Q.** participated in the smuggling operations G, I, N and T, alleged in Count 4 under (4), (5), (8) and (11).
193. Regarding the operation G which took place between 7 and 19 June 2013, the Panel took into account that the financial disclosure revealed that the defendant received via UFP the amount of EUR 1,500 and EUR 400 from senders in Germany and Belgium,<sup>182</sup> but evaluated that this information is not enough to prove his involvement in the smuggling operation.
194. In regards to operation I, as indicted in Count 4 under (5), the Panel found that the available evidence is not sufficient to prove that the defendant participated in a smuggling of migrants operation which took place on 20 June 2013. Even if there is evidence that **Q.**, through the account of his wife, transferred an amount of EUR 1,338 via UFP to Z.S.H. in Hungary,<sup>183</sup> this transfer cannot be linked to the specific operation.
195. Regarding the smuggling operation N (Count 4 under (8)) the Panel found that the interception of a conversation between S.Q.1. and **L.M.** on 18 September 2013 shows that the defendant was aware of the operation, but it did not find proven that he was anyhow involved. The same applies for the operation T (Count 4 under (11), where the intercepted telecommunication between **S.S.** and **S.Q.** on 6 December 2013 reveals that **S.Q.** was aware of ongoing activities, but no direct link to the operation is proven.<sup>184</sup>
196. Additional to the findings about operations A and B, the Panel did not find as proven beyond reasonable doubt that the defendant **L.M.** participated in the smuggling

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<sup>182</sup>Kosovo Police report on the disclosure of financial data dated 23 March 2014, page 6, Binder 20, Tab 5.

<sup>183</sup>Kosovo Police report on the disclosure of financial data dated 23 March 2014, page 16, Binder 20, Tab 5.

<sup>184</sup>Joint Investigation Team Report on interception of telephone number 049602418, Binder 9, Tab 9, page 222, conversation on 6 December 2013, 13:53 hrs.

operation P (Count 6 under (7)). In this regard the only evidence presented by the prosecution is the intercept of a telephone conversation on 26 September 2013 at 21:30 hrs, where the defendant mentions “It’s done. They are in.” The Panel found that there is no concrete link to the indicted operation.

197. Further, the Panel did not find enough evidence to establish beyond reasonable doubt that the defendant **F.K.** participated in the smuggling operation K (Count 5 under (5)). Regarding this operation there is no relevant evidence. The disclosure of financial data shows that during mid-July 2013 the defendant deposited an amount of 1,700 EUR on his and his son’s account,<sup>185</sup> but the Panel did not see a link to the indicted smuggling operation which allegedly took place between 16 July and 10 August 2013.

198. Additional to the finding regarding operation B, the Panel did not find enough evidence to establish beyond a reasonable doubt that the defendant **S.S.** participated in the smuggling operations E, F, G, J and R (Count 7 under (3), (4), (6) and (8)). Further, the Panel did not find evidence that the defendant was involved in the criminal activities of the group before February 2013. As far as the financial disclosure shows that already in December 2012 the defendant undertook a suspicious money transfer when he sent an amount of 100 EUR to M.S. in Serbia,<sup>186</sup> the Panel took into account the defendant’s explanation and was not convinced beyond reasonable doubt that the transfer was related to assisting the group’s activities. The defendant in the examination in the main trial stated that he himself tried to go to the European Union in December 2012. He said that he was a client of S.Q.1, and that for this purpose he carried out the transfer to Serbia, where he got stuck during this operation. The Panel could not exclude the possibility that this was indeed the way that **S.** met S.Q.1. and got involved in the group.

199. As far as **S.** in Count 7 under (2) is charged with smuggling of migrants on 24 January 2013 (operation E) the Panel did not find any proof. It took into account that he on 26 February 2013 transferred 100 EUR to A.H. in Hungary,<sup>187</sup> but did not find a concrete link to the indicted operation.

200. The same applies to the smuggling operation **F.** The Panel agrees with the Prosecution that financial activities of the defendant during April and May 2013<sup>188</sup> are suspicious as he did not have an explanation of a legal income, but besides this the Panel did not see a link to the indicted operation.

201. For the operations G, J and R<sup>189</sup> the Panel did not find any evidence that could prove the involvement of **S.** in the described criminal activities.

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<sup>185</sup> Kosovo Police report on the disclosure of financial data dated 23 March 2014, page 17, Binder 20, Tab 5.

<sup>186</sup> Kosovo Police report on the disclosure of financial data dated 23 March 2014, Binder 20, Tab 5.

<sup>187</sup> Kosovo Police Report on the disclosure of financial data dated 28 March 2014; Binder 20, tab 5.

<sup>188</sup> According to Kosovo Police Report on the disclosure of financial data dated 28 March 2014; Binder 20, tab 5, the defendant on 30 April 2013 transferred money to **F.K.**, and on 20 May 2013 bought a car.

<sup>189</sup> Counts 7.4, 7.6 and 7.8 of the Indictment.

## G. LEGAL QUALIFICATION

### I. Applicable law

202. The applicable material law is the Criminal Code of the Republic of Kosovo, in force since 1 January 2013, in particular Articles 170 and 283 of this code.
203. The criminal activities of the defendants took place between November 2012 and December 2013. During this time the criminal law in Kosovo changed, as since 1 January 2013 the Criminal Code of the Republic of Kosovo was in force. In the indictment the Prosecution referred to both, charging the defendants with Article 170 CCK and where applicable Article 138 PCCK for the Smuggling of migrants, with Article 283 CCK and where applicable Article 274 PCCK. The Prosecution referred to Article 3 CCK to determine the applicable criminal law.
204. The Panel notes that in this case the general principle of the most favourable law which is laid down in Article 3 CCK is not applicable, because the criminal offences in the case at hand were committed as criminal offences in continuation pursuant to Article 81 CCK. In such a situation, where during the commission of a criminal offence in continuation the material law changes, only the law in force at the time of the commission of the last offence is applicable.<sup>190</sup> Therefore, in the case at hand, the applicable law is the law in force since 1 January 2013, in particular Articles 170 and 283 CCK.<sup>191</sup>

### II. Legal assessment of the established facts

#### ***(1) Smuggling of migrants, Article 170 (1), (3), (4), (6) and Article 31 CCK***

205. The Panel found that all four defendants are guilty of Smuggling of migrants in co-perpetration pursuant to Article 170 (1), (3), (6) CCK, but not- as indicted- pursuant to paragraph (4).

#### *Elements of the criminal offence*

206. According to the definition in paragraph 8 of this provision, smuggling of migrants is any action with the intent to obtain material benefit from the illegal entry of a person (...) who is not a Republic of Kosovo national into a state in which such person who is not a permanent resident or a citizen of such state. Illegal entry is defined as crossing the border of a state without complying with the necessary requirements for legal entry in such state. Therefore, the criminal offence consists of the elements (a) planned border

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190 See as well ECtHR 27 January 2015, Rohlana v. The Czech Republic, Appl. No. 59552/08, par. 69.

191 As far as this assessment differs from the classification in the indictment, it is not a re-qualification, but a specification.

crossing without complying with necessary requirements for legal entry of a person who is not a permanent resident or a citizen of such state; (b) intent to obtain benefit from the border crossing, and (c) any action undertaken to facilitate the border crossing. Furthermore, the defendants are found to have committed the criminal offence in (d) co-perpetration pursuant to Article 31 CCK. As a general principle and according to Articles 22 and 23 CCK the defendants must have acted with (e) intent and knowledge of the elements of the criminal offence.

(a) Planned illegal border crossing

207. The Panel found that in all described smuggling operations a group of individuals from Kosovo left Kosovo through Serbia with the intention to enter countries of the European Union, and that in all these cases the individuals were no residents of a European Union member state and did not fulfil the legal requirements to enter the states which they aimed to enter; therefore the intent of these people was to illegally cross the borders to enter countries of the European Union. The Panel highlights that for the criminal offence of Article 170 (1) CCK it is irrelevant if the individuals actually crossed a border or not. Nonetheless, in the case at hand many migrants indeed reached the destinations that they wanted to reach.

(b) Intent to obtain benefit

208. The individuals in all cases paid huge amounts of money to the organizers and executors of these journeys. Usually they paid a total of at least EUR 1,500, but often more than EUR 2,000. The individuals were aware that the real costs of the journey were much lower, and that they had to pay these sums because of the unlawfulness of their journey. The Panel is convinced that the main intent for the defendants to participate in the organization of the journeys and to recruit new individuals was to receive this money. The Panel took into account that the defendants claimed to have organized the trips to help friends or family members, and that they received nothing or only “tips” for their services, but assessed these statements as not credible. The Panel refers to the established facts and in particular to the fact that it is proven that the group earned huge amounts of money from these individuals. Even though the defendants might have had the impression that they did not do anything wrong to the migrants, it is pretty clear from their conversations that their main interest was to gain benefit.

209. In the case of **S.Q.** the Panel could not establish if it was his aim to personally gain from his activities, or if his aim was to let the other defendants, in particular his brother, benefit from the organization of the smuggling operations. In this regard the Panel notes that in this case the defendants committed the criminal offence as co-perpetrators. Therefore it is not necessary that each defendant had the intent to gain personally, as long as his action was directed to gain benefit, which can be the benefit of others as well.

(c) Any action as incriminating behaviour

210. The Panel found for all defendants in the above mentioned cases proof that they committed the criminal offence of smuggling of migrants, because they undertook actions to gain benefit from the illegal border-crossing of others. The Panel notes that the threshold for a behaviour to be incriminated by this provision is very low. The law refers mainly to the intention of the behaviour.
211. In the case of **S.Q.** the Panel found that in five cases he undertook actions to facilitate the illegal border-crossing of individuals. He supported the group's activities by handling the financial side of the operation. In all these cases, as well as on other occasions, he transferred shares of the material benefit to co-perpetrators in other countries. In some cases he was further involved in the organization of trips by facilitating the communication between his brother S.Q.1. and other defendants or eventual migrants, and he personally met other defendants for the hand-over of cash money after the execution of an operation.
212. For **L.M.** the Panel found proof that he was involved in the recruiting of migrants and in the organization and execution of smuggling operations in eight cases. The defendant was recruiting individuals who were interested to illegally go abroad and who were willing to pay the sums that the group requested. He would serve as a first contact person, and inform the migrants about the time and place of their departure. He would liaise with S.Q.1. and other co-perpetrators to organize the execution of the operations. In some cases he was personally making contacts to Serbian co-perpetrators and accompanied groups of individuals to the Serbian-Hungarian border.
213. For **F.K.** the Panel found proof that he undertook actions to facilitate the illegal border crossing of individuals in five cases. It is proven that in many cases he was recruiting people who were interested to go abroad and willing to pay the sums that the group requested. He would tell those individuals where and when to meet, and liaise with S.Q.1. and further co-perpetrators. In many cases he would accompany the groups of migrants on their way to the Serbian-Hungarian border.
214. The Panel established that defendant **S.S.** undertook actions to facilitate the illegal border crossing of migrants in four cases. He was recruiting individuals who were willing to be smuggled to European Union countries. He would inform them where and when to meet for their departure, and in some cases accompany them to north Mitrovica or further.

(d) Co-perpetration

215. The Panel found that according to the established facts the defendants committed the criminal offences in co-perpetration pursuant to Article 31 CCK, because they

worked together to facilitate the illegal border crossing of migrants and they all directly participated at or substantially contributed to the commission of the offence.

216. The Panel highlights that it found that the role of **S.Q.** was that of a co-perpetrator, and not that of an assistant, even though his involvement was different from the involvement of the other defendants. **S.Q.**, as he highlighted in his statements in the main trial, hardly ever had any personal contact with the migrants, and he was mainly acting on the instructions of his older brother S.Q.1. Still he had a crucial role in the organization of the group. In a huge number of cases he was responsible to collect and share the benefits of the operation. Without his involvement the execution of these operations would have been difficult, as he was able to transfer money by many different means, and under different names. Therefore without any doubt he substantially contributed to the commission of the criminal offences.

(e) Intent and knowledge

217. The Panel concluded from the established facts according to Article 23 CCK that all defendants acted with the required intent and with knowledge of all elements of the criminal offence. As far as the defendants stated that they were not aware that the migrants did not fulfil the necessary legal requirements, these statements are not credible. Most defendants already had travelled abroad and are aware of the pertinent regulations. They knew that the individuals would only pay the prices they requested, because they could not enter the destination countries legally. And besides that, all operations were designed to enable the illegal border-crossing of those people, and would not have served any purpose if the individuals could have entered the European Union legally.

Qualifications and variations

(a) Enabling persons to stay in a state, Article 170 (3) CCK

218. The Panel further found that in some of the cases the defendants and their co-perpetrators enabled persons who were not nationals or permanent residents of a state to remain in that state without complying the necessary legal requirements to remain in that state, pursuant to paragraph (3) of Article 170 CCK. By secretly transporting the individuals through Hungary or other European Union states, the group enabled the individuals to stay in those countries during the time of their transport. As far as these transfers were carried out not by the defendants but by their co-perpetrators, it is noted that the defendants are to be held liable for the planned and agreed actions of their co-perpetrators as well. Regarding this qualification the defendants acted with indirect intent, because their main objective was to bring those migrants to the places they longed to reach.

(b) As members of a group, Article 170 (6) CCK

219. The Panel found that the defendants committed the criminal offences as members of a group according to Article 170 (6) CCK, as they were acting in concert with more than three people, as required according to the definition in Article 120 under 12 CCK. The defendants also had the necessary knowledge of the group. Even though not all defendants were informed about the structure of the group in detail, they all knew that they were acting together with more than three people already in Kosovo, and that they were working with many more co-perpetrators abroad.

(c) Attempt, Article 170 (4) CCK

220. In the indictment the Prosecution alleges that the defendants in some cases committed the criminal offences in the form of attempts.<sup>192</sup> The Panel highlights that according to the explicit wording of the provision any action undertaken with the intent to gain benefit from smuggling of migrants is already a completed criminal offence. This means in particular that it is irrelevant if the smuggling operation per se is successful or not. Therefore the Panel concludes that in all mentioned cases the defendants concluded the criminal offences they committed.

(d) Criminal offence in continuation

221. The Panel found that the several cases of smuggling of migrants were committed as criminal offences in continuation, pursuant to Article 81 CCK. The individual operations that were classified as smuggling of migrants were committed by the same perpetrators during a certain time period. In these operations the defendants were taking advantage of the same situation (paragraph (1.3)), the criminal offences were committed at the same place (paragraph (1.4.)) and the intent of the defendants was the same (paragraph (1.5)). The criminal offences committed involved both light and grievous forms, therefore the criminal offence in continuation has been committed in the grave form according to Article 81 (4) CCK.

## ***(2) Participation in an organized criminal group, Article 283 (1) CCK***

222. The Panel found that based on the established facts all four defendants participated in an organized criminal group pursuant to Article 283 (1) CCK.

### ***Elements of the criminal offence***

223. According to Article 120 under 13 CCK an organized criminal group is (a) a structured association of three or more persons, (b) established over a period of time, (c) for the commission of a certain criminal offence that (d) acts in concert with the aim of committing one or more serious criminal offences (e) in order to obtain, directly or

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<sup>192</sup> While this is not further reasoned, it is explicitly mentioned in the enacting clause of the indictment, Counts 4, 5, 6 and 7.

indirectly, a financial or other material benefit. According to Article 283 (1) CCK a defendant is participating in this group if he (f) actively takes part with the (g) intent and knowledge of the aim and the activity of the organization and with the knowledge that his participation will contribute to the achievements of the group's criminal activities.

(a) Structured association of three or more persons

224. Article 120 under 14 CCK defines a structured association as an association that is not randomly formed for the immediate commission of a criminal offence, and highlights that a structured association does not need to have formally defined roles for its members, continuity of membership or a developed structure. The Panel refers to its assessment of the group and concludes that in the case at hand the defendants committed criminal offences as a group consisting of more than three members. This group was not randomly formed for the commission of one criminal offence, but it comprised of a stable structure of members who were ready to be engaged in the joint commission of criminal offences at any time, and who were actively searching for opportunities to commit further criminal offences. The activities of the group were led and coordinated by S.Q.1. The four defendants were, together with other co-perpetrators, executing and organizing the group's actions in Kosovo. **M.**, **K.'s** and **S.'s** main task was to recruit the individuals and to combine with them the time and place of departure. In some cases their task was also to bring migrants to the Serbian-Hungarian border, to collect the fees from the relatives of the defendants after the successful operations or to distribute the benefit. Unknown co-perpetrators were responsible to accompany the groups of migrants over the green border between Serbia and Hungary and lead them to certain meeting points, at which mostly Hungarian co-perpetrators would pick them up and bring them in vehicles to Vienna or further on. This distribution of tasks for the smuggling operations was in place for a period of over a year, during which only minor changes to the modus operandi were introduced.

225. The roles of the four defendants in Kosovo were to some extent flexible, as they would in some cases engage only in the recruiting, and in other cases in the execution or in the financial transaction as well. The roles of the defendants were never assigned randomly, but they followed a repeated pattern which enabled the group to work as successful as it did. Therefore the Panel classified the group as structured association pursuant to Article 120 under 13 and 14 CCK.

(b) Established over a period of time

226. The group was working at least since November 2012 and it continued to operate until December 2013, therefore it was established over a considerable period of time, as required by the legal provision.

(c) For the commission of a certain criminal offence

227. The sole aim of the group was to commit certain criminal offences, namely the smuggling of migrants pursuant to Article 170 (6) CCK, as assessed in detail above. The aim to establish the group was to govern a steady structure that could be used at any time to execute further smuggling operations.

(d) Acting in concert with the aim to commit serious criminal offences

228. The members of the group acted in concert to commit the criminal offence of smuggling of migrants. As described above, all of its members contributed to the organization and execution of the smuggling operations. They coordinated their actions among each other, or were directed by the main defendant S.Q.1. Smuggling of migrants is a serious criminal offence in the understanding of the provision. According to Article 283 (1) CCK a criminal offence in this regard is a criminal offence which is punishable by imprisonment of at least four years.<sup>193</sup> Even if the wording is not as clear as it could be, without any doubt this definition refers to a minimum of a maximum punishment, so that it includes all criminal offences that carry a maximum punishment of four or more years. Smuggling of migrants in paragraph (1) carries a punishment of imprisonment of two to ten years, and is therefore a serious criminal offence.

(e) To gain material benefit

229. The sole aim of the group was to gain a material benefit. They requested fees for the journey that by far exceeded the cost of the transport, knowing that the individuals or their family members would be willing to pay these amounts because they were desperate to leave Kosovo and reach countries of the European Union, no matter how.

(f) Actively taking part

230. The Court refers to the assessment made above and notes that all four defendants in several occasions directly engaged in the criminal offences of the group, because they all committed the criminal offences of smuggling of migrants in several cases.

(g) Intent and knowledge

231. The required subjective elements of the criminal offences are also met. As follows from the established facts all four defendants were aware of the criminal activities of the group. Even though not all defendants knew all other co-perpetrators, they all had knowledge about the structure of the group, and the distinction of roles between the co-

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<sup>193</sup> In the United Nations Convention against Transnational Organized Crime, Article 2, the terms Organized Criminal group and organized crime are defined as follows: (a) *'Organized criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; and (b) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years.* It has to be noted that the law in Kosovo is based on the United Nations Convention, and that the explicit aim of the convention is the fight against- among other- smuggling of migrants (see Annex 3).

perpetrators in different countries.<sup>194</sup> As shown by the evidence, the defendants were in particular aware about the share of the benefit among different members in the transnational group. They all knew that the group was working on an international level, that it was active for a period of one year or more, and that its sole objective was to gain benefit. According to Article 21 CCK a person acts with direct intent when he or her is aware of his or her act and desires its commission. All four defendants knew that their actions were contributing to the aim of the group to benefit from the facilitation of illegal border crossing of migrants, and that is exactly what they wanted.

**(3) Assisting another person in money laundering, Article 32 of the Law on Prevention of Money Laundering and Terrorist Financing**

232. In Count 10 of the indictment the defendants **S.Q., S.S.** and **L.M.** are charged with assisting another person, namely S.Q.1, with money laundering in violation of Article 32 of the Law on the Prevention of Money Laundering and Terrorist Financing in conjunction with Article 25 CCK. After negotiating a guilty plea agreement with the main defendant S.Q.1. the prosecution withdrew the charge of money laundering, and in the judgement the charge was rejected accordingly.

233. The Court concludes that the defendants in the case at hand cannot be convicted for assisting in an offence which was rejected for the main perpetrator and therefore concluded that the defendants have to be acquitted regarding this charge.

**III. Concurrencies**

234. The Panel found that all four defendants committed the criminal offence of smuggling of migrants in continuation as well as the criminal offence of participation in an organized criminal group. The Panel concludes that even though these two criminal offences are partly established by the same elements, the defendants are to be found guilty for both criminal offences.

235. The relation between the two criminal offences is not that of a *lex specialis*, so that it does not lead to a consumption of one of the criminal offences. One criminal offence only consumes another if they regard the same protected values. This is not the case here, even if the defendants committed the qualification of the criminal offence of smuggling of migrants set out in Article 170 (6) CCK. The Panel highlights that the protected values of this qualification - committing a certain criminal offence as a group - differ from the protected values of the organized crime regulations. While the qualification in paragraph (6) is punishable with a higher sentence because of the

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<sup>194</sup> In fact it is a typical work strategy of those groups that not all members are fully aware of all other members.

concretely higher danger that is imposed during the commission of the criminal offence, the criminalization of the organized group has a different and broader reason. The specific danger of an organized criminal group as described in Articles 283, and 120 under 13 CCK lies in the fact that this organization establishes a permanent structure for the commission of further criminal offences, including a mechanism to initiate more criminal offences. This structure poses a more general threat to the society which differs from the danger of a group that cooperates to commit one certain criminal offence.

## **H. SENTENCING**

### **I. Applicable law**

236. The Panel refers to the assessment made above and notes that the applicable law regarding the punishment is Articles 170 and 283 CCK, in conjunction with the provisions of Chapter III of the CCK.

### **II. General Rules and Purposes of Punishment**

237. According to Article 41 CCK the purposes of punishment are (1) to prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator; (2) to prevent other persons from committing criminal offences; (3) to provide compensation for victims or the community for losses and damages caused by the criminal conduct; and (4) to express the judgment of society for criminal offenses, increase morality and strengthen the obligation to respect the law.

238. According to Article 73 CCK the Court shall determine the punishment of a criminal offence within the limits provided for by law for such criminal offence, taking into consideration the purpose of the punishment, all circumstances that are relevant to the mitigation or aggravation of the punishment for each defendant and, in particular, the degree of criminal liability, the motives for committing the act, the intensity or danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence. According to Article 73 (2) CCK the punishment shall be proportionate to the gravity of the offense and the conduct and circumstances of the offender.

### **III. Concurrencies**

239. In the case at hand the Panel found for all defendants that they were guilty of Participating in an Organized Criminal Group pursuant to Article 283 (1), as well as for Smuggling of Migrants, pursuant to Article 170 (1), (3) and (6) CCK.

240. The Panel found that it had to impose one single punishment for each of the defendants, notwithstanding the regulation of Articles 80 and 370 (6) CCK. The Panel took into account that the defendants committed both criminal offences to a considerable part through the same actions, and found Article 80 CCK therefore not applicable<sup>195</sup>.

241. In conclusion the Court found that the applicable limits for the punishment for all defendants are those set out in Article 283 CCK, which declares that Participation in an organized criminal group is punishable by a fine and imprisonment of at least seven years.

#### **IV. Mitigation of punishments**

242. After carefully considering the specific circumstances for all defendants and based on Article 75 (1.2) in conjunction with Article 76 (1.2) CCK the Panel found that the minimum punishment for all four defendants had to be reduced to an imprisonment of at least three years.

243. For the defendant **S.Q.** the Panel found a particularly mitigating circumstance in the fact that he was acting solely on the instructions of his older brother, and that he therefore did not execute any own responsible decisions when taking part in the group. Even though he had an important task within the group, his involvement due to the lack of responsibility can be classified as minor. Further, the Panel could not establish that the defendant took part in the organization with the intent to directly gain material benefit, and that he actually personally gained from his involvement.

244. Regarding the defendants **L.M.**, **F.K.** and **S.S.**, the Panel found as a particular mitigating circumstance that all three defendants pleaded guilty to the charge of Smuggling of Migrants. Even though these pleas would not fulfil the formal requirements of a guilty plea, as a partly guilty plea is not foreseen in the law<sup>196</sup>, the Panel found that this circumstance should be taken into account in favour of the defendants.

#### **V. Concrete Determination of Punishments**

245. When determining the concrete punishments, the Panel took into account for all four defendants that the danger to the protected values of the impugned provisions is very high. The illegal migration of Kosovars to countries of the European Union is not

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<sup>195</sup> In this regard it is noted that while in the first part of Article 80 (1) CCK it says „by one or more acts“, the second part of this paragraph clearly refers to a multiple number of acts.

<sup>196</sup> According to Article 326 (1) in conjunction with 248 (1) CPC a formal guilty plea requires that the defendant pleads guilty *on each count of the indictment*.

only harming the structures of public administration in the destination countries, but also damaging the society in Kosovo. The increased phenomenon of illegal migration is destabilizing the development in Kosovo and it is an obstacle on the country's way to visa liberalization. Due to the regulations in force, most Kosovo citizens do not have a perspective to stay in the European Union countries they want to reach. Many are likely to be returned as soon as their stay is discovered. By nourishing the false hopes of these people to find a better life in other countries, the defendants prevent them to establish a perspective for their lives in Kosovo.

246. The Panel further took into account that the defendants took advantage of the situation of the migrants who desperately wanted to go abroad, and that they therefore were able to ask enormous sums as compensation for the organization of such trips. Very often the interested persons had to spend an amount which exceeded several monthly incomes; in one case the father of the smuggled migrant had to sell his cow.

247. On the other hand the Panel took into considerations that those migrants which gave statements in the main trial did explicitly not complain about the defendants, but affirmed that they were grateful that the defendants helped their family members to go abroad, notwithstanding the high amount of money that was paid for this help.

***(1) Concrete Determination of Punishment for Defendant S.Q.***

248. In the case of **S.Q.**, the Panel found as a mitigating circumstance the rather low degree of participation of the defendant in the criminal offence. Even though the financial transactions that he concluded represented an important aspect to guarantee the functioning of the international cooperation of the group, the defendant was considerably less involved than most of the other co-perpetrators. The Panel further took into account that due to traditional family structures in Kosovo it might have been difficult for the defendant to disobey instructions given by his older brother.

249. As aggravating circumstances the Panel found the long period of time during which the defendant was involved in the group, and the high number of victims involved.

250. Concerning the criminal liability of the defendant the Panel finds that he was fully liable. As a mitigating circumstance the Panel found the defendant's behaviour before committing the criminal offence, as he had to be considered as not convicted because the Panel did not administer any previous convictions. The personal circumstances of the defendant, who is working as a cook to support his wife and his parents, were considered in his favour.

251. In carefully weighing all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine

punishment, the Court imposes a sentence of imprisonment of 4 years and a fine of 1,000 Euro.

**(2) Concrete Determination of Punishment for Defendant L.M.**

252. When determining the concrete punishment for the defendant **L.M.**, the Panel found as a mitigating circumstance that the defendant pleaded guilty to the criminal offence of smuggling of migrants. He admitted that in three or four cases he set people in contact with the organization and guided them to North Kosovo. Even though he stated that he just wanted to help these people and that he did not earn from his activities, he stated to regret his behaviour.

253. As aggravating circumstances the Panel found the long period of time during which the defendant was involved in the group, the high number of victims that were involved and the high degree of engagement of the defendant in the group. The Panel established that the defendant over a long period of time was nearly daily engaged in the recruitment of new clients and in the organization of such trips. The defendant is a friend of the group's leader S.Q.1. since years, and he played an important role in the organization of the criminal offences in Kosovo.

254. Concerning the criminal liability of the defendant the Panel finds that he was fully liable. As a mitigating circumstance the Panel found the defendant's behaviour before committing the criminal offence, as he had to be considered as not convicted because the Panel did not administer any previous convictions. The Panel considered as a mitigating circumstance the poor economic status of the defendant, who committed the criminal offences to support his family, as well as the fact that he dealt with alcohol problems during the time he committed the criminal offences. The personal circumstances of the defendant, who is divorced, father of two children, and is since very recently working as a security guide, were considered in his favour.

255. In carefully weighing all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine punishment, the Court imposes a sentence of imprisonment of 4 years and a fine of 1,000 Euro.

**(3) Concrete Determination of Punishment for Defendant F.K.**

256. When determining the concrete punishment for the defendant **F.K.**, the Panel found as a mitigating circumstance that the defendant plead guilty to the criminal offence of smuggling of migrants. He admitted that in two cases he informed people how to illegally go to European Union countries and guided them to north Kosovo.

257. As aggravating circumstances the Panel found the long period of time during which the defendant was involved in the group, the high number of victims that were involved and the high degree of engagement of the defendant in the group. The Panel established that the defendant over a long period of time was nearly daily engaged in the recruitment of new clients and in the organization of such trips.
258. Concerning the criminal liability of the defendant the Panel finds that he was fully liable. As a mitigating circumstance the Panel found the defendant's behaviour before committing the criminal offence, as he had to be considered as not convicted because the Panel did not administer any previous convictions. The Panel considered as a mitigating circumstance the poor economic status of the defendant, who committed the criminal offences to support his family. The personal circumstances of the defendant, who is father of two children and works as a farmer, were considered in his favour.
259. In carefully weighing all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine punishment, the Court imposes a sentence of imprisonment of 4 years and a fine of 1,000 Euro.

#### ***(4) Concrete Determination of Punishment for Defendant S.S.***

260. When determining the concrete punishment for the defendant **S.S.**, the Panel found as a mitigating circumstance that the defendant pleaded guilty to the criminal offence of smuggling of migrants. In particular it was taken into account that in two of the four counts for which the defendant is convicted he admitted that he helped people to go abroad by setting them in contact with other co-perpetrators and guiding them to North Kosovo.
261. When considering the concrete punishment the Panel took into account that the defendant was involved in the group's activities from at least February 2012 until December 2013, and that he participated in at least four smuggling operations.
262. Concerning the criminal liability of the defendant the Panel finds that he was fully liable. As a mitigating circumstance the Panel found the defendant's behaviour before committing the criminal offence, as he had to be considered as not convicted because the Panel did not administer any previous convictions. The Panel considered as a mitigating circumstance the poor economic status of the defendant, and the fact that he lives with his family and works as a farmer.
263. In carefully weighing all above mentioned circumstances and taking into consideration the purposes of the punishment as well as the general rules to determine punishment, the Court imposes a sentence of imprisonment of 3 years and a fine of 500 Euros.

## **VI. Accessory Punishments**

264. The Panel did not find it necessary to impose accessory punishments for any of the defendants.

### **I. CONFISCATION**

265. The Panel found that some of the items that were confiscated during the searches of the premises of the defendants shall be permanently sequestered, while others are to be returned to the owners or possessors. According to Article 115 (1) CPC temporarily sequestered items are to be permanently sequestered if the Prosecution describes those items in the indictment (1.1) and during the main trial it is proven that those items have facilitated the criminal offence, or constitute a material benefit obtained from the commission of a criminal offence (1.2), and they may be confiscated under the law (1.3).

266. According to Article 283 CPC the Prosecutor has to prove at the main trial that certain items were used in the criminal offence. Pursuant to paragraph (2.1) an item was used in the criminal offence if it was directly used to perform an act in furtherance of the criminal offence.

267. Taking into account the facts established during the main trial the Panel found that it was proven that the mobile phones and SIM cards that were found at the premises of all four defendants have been used for the criminal activities and therefore facilitated the commission of the criminal offences. The defendants used their phones and SIM cards as the main way to communicate. Therefore they have to be permanently confiscated.

268. According to Articles 96 and 97 CCK no person may retain material benefit acquired by the criminal offence; material benefit shall be confiscated according to the rules set out in Article 97 CCK. Material benefit according to the definition in Article 120 Nr. 34 CCK is “any property derived directly or indirectly from a criminal offence. Property derived indirectly from a criminal offense includes property into which any property directly derived from the criminal offense was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized for such property at any time since the commission of the criminal offence.” Article 276 and 277 CCK contain similar explanations.

269. After carefully considering the available information and the established facts the Panel found that it was not established during the main trial that the cars that were confiscated at the premises of **S.Q.** (xxx with number plate xxx), **F.K.** (xxx with number plate xxx) and **S.S.** (xxx with number plate xxx) were benefits from the criminal offences. Even though they could be theoretically sequestered as indirect benefits if they were purchased with the money that the defendants received from their criminal activities, the Panel did not find prove for this. The Prosecution refers to the fact that all three

defendants did not have a legal income during the period in which they committed the criminal offence, but did not present any further information about the circumstances of the purchases of the cars. The Panel found that the mere fact that the origin of the funds for the purchase of the cars is unknown is not sufficient to fulfill the legal requirements to sequester the cars.

**J. COST OF PROCEEDINGS**

270. According to Article 453 in conjunction with Article 450 CPC the costs of the proceedings must be reimbursed by the defendants.

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Jennifer Seel  
Presiding Trial Judge

**LEGAL REMEDY:** Authorized persons (defendant, prosecutor and injured party) may file an appeal against this judgment to the Court of Appeals through this court. The appeal may be filed within fifteen days (15) from the day the copy of the written judgment has been served to the parties.