

IN THE BASIC COURT OF PRISHTINE/PRISTINA

Case Number: PKRNR 942/13

11 March 2014

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 Malcolm Simmons, presiding and Judge Faik Hoxha and EULEX Judge Franciska Fiser, panel members and Sonila Macneil, as Recording Officer, in the criminal case against:

A. V., male, born on xxx in xxx, fathers name xxx, mothers name xxx, Passport number xxx Kosovar Albanian, citizen of Kosovo, residing at xxx, unemployed, trader by profession, high school education, married with xxx children, economic status average, in detention since 23 January 2013;

CHARGED in the Indictment of the EULEX Special Prosecutor PPS No. 42/2012 dated 16 September 2013 and filed on 16 September 2013 as amended on 1 October 2013 and 7 March 2014, in the following Counts:

COUNT 1

Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, paragraphs 1, 2, 3 and 4 of the Criminal Code of Kosovo¹ and punishable by a fine and by imprisonment of three to fifteen years

BECAUSE between 1 January 2012 and 21 February 2012, A.V. on the territory of Kosovo committed the offence of unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances by organising and participating in the

¹ Corresponding to Articles 273 and 279 of the Criminal Code of Kosovo, Law 04/L-082 of 2012 (new code)

purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other countries in Europe of a shipment of 1.496 kg of heroin as a member of a group, the heroin having been seized on 20th February 2012 in Munich, recovered from a Toyota Corolla motor vehicle with registration number xxx, the heroin having been received in Munich by L.G., D.K. and M.K., in co-perpetration, pursuant to Article 23 of the Criminal Code of Kosovo.

COUNT 2

Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, paragraphs 1, 2, 3 and 4 of the Criminal Code of Kosovo² and punishable by a fine and by imprisonment of three to fifteen years.

BECAUSE between 1 May 2012 and 01 July 2012, A.V. on the territory of Kosovo committed the offence of unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances by organising and participating in the purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other countries in Europe of a shipment of 1.436 kg of heroin as a member of a group, the heroin being seized on 10th June 2012 in Munich, Germany, recovered from an Opel Astra vehicle with Serbian registration number XXX, the heroin having been received by R.A., O.B. and L.Z., in co-perpetration, pursuant to Article 23 of the Criminal Code of Kosovo.

COUNT 3

Organised Crime, in violation of Article 274 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo³ (hereinafter "CCK ") and punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

² Corresponding to Articles 273 and 279 of the Criminal Code of the Republic of Kosovo, Law 04/L-082 of 2012

³ Corresponding to Article 283 of the Criminal Code of the Republic of Kosovo, Law 04/L-082 of 2012

BECAUSE between 1st January 2012 and 1st July 2012, A.V. on the territory of Kosovo committed the offence of organised crime by committing a serious crime, namely unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs, by organising and participating in the purchase, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany of two shipments of heroin, specifically, 1.496 kg of heroin seized on 20th February 2012 in Munich, Germany, from a Toyota Corolla motor vehicle with registration number xxx and 1.436 kg seized on 10th June 2012 in Munich, Germany, from an Opel Astra vehicle with Serbian registration number xxx; within a structured group together with L.G., M.K., D.K., G.Y., F.F., O.B., L.Z., R.A. and other unidentified co-perpetrators; actively participating in the criminal group; and organising, establishing, supervising, managing or directing the activities of the group; in order to obtain, directly or indirectly, a financial or other material benefit.

HAVING held the Main Trial sessions in open court on 19, 21, 27 November; 4 and 11 December 2013; 6 and 8 January; 19 February and 7 March 2014, in the presence of the Accused A.V., his Defence Counsel A.H. and in the presence of EULEX Special Prosecutor Andrew Carney of the Special Prosecution Office of Kosovo;

AFTER deliberation and voting held on 11th March 2014;

PURSUANT to Article 362 paragraph 1, Article 365 and Article 366 of the Kosovo Criminal Procedure Code on this 11th day of March 2014, in open court and in the presence of the defendant, his Defence Counsel and the EULEX Special Prosecutor, renders the following

JUDGMENT

A.V., with personal details above, in detention since 23 January 2013 is:

GUILTY

BECAUSE between 1 January and 10 June 2012, the Defendant, on the territory of Kosovo, organized and participated in the purchase, possession, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany of two shipments of heroin, specifically, 1.496 kg of heroin seized on 20 February 2012 in Munich, Federal Republic of Germany⁴, from a Toyota Corolla motor vehicle registration number xxx driven by M.K. in which D.K. was being carried and 1.436 kg of heroin seized on 10 June 2012 in Munich, Federal Republic of Germany⁵, from an Opel Astra motor vehicle registration number XXX driven by R.A. and found in the possession of R.A., O.B. and L.Z.; within a structured group together with L.G., M.K., D.K., G.Y., O.B., L.Z., R.A. and other unidentified co-perpetrators; actively participating in the criminal group; and organising, establishing, supervising, managing and directing the activities of the said group; in order to obtain, directly or indirectly, a financial or other material benefit⁶,

THEREBY, pursuant to Article 3 paragraph 2 of the Criminal Code of the Republic of Kosovo⁷, committing the criminal offence of Organised Crime, in violation of Article 274 paragraphs 1 and 3 of the CCK in conjunction with the criminal offence of Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances

⁴ Count 1

⁵ Count 2

⁶ Count 3

⁷ Law 04/L-082 of 2012

under Article 229, paragraph 3 of the CCK.

HAVING been convicted of the criminal offence of Organised Crime under Article 274 paragraphs 1 and 3 of the CCK in conjunction with the criminal offence of Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances under Article 229, paragraph 3 of the CCK, pursuant to Articles 3, 34, 38, 39, 64, 65 and 274 (3) of the CCK the defendant, A.V., is sentenced to a punishment of **10 (ten) years imprisonment** and a **fine in the sum of 20,000 (twenty thousand) Euros**, to be paid within 30 days of the date the Judgment becomes final.

PURSUANT to Article 73 (1) of the CCK the time spent in detention from 23 January 2013 to the date hereof shall be credited towards the sentence.

PURSUANT to Articles 450, 451 and 453 of the Criminal Procedure Code of Kosovo the Accused shall reimburse the costs of the criminal proceedings, assessed in the sum of 4,600 (four thousand six hundred) Euros⁸ together with the Scheduled Amount, assessed in the sum of 500 (five hundred) Euros.

Any property claim shall be pursued through the civil courts.

FURTHER, detention on remand is hereby extended until the Judgment becomes final, because the risk of flight still exists as foreseen by Article 187, paragraph 1, subparagraphs 1.1, 1.2 and 1.2.1 of the CPCK, but no longer than the expiry of the term of punishment imposed in the Judgment. A separate Ruling on detention will be issued

⁸ To include the sum of 3000 GBP (three thousand Great British Pounds Sterling) paid to P.B. of Audio Forensic Services for his report dated 17 December 2013 and a further 100 (one hundred) Euros for his giving evidence from the United Kingdom via video link on 19 February 2014

REASONING

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The annexes hereto comprise an integral part of this Judgment.

A. INTRODUCTION

i. Procedural History

On 11 May 2012, the Prosecution issued a Ruling on Initiation of Investigation against A.V. (hereinafter the “defendant”) and his brother Y.J. (formerly V.). On the same date, a letter of entrustment was issued to EULEX Police Organised Crime Investigation Unit and Kosovo Police Directorate for Organized Crime.

On 17 August 2012, the Special Prosecution Office of the Republic of Kosovo (hereinafter “SPRK”) received from the Public Prosecutor in Munich, Federal Republic of Germany a Request dated 22 July 2012 in case ref: 371 Js 138867/11 for the transfer of criminal proceedings against Y.V.(J), the defendant and another suspect.⁹ Further documentation relating to the defendant was subsequently received from the Special Criminal Department, Munich as part of the same procedure.

The criminal acts of which the defendant was suspected are qualified in Germany as *‘illegal dealing in narcotic substances in amounts not little, committed as a member of a criminal gang’* under § 30 a section 1, 3 section 1, 2 section 1, 1 section 1 of the Narcotics Act (BtmG) in conjunction with enclosure I as to § 1 of the Narcotics Act, § 53 of the Penal Code (StGB). The qualification of those offences were substantively equivalent to the offences of ‘Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances’, under Article 229 of the Criminal Code of Kosovo and ‘Organised Crime’, under Article 274 of the Criminal Code of Kosovo.

The offences alleged by the German authorities were the subject of the Ruling on Initiation of Investigation issued on 11 May 2012 in case number PPS 42/2012, GJPP 193/2012 against the defendant and Y.J. for Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, under Article 229 paragraphs 1, 2, 3 and 4 of the CCK; and Organised Crime, under Article 274 paragraphs 1, 2 and 3 of the CCK.

⁹ processed through the Embassy of the Federal Republic of Germany in Pristina ref: RK 531/191 Y, dated 26 July 2012 and the Ministry of Justice of Kosovo Department for International Legal Cooperation ref: MoJ/DBJN/03100A/12, DLA/2012-01140 dated 13 August 2012

Accordingly, the criminal proceedings were transferred from the relevant German authorities and joined to SPRK case PPS 42/2012, GJPP 193/2012 on 22 August 2012.

On 11 April 2013, an Indictment was filed with the Basic Court, Prishtinë/Priština against Y.J. under case number PPS 42/2012. Although the defendant was investigated under the same case number and as part of the same proceedings as Y.J., as the investigation progressed, although the offences allegedly committed by the defendant and Y.V. were the same and followed the same modus operandi, it became apparent that other suspects relating to each defendant were different and that the period of the commission of offences by the defendant was different from that of Y.J.. In the circumstances Y.J. and the defendant were indicted under separate indictments.

The Indictment against the Defendant is dated 16 September 2013 and was filed on 16 September 2012.

The Indictment was amended on 1 October 2013 to correct a typographical error in the date in Count 2 that referred to "01 July 2010" when, in fact, it was clear on the face of the Indictment that the correct date was 1 July 2012. The Indictment was amended accordingly.

On 7 March 2014 the Prosecution further amended the Indictment to amend the period in Count 2 to 1 April – 1 July 2012 and the period in Count 3 to 1 January – 11 June 2012.

ii. Jurisdiction

Article 11 of the Law on Courts¹⁰ provides that Basic Courts are competent to adjudicate at first instance in all cases, except as otherwise foreseen by Law.

Article 15 of the said Law provides that the Serious Crimes Department of the Basic Court has jurisdiction to adjudicate at first-instance in cases of unauthorized production, distribution, or processing of dangerous narcotic drugs and psychotropic substances; organized crime, including intimidation during criminal proceedings for organized crime and any case that falls

¹⁰ Law No. 03/L-199

within the exclusive or subsidiary competence of the Special Prosecution Office for Kosovo under the Law on the Special Prosecution Office of the Republic of Kosovo.¹¹

The defendant was charged with two counts of Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, paragraphs 1, 2, 3 and 4 of the Criminal Code of Kosovo and 1 count of Organised Crime, in violation of Article 274 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo.

The offences were committed in Kosovo. The defendant was at all material times residing in Pristina. Pursuant to Article 9 of the said Law, Fushe Kosovo/Kosovo Polje Municipality falls within the jurisdiction of the Basic Court of Prishtine/Pristina. Accordingly, the Basic Court of Pristina has territorial jurisdiction.

Pursuant to Article 3 of the Law on Jurisdiction¹² Eulex judges shall have jurisdiction over any case prosecuted by the SPRK.

B. LAW

The Defendant was charged in three counts in the Indictment.

In Counts 1 and 2 he was charged with Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, under Article 229, paragraphs 1, 2, 3 and 4 of the Criminal Code of Kosovo.¹³ In Count 3 he was charged with Organised Crime, under Article 274 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo.¹⁴

Since the criminal offences were committed the criminal law in Kosovo has been amended. On 1 January 2013 the new Criminal Code of Kosovo¹⁵ (hereinafter “CCRK”) entered into force.

¹¹ No. 03/L-52 (13 March 2008)

¹² No. 03/L-53

¹³ *Corresponding to Articles 273 and 279 of the Criminal Code of the Republic of Kosovo, Law 04/L-082 of 2012*

¹⁴ *Corresponding to Article 283 of the Criminal Code of the Republic of Kosovo, Law 04/L-082 of 2012*

¹⁵ No. 04/L-082

In determining which criminal code to apply the Trial Panel had regard to the well-established principle that the law most favourable to the defendant should be applied.¹⁶

When determining the most favourable law the Trial Panel had regard to the range of sentencing and the defendants' culpability within the appropriate sentencing range.¹⁷ In that regard, it is inappropriate to refer simply to the minimum and maximum sentences provided in the law.

Having considered the subsequent amendment to the criminal law, the Trial Panel finds that the subsequent substantive changes to the criminal law are no more favourable to the defendant. Therefore, the Trial Panel applied the substantive law in force at the time the offences were committed.

i. Applicable Provisions of the Criminal Law

Under Counts 1 and 2 the Defendant was charged with Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, under Article 229 paragraphs 1, 2, 3 and 4 and Article 23 of the CCK and punishable by a fine and by imprisonment of three to fifteen years.

Article 229 of the CCK provides:

(1) Whoever, without authorisation, purchases or possesses with the intent to sell or distribute or offers for sale substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances shall be punished by a fine and by imprisonment of one to five years.

(2) Whoever, without authorisation, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or

¹⁶ Article 2 (2) CCK and Article 3 (2) CCRK

¹⁷ Maktouf and Damjanovic v. Bosnia and Herzegovina ECtHR, July 2013 (*Applications nos. 2312/08 and 34179/08*)

psychotropic substances, with the intent that that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years.

(3) Whoever, without authorisation, exports or imports substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances shall be punished by a fine and by imprisonment of three to ten years.

(4) When the offence provided for in paragraphs 1, 2 or 3 of the present article is committed under one or more of the following circumstances, the perpetrator shall be punished by a fine and by imprisonment of three to fifteen years:

1) The perpetrator is acting as a member of a group;

2) The perpetrator is a member of the police force or responsible for law enforcement;

3) The perpetrator is an official person acting in the exercise of his or her duties;

4) The perpetrator uses or threatens to use violence or a weapon in the course of committing the offence;

5) The act is committed by exploiting a child, or to the detriment of a such person;

6) The act is committed against a person who is particularly vulnerable by reason of age, illness, physical or mental disability or disorder, or pregnancy which is known or evident to the perpetrator;

7) A shipment, consignment, container or vehicle intended for a humanitarian operation is used for the unlawful transport of narcotic drugs or psychotropic substances;

8) The perpetrator mixes the narcotic drug or psychotropic substance with other substances so as to aggravate the danger to health;

9) The perpetrator intoxicates another person with a narcotic drug or psychotropic substance without this person's knowledge.

(5) The narcotic drugs or psychotropic substances shall be confiscated.

Under Count 3 the defendant was charged with Organised Crime, under Article 274 paragraphs 1, 2 and 3 of the CCK and punishable by a fine of up to 500.000 Euros and by imprisonment of seven to twenty years.

Article 274 of the CCK provides:

(1) Whoever commits a serious crime as part of an organized criminal group shall be punished by a fine of up to 250.000 EUR and by imprisonment of at least seven years.

(2) Whoever actively participates in the criminal or other activities of an organized criminal group, knowing that his or her participation will contribute to the commission of serious crimes by the organized criminal group, shall be punished by imprisonment of at least five years.

(3) Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years.

(4) Whoever commits the offence provided for in paragraph 2 of the present article shall be punished by a fine of up to 500.000 EUR and by imprisonment of at least ten years or by long-term imprisonment if the activities of the organized criminal group result in death.

(5) The court may waive the punishment of a perpetrator who commits the offence provided for in paragraph 2 or 3 of the present article if, before the group has committed a crime, such person reports to the police or public prosecutor the existence, formation and information of the organized criminal group in detail to allow the police to arrest or the prosecutor to prosecute the group.

(6) Whoever is punished by the accessory punishment provided for in Article 57 of the present Code for the commission of a criminal offence provided for in the present Article and violates the terms of such accessory punishment shall be punished by imprisonment of up to one year.

(7) For the purposes of the present article,

1) The term "organized crime" means a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit.

2) The term "organized criminal group" means a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit.

3) The term "serious crime" means an offence punishable by imprisonment of at least four years.

4) The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

Article 23 of the CCK provides:

When two or more persons jointly commit a criminal offence by participating in the commission of a criminal offence or by substantially contributing to its commission in any other way, each of them shall be liable and punished as prescribed for the criminal offence.

C. CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE

I. Burden and standard of proof

Article 6 (2) of the European Convention on Human Rights (hereinafter the “ECHR”), the Constitution of Kosovo and Article 3 (1) of the CPC enshrine the presumption of innocence to which the defendant is entitled. This presumption places on the Prosecution the burden of establishing the guilt of the defendant, a burden which remains on the Prosecution throughout the trial.

Article 370 (7) of the CPC stipulates that *‘the court shall state clearly and exhaustively which facts it considers proven or not proven, as well as grounds for this’*. Accordingly, the Trial Panel must determine whether it is satisfied on the basis of the whole of the evidence, so that it is sure, that every element of the crime has been established. Any doubt must be resolved in favour of the defendant.

The Trial Panel, pursuant to Article 7 (1), (2) CPC, *‘... must truthfully and completely establish the facts which are important to rendering a lawful decision’* and *‘... has a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in ... favour ...’*.

G. ASSESSMENT OF THE EVIDENCE

It was alleged in the Indictment that the defendant organised the supply, export and transportation of heroin from Kosovo to Germany, the drugs being hidden inside vehicles before onward transportation by couriers and distribution to end users.

The Prosecution case rested substantially upon telephone interceptions ordered and implemented in the Federal Republic of Germany and telephone interceptions ordered and implemented in Kosovo.

It was the defendants' case that he was not the narcotics trafficker who had been recorded by police during the various telephone intercepts and the person who had sent and received various SMS messages arranging the supply of drugs.

In July 2010 police in Germany commenced "Operation Marimanga"¹⁸. During the course of that operation police gathered a significant amount of evidence against the Defendant and other persons associated with him. The evidence comprised interception of telephonic communications, surveillance evidence, evidence gathered following the arrest of suspects and the seizure of two consignments of heroin on 20 February 2012 and 10 June 2012.

The Defendant was arrested in Kosovo on 23 January 2013.

The Court has assessed the evidence in a chronological format, similar to the format adopted in the Indictment.

Given the central importance of evidence gathered pursuant to various orders for telephonic interception the Trial Panel will review and assess that evidence as a 'preliminary' issue.

Voice Analysis

During the investigation, the Munich Lower Court in the Federal Republic of Germany ordered covert interception of telephonic communications made using telephone numbers xxx, xxx, xxx, xxx, xxx, xxx and xxx¹⁹.

It was the Prosecution case that these telephone numbers were in the possession and use of the defendant. That was denied by the defendant.²⁰

Given that the evidence obtained through the interception of these telephone numbers was central to the Prosecution case and its' determination of the facts in issue the Trial Panel sought

¹⁸ Spider

¹⁹ Court Orders for Interceptions Germany, Binder III, Tab 23

²⁰ Minutes of 8 January 2014

the expert opinion of a forensic audiologist, Mr. P.B. of Audio Forensic Services. Mr. B. gave evidence before the Trial Panel on 19 February 2014 and was cross-examined by counsel.

In his report dated 17 December 2013 Mr. B. analysed the voice recordings made by police during the interception of telephone numbers xxx, xxx, xxx, xxx, xxx, xxx and xxx and compared these with a sample of the defendants' voice.

Referring to intercept evidence ID 3.352.335 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants' voice, Mr. B. concluded there is a "high probability"²¹ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 3.353.964/651 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants' voice, Mr. B. concluded there is a "high/low probability"²² of a match between the voice intercepted during this telephone conversation and the defendants voice.

However, referring to intercept evidence ID 3.353.972/406/614/827/073 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants' voice, Mr. B. concluded there is a "high probability"²³ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 3.353.982 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants' voice, Mr.

²¹ Report dated 17 December 2013, page 7 (English version)

²² Report dated 17 December 2013, page 7 (English version)

²³ Report dated 17 December 2013, page 7 (English version)

B. concluded there is a “high probability”²⁴ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 3.356.583, 3.516.912 and 3.357.004 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants’ voice, Mr. B. concluded there is a “high probability”²⁵ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 3.575.169 and 3.600.227 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants’ voice, Mr. B. concluded there is a “high probability”²⁶ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 4.384.359 and 4.394.141 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants’ voice, Mr. B. concluded there is a “high/low probability”²⁷ of a match between the voice intercepted during this telephone conversation and the defendants voice.

Referring to intercept evidence ID 4.369.763 comprising a recording of a telephone conversation between two persons one of whom the Prosecution averred was the defendant using telephone number xxx and comparing this with the sample of the defendants’ voice, Mr. B. concluded there is a “high probability”²⁸ of a match between the voice intercepted during this telephone conversation and the defendants voice.

²⁴ Report dated 17 December 2013, page 7 (English version)

²⁵ Report dated 17 December 2013, page 7 (English version)

²⁶ Report dated 17 December 2013, page 7 (English version)

²⁷ Report dated 17 December 2013, pages 7 and 8 (English version)

²⁸ Report dated 17 December 2013, pages 7 and 8 (English version)

The forensic expert found a “high/low probability” of a match when comparing the sample of the defendants’ voice with the intercept evidence of telephone numbers xxx and xxx which the Prosecution averred were in the possession and use the defendant.

For the reasons stated herein the Trial Panel finds that, at all material times, the Defendant was in possession of and using mobile telephone numbers xxx, xxx, xxx, xxx, xxx, xxx and xxx²⁹.

Further, for the reasons stated herein the Trial Panel finds that, at all material times

- i. M.K. was in possession of and using mobile telephone numbers xxx³⁰ and xxx³¹
- ii. L.Z. was in possession of and using mobile telephone number xxx;
- iii. O.B. was in possession of and using mobile telephone numbers, xxx and xxx.³² It was the prosecution case O.B. was also in possession of and using telephone numbers xxx, xxx, xxx and xxx but the Trial Panel could find no conclusive link between O.B. and the numbers cited;
- iv. Y. G. was in possession of and using mobile telephone number xxx³³;
- v. It was the Prosecution case that R.A. was in possession of and using mobile telephone number xxx However, the Trial Panel could find no conclusive link between R.A. and that number;
- vi. A.V. was in possession of and using mobile telephone number ³⁴;
- vii. T.V. was in possession of and using mobile telephone number xxx. When he gave evidence before this Court the Defendant confirmed this was the number used by his father³⁵;
- viii. D.K. was in possession of and using mobile telephone number xxx³⁶;

²⁹ Report dated 17 December 2013

³⁰ M.K. was the registered subscriber

³¹ The subscriber of telephone number xxx was A.V., the defendants’ sister. The SIM card with this number was found in the Toyota motor vehicle which M.K., the partner of A.V., was driving at the time of his arrest.

³² SIM card seized on 10 June 2012 in the possession of O.B.

³³ SIM card with this number was seized by police during a search on 9 May 2012 of the apartment occupied by G.Y.

³⁴ Record of Telephone Subscriber Details A.V. and T.V., Binder III, Tab 22

³⁵ Minutes of 8 January 2014

³⁶ SIM card with this number seized by police during a search of apartment occupied by D.K.

ix. F.F. was in possession of and using mobile telephone number xxx.

Further, the Defendant gave evidence that M.A. is his “second” Common Law wife and that during 2012 she was living with him. Further, he stated that Sh.A. is the sister of M.A. and that B.A. is their father³⁷.

i. Counts 1 and 3

These Counts arise from an investigation involving the defendant, L. (L.) G., D.K., O.B., G.Y. and M.K. culminating on 20 February 2012 with the seizure of packages containing three different amounts of powder weighing 498.7 g, 499.9 g and 498.1 g which were later found on analysis to contain heroin. A further smaller plastic bag was recovered consisting of 2.86 g of powder. The three packages were subject to forensic analysis and were found to contain a total of 1496.7 g of pressed powder. The quantity of heroin within the powder was 11 per cent. The plastic bag of 2.86 g of powder was found to contain 8 per cent heroin.³⁸

a. Telephonic communications

17 February 2012

At 17:46:15 hrs³⁹, M.K. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

“What are you doing? Anything new from your side?”

At 18:11:09 hrs⁴⁰ the Defendant (xxx) sent an SMS to M.K. (xxx) wherein he stated

“Really nothing....did you find anyone to send me those money”.

At 18:11:54⁴¹ M.K. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

³⁷ Minutes of 8 January 2014

³⁸ Expertise, Department of Narcotic Substances, 21 August 2012, Binder II, pp. 250-260

³⁹ Binder III, pp. 193-194

⁴⁰ Binder III, pp. 195

⁴¹ Binder III, pp

"I'm in M.S. really not yet. When somebody will come, I'll send you. Did you hear anything from him?"⁴²

It was the Prosecution case this discussion concerned an exchange of money that was related to a drugs deal.

18 February 2012

At 20:21:01⁴³, the Defendant (xxx) had a conversation with M.K. (xxx) during which the Defendant instructed M.K. to go to Aubing the next day and to collect some "things" that he should then take to K. The defendant told M.K. that he would receive for himself⁴⁴ 300 Euros from a young man and a further 2,000 Euros that was destined for the Defendant. The Defendant told M. K. to take the money from this person and to give him the "things".

The Defendant instructed M.K. to travel alone by car. The Defendant gave him the address where he should go, stating *"Aubing, Schmanstrasse."* The Defendant further instructed M.K. that *"till Aubing, you will go to meet with a friend. He will give you the things, you will take the things and go to that one in Karlsfeld. Will give you the things, he will give what I have said, did you get me?"*

It was the Prosecution case that the only possible interpretation of this exchange is that there would be an exchange of narcotics for money with a courier organized by the defendant.

19 February 2012

At 12:33:28 the Defendant (xxx) sent an SMS to xxx wherein he stated

"Call me"

At 14:41:28 hrs⁴⁵, the Defendant (xxx) sent an SMS to xxx wherein he stated

"This is my new number okay, he didn't arrive yet"

⁴² Binder III, pp. 195-196

⁴³ Binder III, pp. 200-204

⁴⁴ 'fur dich' for you

⁴⁵ Binder III, p. 212

At 14:42:11⁴⁶ the Defendant (xxx) sent an SMS to M.K. (xxx) wherein he stated:

“This is my new number“

At 14:43:23 the Defendant (xxx) sent an SMS to M.K. (xxx) wherein he stated:

“He did not call me yet. I’m waiting. I’ll inform you after.”⁴⁷

At 17:30:58 hrs⁴⁸, an unknown person (xxx) spoke to the Defendant (xxx) during which the Defendant stated *“the idiot arrived late”* and that the deal should be postponed until the following day. The Defendant explained that he had changed his phone number. O.B. requested that he be informed ten minutes in advance to which the Defendant responded that O.B. should have his mobile phone switched on from 12 o’clock onwards.

At 17:36:21 hrs⁴⁹ the Defendant (xxx) contacted M.K. (xxx) and told him that he should be ready between 12:00 and 13:00 and that he would tell him where to go.

It was the Prosecution case that these messages and conversations showed that the defendant had intended to dispatch a courier to meet with O.B. and M.K. on 19 February 2013 but that, due to a difficulty, the meeting had to be postponed by twenty-four hours.

At 17:43:18 hrs⁵⁰, Y.G. (xxx) called the Defendant (xxx). During that conversation the Defendant told Y.G. that he would call him the next day and that in the afternoon he should *“go and take it quickly”*.

It was the Prosecution case that this communication concerned the delivery of narcotics.

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At 13:28:03 hrs⁵¹ M.K. (xxx) called the Defendant (xxx) and they agreed that M.K. would be at the address *“number 2”* at about four o’clock.

⁴⁶ Binder III, pp. 213

⁴⁷ Binder III, pp. 213-214

⁴⁸ Binder III, pp. 215-218

⁴⁹ Binder III, pp. 218-220

⁵⁰ Binder III, pp. 220-227

⁵¹ Binder III, pp. 231-233

At 13:43:12 hrs⁵² M.K. (xxx) contacted A.V. (xxx) and told her that “he” had just contacted him and that he will take the vehicle and that after that they will meet.

At 14:12:12 hrs⁵³, the Defendant (xxx) contacted M.K. (xxx) and told him that *“he is waiting for you there...when you go to that guy, he will give you those things and one phone number.”* The Defendant told M.K. *“then that number, when you’ll go there you will give to him, to another guy”*.

At 14:21:44 hrs⁵⁴ the Defendant (xxx) contacted M.K. (xxx) and asked him if he knew “L. of Prizren”⁵⁵ M.K. replied that he knew him through Y.⁵⁶ The Defendant responded stating *“it is bad, fuck he should not see you, how to do this?”*

It was the prosecution case the Defendant did not want his couriers and dealers to know each other. Clearly, the defendant did not want M.K. personally to collect the narcotics from the courier L.G., whom he knew.

At 14:24:27 hrs⁵⁷ M.K. (xxx) contacted A.V. (xxx) and told her about the conversation that he had had with the Defendant and the fact the Defendant did not want him to go and meet L.G. because he had met him previously.

At 14:27:40 hrs⁵⁸ M.K. (xxx) contacted D.K. (xxx) and said to him *“do you mind to come somewhere with me...I need to go to Pasing to take something...right now...we will give you something...come right now...I will give you something.”*

It was the Prosecution case that M.K. had found a last-minute replacement to assist with the collection of the narcotics.

At 14:28:52 hrs⁵⁹, the Defendant (xxx) contacted an unknown person (xxx) and told him that *“at four o’clock, a friend of mine will go there...I will give him your number, then he will call you.”*

⁵² Binder III, pp. 233-234

⁵³ Binder III, pp. 234-236

⁵⁴ Binder III, pp. 236-238

⁵⁵ It was the prosecution case this was L.G.

⁵⁶ It was the prosecution case this was Y.J.

⁵⁷ Binder III, pp. 238-240

⁵⁸ Binder III, pp. 242-244

It was the prosecution case this 'friend' was M.K..

At 14:29:54 hrs⁶⁰, the Defendant (xxx) contacted M.K.(xxx). During that conversation M.K. told the defendant that he had found someone else. The Defendant told him *"he should not see you, he should not, that is your friend!"*

The Defendant told M.K. *"go there where I gave you the address with SCH, do you know?"* and to drop him close to the S- there and wait nearby in the vehicle. He was then to pick him up and take him to Karlsfeld. For that, M.K. was to give him 100 Euros. M.K. told the Defendant that 50 Euros was sufficient because "he" was his nephew. The Defendant told him that an Albanian would give him 3000 Euros, from which he should give 50 Euros to him and keep 250 Euros for himself. M.K. was also told to collect 2000 Euros that was to be handed over to the Defendant. The Defendant told him to leave a part of it at "number 2".

It was the Prosecution case that a part of the heroin consignment was to be taken and handed over to O.B. in Karlsfeld.

At 14:48:54 hrs⁶¹ M.K. (xxx) contacted D.K. (xxx) and they arranged to meet.

At 14:53:17 hrs⁶², G.Y. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

"How much more time?! Small man..."

At 14:54:37 hrs⁶³ the Defendant (xxx) sent an SMS to G.Y. (xxx) wherein he stated

"at about 6 at Trudering. I will call you at about 5."

At 15:36:53 hrs⁶⁴ the Defendant (xxx) contacted M.K. (xxx) and asked him if he had dropped him. M.K. replied that they could not find the street. The Defendant replied stating *"Schwemmstrasse 2"*

⁵⁹ Binder III, pp. 244-246

⁶⁰ Binder III, pp.247-250

⁶¹ Binder III, pp. 251-252

⁶² Binder III, pp. 252-253

⁶³ Binder III, p. 253

⁶⁴ Binder III, pp. 256-258

At 15:54:52 hrs⁶⁵, the Defendant (xxx) contacted M.K. (xxx). M.K. told him "I'm here". The Defendant responded, stating "*Okay cousin, right now I'll call that guy and inform, now will come outside at the second*".

At 15:57:20 hrs⁶⁶, D.K. (xxx) contacted M.K. (xxx) and stated "*hey, come and take me where you left me*".

At 15:59:14 hrs⁶⁷ the Defendant (xxx)⁶⁸ contacted M.K. (xxx)⁶⁹ and asked him "*have you finished?*" M.K. replied "*yes*".

It was the Prosecution case that the purpose of this conversation was in order to check that all had gone to plan.

At 16:00:16 hrs the Defendant (xxx) contacted M.K. (xxx) and told him "*Now go to that one in Karls*"⁷⁰

At 16:05 hrs, M.K. and D.K. were arrested in Bodensee xxx⁷¹ in a Toyota Corolla vehicle, registration number xxx.

During a subsequent search of that vehicle police seized packages containing three different amounts of powder weighing 498.7 g, 499.9 g and 498.1 g respectively. A further smaller plastic bag of powder was also recovered weighing 2.86 g. The three packages were subject to forensic analysis and found to contain a total of 1496.7 g of pressed powder. The quantity of heroin within the powder was 11 per cent. The plastic bag of 2.86 g of powder was found to contain 8 per cent heroin.⁷²

At 16:24 hrs, L.G. was arrested in xxx 5, Munich⁷³.

From 16:06:57 the Defendant (xxx) telephoned M.K. (xxx) a number of times⁷⁴.

⁶⁵ Binder III, pp. 261-262

⁶⁶ ID 3.355.878, Binder III, pp. 262-263

⁶⁷ Binder III, pp. 263-264

⁶⁸ "high probability" voice match, Report dated 17 December 2013, page 7 (English version)

⁶⁹ M.K. was the registered subscriber

⁷⁰ The Trial Panel finds this to be reference to Karlsfeld, a town in the Federal Republic of Germany

⁷¹ Records in the file, M.K., Binder II, pp. 87-88, 105-106

⁷² Expertise, Department of Narcotic Substances, 21 August 2012, Binder II, pp. 250-260

⁷³ Synopsis/Overview, Binder II, pp 29, 47

It was the Prosecution case that, being unable to contact M.K., the defendant started to panic.

At 16:38:30 hrs⁷⁵ the Defendant (xxx) spoke with an unknown person (xxx)

"I think, I think they got him...it is my fault because he has nothing to do with this. He called me that time and said "we have finished." Right now, the phones are ringing but not answering. I don't know...fuck, I am in a bad position"...fuck, if the family members understand that I have sent him, catastrophe, catastrophe!"

It was the Prosecution case that during this conversation the defendant was referring to his sister's partner, M.K. when he stated "I think they got him". The defendant was clearly worried about his family's reaction when they discovered M.K. had been arrested. Thereafter, the defendant contacted other members of the criminal group in order to cover their tracks.

At 17:23:35 hrs⁷⁶ the Defendant (xxx) spoke with an unknown person (xxx) and told him *"take off the card, take off the battery, throw the card because I think he has written mine, throw away, ok?"*

At 17:29:42 hrs⁷⁷ the Defendant (xxx) sent an SMS to G.Y. (xxx) wherein he stated

"He is dead. I will inform you later."

The defendants' sister also tried to contact her partner M.K..

At 17:47:51 hrs⁷⁸ A. V. (xxx) sent an SMS to M.K. (xxx) wherein she stated:

"M., call me on the phone! Where are you?"

The defendants' father also contacted the defendant.

⁷⁴ Binder II, pp. 266-271

⁷⁵ Binder II, pp. 272-274, 274-277

⁷⁶ Binder II, pp. 278-279

⁷⁷ Binder II, pp. 280

⁷⁸ Binder III, pp. 281-282

At 18:57:40 hrs⁷⁹ T.V. (xxx) contacted the Defendant (xxx) and asked him *“Where are you, A.?”* The Defendant stated *“...he send one of his friend, he stayed with him there, he failed”*. T.V. stated *“okay, talk with A. because I don’t have time.”*

During this conversation the defendants’ father refers to the defendant using his name, “A”. The defendants’ father also refers to the defendants’ sister by name, “A”.

A.V. then took the telephone from T.V. and spoke with the Defendant. The Defendant asked A.V. about ‘B’. A.V. responded that his name is “D.”

It was the Prosecution case that this conversation linked the defendant with the telephone that he had used to contact D.K. who had accompanied M.K. in the Toyota Corolla when they went to meet with L.G. when the drugs were handed over.

At 20:12:05 hrs⁸⁰, Y.G. (xxx) spoke with the Defendant (xxx) and asked him *“whats up”*. The Defendant responded stating that he would call him the next day.

At 20:13:01 hrs⁸¹ Y.G. (xxx) contacted an unknown person (xxx) and stated

“the guy was killed”

It was the Prosecution case that this communication is indicative of the fact that some of the seized heroin was destined to be delivered to Y.G. and that that was the reason the defendant contacted him so quickly and why G.Y. was passing on information to an unknown co-perpetrator saying that the courier had been caught.

At 23:31:43 an unknown person (xxx) spoke with the Defendant (xxx). During that conversation the Defendant told him *“they have moved...fuck...buy a new number and tomorrow send me and I’ll call you from Post Office...”*

⁷⁹ Binder xx, pp. 286-289

⁸⁰ Binder III, pp. 289-290

⁸¹ 3.356.750, Binder III, pp. 290-292

It was the Prosecution case that part of the heroin shipment seized was destined for O.B.. That evening, a number of calls and SMS' were exchanged between him and the defendant (xxx) during which the defendant told O.B. to *"buy a new number."*⁸²

21 February 2012

At 12:41:54 hrs⁸³, an unknown person (xxx) contacted the Defendant (xxx) and stated

"that the lawyer cannot do anything, there is nothing for a moment until they go there."

It was the Prosecution case they were discussing the arrest of D.K. and M.K. and his access to a lawyer whilst in police custody following his arrest.

b. Searches and Arrests

1. Search of Toyota Corolla motor vehicle registration number EBE-A 2389

Following the arrest of D.K. and M.K. at 16:05 hrs on 20 February 2012 police searched the Toyota Corolla motor vehicle registration number EBE-A 2389 in which M.K. and D.K. were being carried.

A vehicle registration document of the vehicle was found in a sheath behind the sun visor and was found to be registered to S.V. of xxx 9, M.S.⁸⁴. S.V. is the defendants' mother.⁸⁵

From inside the said vehicle police seized from behind the driver's seat a Lidl plastic bag containing a box. Inside that box were found three red packages containing three different amounts of powder weighing 498.7 g, 499.9 g and 498.1 g respectively. A further smaller plastic bag was also recovered consisting of 2.86 g of powder.⁸⁶

⁸² 3.357.004, Binder III, pp. 292-293

⁸³ 3.357.743, Binder III, pp. 297-298

⁸⁴ Records in the File Case of K. dated 20.02.2012, Binder II, pp. 87-88, 105-106

⁸⁵ Records in the File Case of K. dated 20.02.2012, Binder II, pp. 87-88, 105-106

⁸⁶ Photograph Album of Vehicle and Narcotics dated 21.02.2012, Binder II, pp. 53-86

The three bags containing 498.7 g, 499.9 g and 498.1 g respectively⁸⁷ of pressed powder, were analysed and found to contain heroin. The quantity of heroin within the powder was 11 per cent. The plastic bag containing 2.86 g of powder was found to contain 8 per cent heroin.⁸⁸

A driving license and a Yugoslav passport were found inside the car bearing the name A.V., the defendants' sister.

Two mobile phones were recovered from inside the vehicle⁸⁹.

One was an I-phone⁹⁰. This i-phone was later the subject of analysis and was found to have IMEI number xxx and Vodafone SIM card number xxx. The subscriber of that number was A.V..

Telephone numbers found in the phone contacts list of the said i-phone and SIM card link the user of that mobile telephone and SIM card to the Defendant:

- i. Item 51, being registered under 'Own number' was xxx; this was a telephone number used by M.K. that the defendant and D.K. had used to contact him before the drugs exchange and to which A.V. sent M.K. an sms after he had been arrested;
- ii. Item 65, being registered under 'A. Handy T1' was xxx; this is the telephone number of T.V., the father of the Defendant⁹¹. T.V. used this number to call the Defendant (xxx)⁹² after the arrest of M.K. at 18:57:40 hrs on 20 February 2012 and during which he referred to 'A.' by name;
- iii. Item 93, being registered under 'V.B. Handy' number xxx; This is the number that T.V. called to speak to the Defendant (see (ii) above); The Court-appointed expert found a "high probability" of a match with the defendants voice when analyzing a recording of a telephone intercept by a person using this number.⁹³

⁸⁷ total of 1496.7 g

⁸⁸ Expertise, Department of Narcotic Substances, 21.08.2012, Binder II, pp. 250-260

⁸⁹ Assessment of Exhibits M.K. dated 16.08.2012, Binder II, pp. 123-157

⁹⁰ Ibid., pp. 125-129, 142-146, Exhibit 'Ass 02'

⁹¹ Record of Telephone Subscriber Details for T.V., Binder III, Tab 22

⁹² "high probability" voice match, Report dated 17 December 2013, page 7 (English version)

⁹³ Report dated 17 December 2013, page 7 (English version)

- iv. Item 96, being registered under 'H.Th.' number xxx; The Defendant used this telephone number to contact M.K. on 18 February 2012 and to contact O.B. on 19 February 2012. This number was also found registered into the second phone found in the Toyota Corolla. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.⁹⁴
- v. Item 125, being registered under 'Th.' number xxx; this is the number that G.Y. used to contact the Defendant. This number was also stored in the second phone recovered from the vehicle. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.⁹⁵

The second handset seized was a Nokia 1800⁹⁶ which had the IMEI number xxx and an O2 SIM card inserted with the number xxx.

Telephone numbers found in the phone contacts list of the said Nokia 1800 handset and SIM card link the user of that mobile telephone and SIM card with the Defendant:

- i. Item 21, this registering the number of the phone itself under 'M'. The packaging and contract documents for this device were found at the apartment occupied by M.K. (see below). This was the primary number that M.K. used to contact the Defendant;
- ii. Item 2, registered under 'Ar Ks' was telephone number xxx. This is the same number that was found registered in the aforementioned i-phone under item 96, 'H.Th..' The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.⁹⁷

⁹⁴ Report dated 17 December 2013, page 7 (English version)

⁹⁵ Report dated 17 December 2013, page 7 (English version)

⁹⁶ Ibid., pp. 129-133, 146-150, Exhibit 'Ass 03'

⁹⁷ Report dated 17 December 2013, page 7 (English version)

- iii. Item 6, registered under 'Been Ks Ks' was telephone number xxx. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.⁹⁸ This is the number the Defendant used most often, not only to contact M.K. but also to contact O.B.. At 14:41 and 14:42 hrs on 19 February 2012 the Defendant had informed both men that that this was his new number.
- iv. Item 22, registered under 'Th.' number xxx. This same name and telephone number are recorded under item 125 in the aforementioned i-phone. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.⁹⁹

2. Search of the Apartment of M.K. and A.V.

On 20 February 2012 between 17:25 and 18:45 hrs, police searched the apartment of M.K. and A.V. at xxx in Munich, Germany¹⁰⁰.

A search record was kept that exhibited various items of evidential value¹⁰¹. Exhibit W1 was the O2 packing and contract documents for a Nokia 1800 silver grey mobile phone, IMEI number xxx. That was the IMEI number of the handset seized during the search of the Toyota Corrolla motor vehicle. The pre-paid mobile number was xxx. The account documentation showed it to be in the name of "M. K" of Munich, xxx.

Exhibit W4 was a proof of payment document from Western Union dated 9 February 2012 in the sum of 326 Euros wherein it was stated the Defendant was the intended recipient of the money.

⁹⁸ Report dated 17 December 2013, page 7 (English version)

⁹⁹ Report dated 17 December 2013, page 7 (English version)

¹⁰⁰ Notes on the File of the House Search, Munich, Trudering Str dated 28.02.2012, Binder II, pp. 87-122

¹⁰¹ Evaluation Report for items seized from the accommodation of M.K., dated 28.02.2012, Binder II, pp. 94-104, 112-122

3. Arrest of G.Y. and Search of his Apartment

On 9 May 2012, G.Y. was arrested and his apartment at xxx, Munich, Germany was searched¹⁰². Cash in the sum of 7,700 Euros was found. In addition, police seized a white powder.

During the search police seized mobile telephone handsets and SIM cards¹⁰³ including a white iPhone with number xxx.

- i. Under item number 139 was the name 'A' listing two numbers, xxx and xxx. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using these numbers.¹⁰⁴ Telephone number xxx was contacted by G.Y.'s number as is set out above just before the narcotics exchange.

These same numbers were saved in the two mobile telephones seized during the search of the Toyota Corolla motor vehicle. Telephone number xxx registered in the contacts list of the iPhone under the name 'V.B. B.H.'. Telephone number xxx was registered in the same handset under the name 'H.Th.'. The Defendant used this telephone number to contact M.K. on 18 February 2012 and to contact O.B. on 19 February 2012. Telephone number xxx was registered in the contacts list of the Nokia 1800 handset under the name 'Ar Ks'.

- ii. Under item 161 was the name 'A.2' and the telephone number xxx. This number was in contact with G.Y.'s number just after the arrest of M.K.. The number is saved in both phones recovered from M.K.¹⁰⁵ where it is listed under the name 'Th..' The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.¹⁰⁶
- iii. Under item number 186, the name 'A.' and the number xxx. This telephone number was used on 1 June 2012 at 10:55 hrs by M.A., at a time when she was

¹⁰² Search Report Yl.G. dated 09.05.2012, Binder II, pp. 211-249

¹⁰³ Ibid., 214-221, 234-241

¹⁰⁴ Report dated 17 December 2013, page 7 (English version)

¹⁰⁵ Exhibits Ass 02 and 03

¹⁰⁶ Report dated 17 December 2013, page 7 (English version)

living with the Defendant in Prishtina and, according to his own testimony in interview with the Prosecutor¹⁰⁷, had been living with him since his return to Kosovo at the end of 2011. The Court-appointed expert found a “high probability” of a match with the defendants’ voice when analyzing a recording of a telephone intercept by a person using this number.¹⁰⁸

A number of SIM cards were seized during the search of G.Y.’s address. One SIM card with telephone number xxx. In this SIM card were registered the numbers xxx under the name ‘A’ and xxx under the name ‘A’.

At 18:47 hrs on 12 April 2012 the Defendant sent to G.Y. an sms wherein he stated:

“Xxx, you need to send me tomorrow through Western Union two thousand euro then my man will come on Sunday to you. I need to give him two thousand euros otherwise they won’t leave and I at the moment don’t have enough money with me otherwise it won’t be a problem”.

At 18:50 hrs on 12 April 2012 G.Y. sent an SMS to the Defendant wherein he stated:

“if you can send tomorrow, tell me now so I prepare everything.”

The SMS messages found logged within the phone book record frequent contact between G.Y. and the numbers the Trial Panel finds the Defendant was using. Those contacts began soon after the Defendant left the I. A.C.. The Defendant and G.Y. were patients in the clinic at the same time.

Throughout their communications the Defendant continually referred to G.Y. by the nick-name ‘xxx.’

The Defendant was deported from Germany.

At 08.45 hrs on 18 November 2011 the Defendant sent an sms to G.Y. he stated:

“Hello xxx, I have been in Kosovo for a week. Ciao, A.”

¹⁰⁷ Pre-Trial Testimony of the Defendant, Binder V, pp. 352

¹⁰⁸ Report dated 17 December 2013, page 7 (English version)

That SMS was sent one week after the defendant was deported from Germany.

At 11:56 hours on 19 November 2011 G. Y. sent an sms to the Defendant wherein he stated:

"I have your number, xxx."

Thereafter follows a number of SMS messages between the two with A.V. often referring to Y. by the same nick-name.

4. Arrest of D.K. and Search of his Apartment

Police subsequently searched the apartment of D.K. at Frankfurter Ring 136, Munich, Germany.

During the course of the search police seized a Nokia 5250 mobile phone and a SIM card with the telephone number xxx. This was the same number that D.K. had used to contact M.K..

ii. Counts 2 and 3

a. Telephonic Communications

These Counts arise from an investigation involving the defendant, F.B., O.B., L.Z. and R.A. culminating in the seizure on 10 June 2012 of three packets weighing 0.554, 0.546 and 0.336 kg respectively.¹⁰⁹ On examination¹¹⁰, the net weight of the powder was 1.293 kg of powder containing heroin, paracetamol and caffeine. The proportion of heroin found within the powder was 11%.

2- 25 April 2012

On 2 April 2012¹¹¹ at 19:57:52 hrs the Defendant (xxx) spoke with an unknown person (xxx)

"we're fucked up, now we have to wait until next week."

¹⁰⁹ total of some 1.436 kg

¹¹⁰ Report on Examination of Narcotics dated 04.12.2012, Binder II, pp. 312A-312F

¹¹¹ Binder IV, pp. 332-336

"...our bad luck, when he called me yesterday and said 'A., come outside somewhere in the street'..."

"...my brother is looking if he can do anything for tomorrow or day after tomorrow to send that by car."

"But I will find a solution, don't worry. If I cannot do anything on Monday, you will have there, I will do something."

It was the Prosecution case that during this communication the defendant was referring to the fact that couriers were unable to get through to Germany on buses due to a demonstration in Kosovo. Further, the Prosecution averred "that" was reference to drugs.

During this communication the defendant referred to himself by name "A."

On 10 April 2012¹¹² at 12:51:02 hrs an unknown person (xxx) spoke to the Defendant (xxx)

"no one wants to get it there...they are afraid. These shitty guys are checking them who are coming by bus, that's why they are scared. I really don't know whom to give it, damn, I have it here."

It was the Prosecution case that this conversation concerned the difficulty of importing drugs into Germany and that the defendant was frustrated that couriers were not able to transport the drugs by bus due to police checks and that he still had 'it' with him in Kosovo.

It was the Prosecution case that "it" referred to drugs.

On 22 April 2012 at 10:59:34 hrs¹¹³ the Defendant (xxx) sent an sms to an unknown person (xxx) wherein he stated:

"Buddy, tomorrow I will send it by car. How much money do you have with you now?"

On 24 April 2012 at 22:22:00 hrs¹¹⁴, O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

¹¹² Binder IV, pp. 336-340

¹¹³ Binder IV, pp. 355-356

“Tell me definitely how is going to be, if is going to be finished, is good, if not I cannot rely on you because it was taken too much time.”

On 25 April 2012 at 09:13:49¹¹⁵ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated:

“I will try to send it if I can find any person that will leave now...because too much time was blocked...hopefully the way toward you will open...”

6 May – 3 June 2012

Between 6 May and 25 May 2012 the Defendant (xxx) communicated with O.B. (xxx) regarding obtaining money.

On 17 May 2012 at 21:01:57¹¹⁶ O.B. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

“...now will work something and also I’ll look here. If you make five thousand then to give it to that one who will come.”

On 17 May 2012 at 21:07:58¹¹⁷ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

“Buddy, something happened here and we are without money, I cannot do anything; if you can make money would be good, because everything is stops here”

On 17 May 2012 at 21:12:14¹¹⁸ O.B. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

“Buddy, how much money do you need, and without his presence here I cannot give money, maybe I’ll take from someone before time but then, he must be here. Do you understand?”

On 17 May 2012 at 21:12:32¹¹⁹ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

“If you trust me buddy send me 10 thousand LEK...”

¹¹⁴ Binder IV, pp. 358-359

¹¹⁵ Binder IV, pp. 359-60

¹¹⁶ Binder IV, p. 368

¹¹⁷ Binder IV, p. 368

¹¹⁸ Binder IV, p. 370

¹¹⁹ Binder IV, p. 370

On 25 May 12 at 22:06:54 hrs¹²⁰, O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

"I have one thousand, nothing more."

On 25 May 2012 at 22:44:29 hrs¹²¹, the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

"do something, can you give when you arrive there, how much you can make it?"

On 25 May 2012 at 22:46:59 hrs¹²² O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

"Cousin, I'll give five thousand, just to know for sure when he will arrive."

It was the Prosecution case that O.B. was offering only €1,000 initially and later indicating that he would give €5,000 to the drugs courier upon his arrival in Munich.

On 26 May 2012 at 10:15:51 hrs¹²³ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

"..if you can make half the money then I can send it but you should give the money immediately. Can you make ten thousand or not, tell me?"

On 26 May 2012 at 14:12:35 hrs¹²⁴ O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

"I cannot prepare that much but finish deal with these five thousand immediately and for four days, I will give you the rest."

On 28 May 12 at 16:36:31 hrs¹²⁵ the Defendant (xxxx) sent an SMS to O.B. (xxx) wherein he stated

¹²⁰ Binder IV, p. 464

¹²¹ Binder IV, p. 465

¹²² Binder IV, p. 373

¹²³ Binder IV, p. 467

¹²⁴ Binder IV, p. 467

“My friend, if you could give ten thousand when the person comes there, I could send it to you..”

It was the Prosecution case that this was a clear request that O.B. should hand over €10,000 to the courier in return for the ‘it’ (meaning narcotics).

On 29 May 12 at 00:51:56 hrs¹²⁶ O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

“Ok buddy, I will give it to him when he comes.”

On 29 May 2012 at 00:53:00 hrs¹²⁷ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

“Ok, then I will try to send it to you ASAP.”

Again, it was the Prosecution case that ‘it’ was reference to drugs.

On 29 May 12 at 00:57:32 hrs¹²⁸ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

“...I finished work with my friend so we agree to send it to you if you have the money. Tomorrow, I will tell him that you will give the money and will try to send it to you as soon as possible...I will let you know when it will arrive to you..”

On 29 May 2012 at 20:13:42¹²⁹ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

“...will send it to you end of this week. In a few days I will tell you exactly when ok?”

On 30 May 2012 at 01:29:15 hrs¹³⁰ O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

¹²⁵ Binder IV, p.468

¹²⁶ Binder IV, p.469

¹²⁷ Binder IV, p. 470

¹²⁸ Binder IV, p. 470A

¹²⁹ Binder IV, p. 470A

¹³⁰ Binder IV, p 472

"...I will be waiting."

On 31 May 2012 at 10:59:42 hrs¹³¹ O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

"...whats up there in Kosova? I bet you are having a great time.."

On 31 May 2012 at 11:57:25 hrs¹³² the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated

"..dont worry my friend. Will finish that job."

On 1 June 2012 at 10:55¹³³ hrs, M.A. (using telephone number xxx) spoke with "S" (xxx).¹³⁴

Between 6 May 2012 and 4 June 2012¹³⁵, there was extensive contact between the Defendant and O.B..

M.A. was described by the defendant as his second Common Law wife. "Sh" is the sister of M.A..

4 June 2012

At 13:45:55 hrs¹³⁶, the Defendant (xxx) contacted O.B. (xxx) and told him *"a friend of mine will come there on Thursday...by car...do you have a place where he can park the car?...to have a place to enter for...you know it...get a new phone number...call that guy from your village, your relative...and give it to him...I'll get the number from him"*

It was the Prosecution case the defendant and O.B. were discussing finding a garage in Munich into which the car carrying the narcotics could be driven and unpacked secretly. The defendant instructed O.B. to get a new phone number and communicate to him the new number through someone from his family.

¹³¹ Binder IV, p. 473

¹³² Binder IV, p. 473

¹³³ CD of live interceptions

¹³⁴ Number registered in the name of B.A., PTK/IPKO Subscriber Report, Binder V, pp. 284-295

¹³⁵ Binder IV, pp. 361-390

¹³⁶ Binder IV, pp. 390-394

6 June 2012

At 14:57:27 hrs O.B. (xxx) spoke to the Defendant (xxx) and told him

“..I’ll take the number and then I’ll call you”

At 16:31:32 hrs¹³⁷ O.B. (xxx) spoke to the Defendant (xxx) and told him

“...in 20 minutes.” The Defendant replied “...you will see it then”

At 16:58:55 hrs¹³⁸ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated:

“buddy what are you doing, are you ok?”

This SMS was sent approximately 20 minutes after the last communication at 16:31 between O.B. and the defendant on a number xxx that the Trial Panel has found was in the possession and use of the defendant. The Trial Panel finds that the SMS at 16:58:55 was the exchange of the new telephone numbers between the Defendant and O.B..

The Trial Panel finds that mobile telephone number xxx was in the possession and use of O.B..

At 17:40:52 hrs¹³⁹ the Defendant (xxx) spoke with O.B. (xxx) and told him

“...we would like to send that guy, but we were thinking better to leave on Friday to arrive there in weekend, better to arrive on Saturday.

7 June 2012

At 12:20:30 hrs¹⁴⁰ the Defendant (xxx) spoke with O.B. (xxx) and told him

“I’ll call you later and tell you were to send the papers, because he is working until five o’clock and then send it to him in the evening”

It was the Prosecution case that “papers” was reference to money and that this communication concerned finding another person to whom they could send money through Western Union.

¹³⁷ Binder IV, pp. 405-407

¹³⁸ Binder IV, pp. 408

¹³⁹ Binder IV, pp. 410-413

¹⁴⁰ Binder IV, pp. 414-415

At 16:48:46 hrs¹⁴¹ the Defendant (xxx) spoke with O.B. (xxx) and told him

“Buddy, try to find someone to send them in Western Union tomorrow morning, because that friend cannot. Can you do this tomorrow morning?”

At 22:49:17 hrs¹⁴² the Defendant (xxx) spoke with O.B. (xxx) and told him

“Buddy, are you going to do that issue tomorrow morning, because we are ready”

At 22:53:30 hrs¹⁴³ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated:

“The name is M.A..”

It was the Prosecution case that this sms further linked the defendant with telephone number xxx. In that sms reference is made to M.A., the defendants’ common law wife. She was the intended recipient of the Western Union money transfer.

8 June 2012

At 16:05:06 hrs¹⁴⁴ O.B. (xxx) contacted L.Z. (xxx) and told him to bring the vehicle to him.

At 16:15:22 hrs¹⁴⁵ L.Z. (xxx) sent an sms to O.B. (xxx) wherein he stated:

“xxx”

At 16:20:53¹⁴⁶ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated:

“Buddy, at 17:00 hrs will be closed.”

It was the Prosecution case that these communications referred to the transfer of funds through Western Union. “xxx” was a Western Union reference number. The Western Union office would close at 17:00.

¹⁴¹ Binder IV, pp. 414-415

¹⁴² Binder IV, pp. 418-419

¹⁴³ Binder IV, pp. 421

¹⁴⁴ Binder IV, pp. 428-430

¹⁴⁵ Binder IV, pp. 430-431

¹⁴⁶ Binder IV, pp. 431

At 16:24:07 hrs¹⁴⁷ O.B. (xxx) contacted L.Z. (xxx) and asked him where he was. L.Z. replied *“on the way going to take the vehicle”*. O.B. asked him *“give me just that number”*. L.Z. replied *“I sent by SMS”*.

At 16:25:17 hrs¹⁴⁸ O.B. (xxx) sent an sms to the Defendant (xxx) wherein he stated:

“xxx L.Z..”

It was the Prosecution case that these communications between the defendant, O.B. and L.Z. related to the fact that O.B. had sent L.Z. to the Western Union office in order for him to send money to Kosovo for the defendant. O.B. then sent the defendant the transaction number and the name of the person sending the money.

At 17:15:10 hrs¹⁴⁹ the Defendant (xxx0) spoke with O.B. (xxx) and expressed his irritation that he had been unable to collect the money and pay the *“mechanic”*.

At 22:28:39 hrs¹⁵⁰ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated

“I am with this friend of mine, who you called tonight, we couldn’t send it to the maintenance guy, will fix it tomorrow morning, then on Sunday morning there...”

Pursuant to an order for disclosure of financial data, Financial Union disclosed documentation that confirmed that on 8 June 2012 a money transfer in the sum of 1,900 Euros was made through Western Union from L.Z. to M.A.. The ‘MTCN’¹⁵¹ number of the transfer was xxx.¹⁵²

9 June 2012

At 17:02:05 hrs¹⁵³ the Defendant (xxx) spoke with O.B. (xxx) and said

“I just sent that friend of mine to go to your friend. He just left...the place has to be prepared for tomorrow...keep your phone on”

¹⁴⁷ Binder IV, pp. 432-433

¹⁴⁸ Binder IV, pp. 434

¹⁴⁹ Binder IV, pp. 435-437

¹⁵⁰ Binder IV, pp. 438-439

¹⁵¹

¹⁵² Binder V pages 302, 303 and 310, 311

¹⁵³ Binder IV, pp. 445-447

At 17:26:21 hrs¹⁵⁴ O.B. (xxx) spoke with L.Z. (xxx) and told him to tell the “P.” and the “Albanians” to remove their vehicles from the garage.

At 18:18:12 hrs¹⁵⁵, L.Z. (xxx) spoke with O.B. (xxx) and they discussed removing vehicles from the garage and blocking the front entrance.

10 June 2012

At 09:42:41 hrs¹⁵⁶ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated:

“...are you up my friend. Another two hours I believe I can call you.”

Thereafter, a series of sms messages were exchanged between the defendant and R.A. who the Prosecution aver was driving towards the rendezvous point.

At 13:06:53 hrs¹⁵⁷ the Defendant (xxx) sent an SMS to O.B. (xxx) wherein he stated:

“Come out by the place.”

At 13:07:11 hrs¹⁵⁸ the Defendant (xxx) spoke with O.B. (xxx) wherein he stated:

“are you coming to the seventh”

O.B. replied that he was. The Defendant then said

“one with Serbian number plates...he is a friend of mine, take care of him, bye.”

It was the Prosecution case that this was reference to the car driven by R.A. in which the drugs were seized. That vehicle bore Serbian registration plates, XXX. R.A. was heading towards xxx, Karlsfeld, in order to meet up with L.Z. and O.B. in order to take the car to a garage where it could be unloaded of the consignment of narcotics. Reference to “the seventh” was reference to the address, Munchen xxx.

At 13:08:15 hrs¹⁵⁹ O.B. (xxx) spoke with L.Z. (xxx) and asked him where he was.

¹⁵⁴ Binder IV, pp. 447-490

¹⁵⁵ Binder IV, pp. 451-452

¹⁵⁶ Binder IV, pp. 452-453

¹⁵⁷ Binder IV, pp. 454

¹⁵⁸ Binder IV, pp. 455-457

The Surveillance Report¹⁶⁰ records that at 12:47 hrs, L.Z. left a building known as Zweigstrasse 1 and went to a garage at the same address where he opened the shutter, looked inside and then closed it. He subsequently left the address on a bicycle and went to xxxx in Karlsfeld. At 13:13 hrs, he approached an Opel Astra vehicle of metallic colour with Serbian registration plates XXX at xxx, Karlsfeld. When he returned on his bicycle at 13:15 hrs, he was followed by the Opel Astra that was driven by R.A.. O.B. then left xxx and spoke to R.A.. At 13:18 hrs, R.A. drove the car into the garage. All three entered the garage.

At 13:25, O.B., L.Z. and R.A. were arrested by the German Police.

At 13:26:00 hrs¹⁶¹ the Defendant (xxx) sent an sms to O.B. (xxx) wherein he stated:

"call me when he comes."

There was no response from O.B. because he was in custody.

b. Searches and Arrests

i. Arrest of R.A., O.B. and L.Z. and subsequent searches

The Opel Astra, registration number XXX driven by R.A. was seized by Police on 10 June 2012. During the subsequent search of the said vehicle police found hidden behind the dashboard three packages wrapped in black tape and containing powder¹⁶². Two notes were found in the car. On one was written the address 'xxx, Karlsfeld Rothschaige'. On the other was written the telephone number 'xxx'. This was a number used by O.B..

On examination, the three packets were found to have a gross weight of 0.554, 0.546 and 0.336 kg respectively, thus a total of 1.436 kg. On analysis¹⁶³, the net weight of the powder was 1.293

¹⁵⁹ Binder IV, pp. 458-459

¹⁶⁰ Report on Surveillance Activities of 10.06.2012, dated 13.06.2012, Binder II, pp. 366-369

¹⁶¹ Binder IV, pp. 459

¹⁶² Case Record Regarding the Search of Opel Vehicle dated 10.06.2012 Binder II, pp. 313-324; Photograph Album of Vehicle and Narcotics dated 14.06.2012, Binder II, pp.287-311

¹⁶³ Report on Examination of Narcotics dated 04.12.2012, Binder II, pp. 312A-312F

kg and was found to contain heroin, paracetamol and caffeine. The proportion of the heroin found within the powder was 11%.

Motorway toll documentation and the data recovered from R.A.'s passport indicated that the vehicle and the driver had left Serbia on 9 June 2012 and that the car had crossed the frontier between Serbia and Hungary just after midnight on 10 June 2012.

Two mobile phones were recovered from the Opel Astra motor vehicle;¹⁶⁴

- a. Cell phone Nokia 1616 (IMEI: xxx) with IPKO SIM card number xxx. On examination, the handset had stored in it three numbers. Number xxx under the name 'H.'.
- b. Cell phone Nokia 5000d (IMEI: xxx) with Telenor SIM card number xxx. Under number xxx was the name 'Sh.A..' and the number xxx¹⁶⁵. The Court-appointed expert found a "high probability" of a match with the defendants' voice when analyzing a recording of a telephone intercept by a person using this number.¹⁶⁶

(ii) Arrest of O.B. and the subsequent searches

O.B. was arrested on 10 June 2012

When he was arrested O.B. was found to be in possession of cash in the sum of 9,940 Euros.

During a subsequent search of his premises at xxx, Police seized an envelope with an invoice from Western Union for 1,000 Euros in the name of L.Z.. Police also seized a flight ticket dated 1 April 2012 from Tirana to Munich.¹⁶⁷

¹⁶⁴ Evidence Evaluation R.A. dated 14.08.2012 Binder II, pp.325-330, 338-344 and adjoining Report dated 31.10.2012, pp. 331-337, 345-351

¹⁶⁵ There is an error in translation. The English version refers to xxx. The German original version refers to xxx

¹⁶⁶ Report dated 17 December 2013, page 7 (English version)

¹⁶⁷ Statement of Seizure O.B. dated 10.06.2012, Binder II, pp. 374-381

During the course of that search police seized a number of mobile telephones. An examination of the telephones showed extensive communication between O.B. and the Defendant in the days leading up to his arrest on 10 June 2012.¹⁶⁸

Police also searched a BMW motor vehicle registration number xxx during which they seized a Nokia 1800 mobile phone number xxx¹⁶⁹. In the address book of that phone were recovered two contacts that link the user of the phone with the Defendant. One number was listed under the name 'Sh.' with the number xxx. The Trial Panel has found that this was a number used by the Defendant. This number was also found in the phones seized from G.Y. and M.K.. A second listing was under the name 'Sh. K.' with the number xxx. The Trial Panel has found that this was a number used by the Defendant.

During the search of his premises¹⁷⁰ police seized a Mobistel Elson EL 600 dual SIM phone with two SIM cards in it.¹⁷¹ In the memory of the said mobile telephone and within the contacts recorded on an O2 SIM card with telephone number xxxx, a number of contacts were found, one being under 'Q.II.' with the telephone number xxx. The Trial Panel has found that this was a number used by the Defendant. Investigators also found listed two telephone numbers - xxx under the name 'M.O2' and xxx under the name "M. O2" - that were telephone numbers the Trial Panel has found were in the possession and use of L.Z..

Police also seized a Sony Ericsson X10 with SIM card xxx.¹⁷² This was the telephone number that had been in contact with xxx. The Trial Panel has found that xxx was a number used by the Defendant. Various contacts were listed in the handset/SIM card, including the name 'Xxx I.' with the number xxx. Telephone number xxx was also registered in the handset/SIM card under the name 'M O2'. The Trial Panel has found that this was a telephone number used by L.Z..

¹⁶⁸ Examination of Items of B.O. dated 25.07.2012, Binder II, pp. 382-407

¹⁶⁹ Ibid., pp. 382-3, 395-6

¹⁷⁰ Ibid., pp. 384-394, 395-407

¹⁷¹ Ibid, p. 384

¹⁷² Ibid, p. 386

(iii) Arrest of L.Z. and subsequent searches

L.Z. was arrested on 10 June 2012.

A mobile telephone and SIM cards were seized in the possession of L.Z..¹⁷³ The telephone handset was a Nokia 1616 with a SIM card numbered xxx. This was a telephone number on which he had frequent contact with O.B. (xxxx). It was also found stored on O.B.'s other O2 SIM card (xxx). A second, Vodafone, SIM card number xxx was also seized. An examination of this SIM card showed that this card had been used to contact xxx¹⁷⁴. That is a telephone number the Trial Panel has found was used by the Defendant.

(iv) Arrest of the defendant

The defendant was arrested on 23 January 2013.

On 20 May 2012 the defendant (xxx) spoke with 'F' (xxx) and during that conversation stated

*"my address is xxx"*¹⁷⁵

The Defendant was arrested on 23 January 2013 in his apartment at xxx, Prishtina. The district of xxx was formerly known as xxx.

This evidence supports the Trial Panels finding that xxx was a telephone number in the possession and use of the defendant.

iii. Investigation Involving the defendant and F.F. alias 'F'

It was the prosecution case that one F.F., alias 'F', was also involved in the criminal enterprise. Specifically, it was alleged that F.F. was an intended recipient of the drugs imported by the Defendant.

¹⁷³ Examination of Exhibits for L.Z., Binder II, pp. 408-427

¹⁷⁴ SMS on 2 May 2012 at 12:40 hrs

¹⁷⁵ Binder V, page 8

During the interception of mobile telephone number xxx, that the Trial Panel has found was in the possession and use of the Defendant, the Defendant was in communication with telephone number xxx. The Trial Panel finds that telephone number was registered in the name of F.F..¹⁷⁶

At 11:35:09 hrs on 23 May 2012¹⁷⁷, F.F. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

"It's me, F.."

At 17:35:11 hrs on 25 May 2012¹⁷⁸ F.F. (xxx) spoke with the Defendant (xxx) and said

"...It does not look good with the papers...before the first, I hope the transport will take part. Two days later I can pay. I will call you later when I know more about.."

It was the Prosecution case that in this communication F.F. was referring to the fact that he was struggling to obtain money ("*papers*") but that he wanted a shipment of narcotics to be delivered to him before the 1st of the month.

At 15:22:31 hrs¹⁷⁹ on 2 June 2012 F.F. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

"What's going on? Can I count on you? I need a date very urgent. F.."

At 15:24:39 hrs¹⁸⁰ on 2 June 2012 the Defendant (xxx) sent an SMS to F.F. (xxx) wherein he stated

"have you done nothing?"

At 16:44:48 hrs¹⁸¹ on 2 June 2012 the Defendant (xxx) sent an SMS to F.F. (xxx) wherein he stated

"you have to send money. Do you have nothing?"

¹⁷⁶

¹⁷⁷ Binder IV, p. 461

¹⁷⁸ Binder IV, p. 461

¹⁷⁹ Binder IV, p. 479

¹⁸⁰ Binder IV, p. 479

¹⁸¹ Binder IV, p. 480

At 16:46:49 hrs¹⁸² on 2 June 2012 F.F. (xxx) sent an SMS to the Defendant (xxx) wherein he stated

“no, sorry nothing. A friend is helping me that I can just survive.”

During these telephone conversations with F.F. the defendant was using xxx which was the number that M.A. had used to contact her sister when she was living with the defendant.

iv. Witness Testimony

M. L., Criminal investigator, Munich, Federal Republic of Germany formerly a EULEX Police Officer in the Organised Crime Investigation Unit, gave evidence before the trial panel on 11 December 2013. This evidence was given via videolink from a courthouse in Germany.

Officer L. confirmed that he was employed with EULEX between February 2012 and February 2013 and in that time was a team leader with the Investigative Unit of the OCIU. Officer L. confirmed that since the investigation had commenced in Germany and was transferred to Kosovo that he was tasked with negotiating with the authorities in Bavaria, that he was in charge of the reports issued by the Bavarian police and that he was in charge of the filing and translation of the investigation in Kosovo.

Officer L. further confirmed that, pursuant to information received from Germany, certain telephone numbers were believed to be pertinent to the allegations. This information precipitated the opening of an investigation by the SPRK, and thereafter orders were sought from, and granted by, the pre-trial Judge directing covert measures against the defendant. Officer L. confirmed to the trial panel that the OCIU were involved in the investigation of the allegations involving the defendant from May 2012 until his arrest.

Officer L. also confirmed to the Trial Panel that the defendant was arrested on 23 January 2013 at his address and both OCIU (including Officer L.) and the Kosovo Police were present.

¹⁸² Binder IV, p. 481

Officer L. confirmed that it was shortly after this point that he left the mission, but, before doing so, he issued a final report for the investigation in order that his successor, Officer S., could continue the investigation.

Officer L. confirmed his eventual date of departure from the Mission as 13 February 2013.

Counsel for the defendant objected to the testimony of the witness as being unreliable by virtue of the fact that the witness was a police officer.

The Trial Panel noted that such an objection, based on the supposition that a police witness is a party to the proceedings, by implication has a vested interest in the outcome, and therefore – by further implication - has a motivation to fabricate evidence is one that is unsupported by any evidence, and is therefore a mere assertion which does not merit serious consideration by the Trial Panel.

The Trial Panel found Officer L. to be a credible witness who gave reliable evidence.

A. S., Criminal Investigator, Republic of Turkey, seconded as EULEX Police Officer, Organised Crime Investigation, gave evidence on 4 December 2013.

Officer S. joined the investigation against the defendant in the second half of June 2012, and from that time he was one of the 'responsible officers' in the case under Officer L..

Officer S. confirmed that he was tasked with applying for, implementing and analysing evidence obtained pursuant to various covert measures.

He confirmed that upon taking up his role he examined all of the previous covert measures orders that had been made in the case and in particular an Order made on 16 May 2012, referring to two telephone numbers (ending xxx, and xxx). He confirmed that the order for telephone -xxx was recorded on compact discs.

It was confirmed that Officer S. joined the investigation after the arrests of 10 June 2012 had taken place in Germany and therefore his evidence touched upon documents that he saw subsequent to his arrival and actions taken by him that arose from that documentation.

Evidence relating to text (SMS) messages was put to Officer S.

Officer S. confirmed that he was present when the defendant was arrested at an address that had been identified during telephonic communications between the defendant and another person.

The defendant's address was searched by an OCIU/KP team. Present was the defendant, his two daughters, his partner Z. V. and M.A..

Officer S. was not cross-examined by defence counsel for the reasons cited above in relation to Officer L..

v. Statements

a. Defendant

On 15 May 2013, the defendant was interviewed by the Prosecutor¹⁸³. Various telephone numbers were put to him and a number of interceptions were played to him. He denied that his was the voice recorded during the telephone intercepts.

He was interviewed again on 30 May 2013¹⁸⁴. During that interview he was played the interception of a telephonic communication at 10:55 on 1 June 2012 and he was asked if he recognized the two female voices that can be heard speaking. The Defendant identified the voices recorded as those of M.A. whom he said was his second common-law wife and that of her younger sister Sh.

The Defendant refused to sign the record of that interview.

¹⁸³ Record of Suspect Hearing 15 May 2013 Binder V, pp. 316-330

¹⁸⁴ Record of Suspect Hearing 30 May 2013 Binder V, pp. 345-358

F. FINDINGS ON THE RESPONSIBILITY OF THE ACCUSED

The Defendant was charged for his part in organizing and participating in the purchase, sale transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany through other European countries of 1.49 kgs of heroin seized on 20 February 2012 and a further 1.43 kgs of heroin seized on 10 June 2012.

Police in Germany conducted an operation to identify and, ultimately, arrest the alleged traffickers.

During the course of their investigations police identified the defendant. Thereafter, police monitored his activities by means of telephone interceptions in Germany and in Kosovo and undertook surveillance of various suspects.

The defendant was arrested in Kosovo on 23 January 2013.

The prosecution case rested substantially on telephone interception evidence. Much of that evidence had been received from the relevant authorities in the Federal Republic of Germany in response to requests for International Legal Assistance. The Trial Panel found those requests lawful and the evidence obtained properly admissible before the Court.

The Trial Panel does not propose repeating here all of the factual findings to which it has referred herein and which form part of its' findings on the responsibility of the defendant.

During the police investigation a number of suspects were arrested in Germany. L.G., M. K, D.K. and R.A. were charged with drugs offences. L.G., M.K. and D.K. were convicted of offences relating to the seizure of heroin on 20 February 2012. R.A., O.B. and L.Z. were convicted for offences relating to the seizure of heroin on 10 June 2012.

It was the prosecution case the Defendant was at the centre of a well-structured criminal organisation that was responsible for exporting heroin from Kosovo and importing the drug into Germany on two specific dates by using different intermediaries, dealers and users who were based in Munich, Germany.

When he gave evidence before this court the Defendant said he did not know L. (L.) G, D.K., O.B. and R.A.. He said he knew G.Y. and that he was a friend although he said he had not spoken to him since his return to Kosovo. He said M.K. is his brother-in-law but that he had never spoken with him or met him. That was a lie. The telephonic evidence upon which the Prosecution relied proved that the defendant was in telephonic communication with O.B., G.Y., R.A. and M.K..

Between 1 January 2012 and 21 February 2012 the Defendant, M.K., O.B., L.G., Y.G. and D.K. were in regular contact with each other.

On 20 February 2012 M.K. and D.K. were arrested by German police in xxx, Germany. M.K. was driving a Toyota Corolla vehicle registration number xxx in which D.K. was being carried. The Said Toyota motor vehicle was registered in the name of the Defendants' mother, S.V..

During the subsequent search of the motor vehicle police seized three wrapped packages that contained approximately 1.49 kgs of heroin.

The defendant had previously arranged for M.K., the fiancé of his sister, A.V., to recruit D.K. who in turn, acted as the person who was dropped off by car by M.K., took possession of the narcotics from L.G. and then returned with them before handing them over to M.K..

During an intercepted telephone conversation with O.B. following the arrest of M.K. the defendant stated “...*if the family members understand that I have sent him, catastrophe.*”

Thereafter the defendant had a three-way conversation with his father, T.V., and his sister A.V. during which they referred to each other by their first names. The Defendants' father asked him about the arrest of M.K..

In the days and weeks prior to the arrests of M.K., D.K. and L.G. on 20 February 2012, the defendant primarily used four¹⁸⁵ mobile telephone numbers to liaise with other members of the criminal group.

¹⁸⁵ xxx, xxx, xxx and xxx

During the search of the Toyota Corolla motor vehicle driven by M.K. and in which D.K. was being carried police seized two mobile telephone handsets. The Trial Panel finds that those mobile telephones were in the possession and use of M.K.. Three¹⁸⁶ of the four numbers that had been used by the defendant in the weeks leading up to the arrests on 20 February 2012 were recovered from the memory of one telephone. In the second telephone, three¹⁸⁷ of the numbers used by the defendant were recovered. Each number was assigned a nickname.

G.Y. was arrested on 9 May 2012. A mobile telephone in his possession was examined and found to contain some of the same telephone numbers that were found in the mobile telephones in the possession of M.K. when he was arrested. Telephone number xxx was listed under the name 'A'. The telephone number xxx was also listed under the name 'A'. The telephone number xxx was listed under the name 'A.2'. The telephone number xxx was listed under the name 'A'. In addition, a SIM card seized from G.Y. listed two contacts. The first xxx was listed under the name 'A'. The second number xxx was listed under the name 'A'.

From April 2012, there was a period of extensive telephonic communications between the defendant and O.B. from which it is evident that they were trying to arrange a further narcotics delivery.

The Defendant was primarily using telephone numbers xxx and xxx. The Defendant is linked to these numbers by M.A., his second Common Law wife.

On 6 June 2012 the Defendant and O.B. discussed how money could be transferred from Germany to Kosovo via Western Union. On 7 June 2012, using telephone number xxx, the Defendant sent an SMS to O.B. in which he stated "*The name is M.A.*"

On 8 June 2012 L.Z. sent an sms to O.B. wherein he stated "xxx"

The financial data records show that on 8 June 2012 a Western Union money transfer in the sum of 1,900 Euros was sent from L.Z. to M.A.. The money transfer number was xxx.

¹⁸⁶ xxx, xxx and xxx

¹⁸⁷ xxx, xxx and xxx

Telephone number xxx had been used by the Defendant to discuss the delivery of drugs. On 1 June 2012 M.A. used that telephone number to speak with her sister Sh.A.. When he was interviewed on 30 May 2013 the Defendant identified the voice on the recorded intercept as that of M.A.. The number called by M.A. was registered to B.A., the father of M.A. and Sh. When the Defendant was arrested on 23 January 2013 M.A. was found in his apartment. The Defendant made these factual admissions at trial¹⁸⁸.

Telephone numbers xxx and xxx were used by the Defendant to liaise with other members of the criminal group to ensure that L.Z. and O.B. were able to guide the courier R.A. to an address xxx, Karlsfeld.

The surveillance evidence records L.Z. going to that address by bicycle and thereafter leading the Opel Astra motor vehicle registration number XXX driven by R.A. to an address in xxx where O.B. was waiting. L.Z., R.A. and O.B. were arrested on 10 June 2012. The Opel Astra motor vehicle was searched and 1.43kgs of heroin seized.

During a search of the Opel Astra police seized two mobile telephones.

In the memory of one, under the name 'Sh. A', was recorded the number xxx. This was the same number that had been recorded in the mobile telephones of G.Y. and M.K.. It was the same number that the Defendant had used on 20 February 2012 to speak to his sister, his father and O.B.. Indeed, on 20 May 2012 a male whom the prosecution averred was the defendant using telephone number xxx stated "*my address is xxx*"¹⁸⁹ That was the address at which the defendant was arrested on 23 January 2013.

During that search police seized a number of mobile telephones. An examination of the telephones showed extensive communication between the Defendant and O.B. in the days leading up to his arrest on 10 June 2012.¹⁹⁰

Police also searched a BMW motor vehicle registration number DAH-AL 12 in the possession and use of O.B. during which they seized a Nokia 1800 mobile phone number xxx¹⁹¹. In the

¹⁸⁸ Minutes of 8 January 2014

¹⁸⁹ Binder V, page 8

¹⁹⁰ Examination of Items of O.B. dated 25 July 2012, Binder II, pp. 382-407

address book of that phone were recovered telephone numbers xxxx and xxx. The Trial Panel has found that these were telephone numbers used by the Defendant.

During the search of his premises¹⁹² police seized a Mobistel Elson EL 600 dual SIM phone with two SIM cards in it.¹⁹³ In the memory of the said mobile telephone and within the contacts recorded on an O2 SIM card with telephone number xxx, a number of contacts were found, one being under 'xxx L' with the telephone number xxx. The Trial Panel has found that this was a number used by the Defendant. Investigators also found listed two telephone numbers - xxx under the name 'M.O' and xxx under the name "M.2' - that were telephone numbers the Trial Panel has found were in the possession and use of L.Z..

Police also seized a Sony Ericsson X10 with SIM card xxx.¹⁹⁴ This was the telephone number that had been in contact with xxx. The Trial Panel has found that xxx was a number used by the Defendant. Various contacts were listed in the handset/SIM card, including the name 'xxx I' with the number xxx. Telephone number xxxx was also registered in the handset/SIM card under the name 'M.'. The Trial Panel has found that this was a telephone number used by L.Z..

When L.Z. was arrested his mobile telephone was examined and found to contain evidence of SMS communications with xxx.

The defendant was charged with Organised Crime under Article 274 paragraphs 1, 2 and 3 of the CCK.

Under Article 274 "organized crime" means a serious crime committed by a structured group in order to obtain directly or indirectly a financial or other material benefit.

Article 274 paragraph 7, sub-paragraph 2 uses the term "organized criminal group" in reference to a 'structured group' that (i) exists for a period of time; (ii) acts in concert; (iii) with the aim of committing one or more serious crimes; (iv) in order to obtain directly or indirectly a financial or other benefit.

¹⁹¹ Ibid., pp. 382-3, 395-6

¹⁹² Ibid., pp. 384-394, 395-407

¹⁹³ Ibid, p. 384

¹⁹⁴ Ibid, p. 386

The term “serious crime” means an offence punishable by imprisonment of at least four years.

The term “structured group” means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its’ members, continuity of membership or a developed structure.

The defendant was convicted for his part in two counts of Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, in violation of Article 229, paragraph 3 of the Criminal Code of Kosovo.¹⁹⁵

The offences were committed during the period 1 January – 10 June 2012. The Trial Panel has found that the group was active during that period.

The Trial Panel found that the offence charged under Count 1 was committed by the defendant as a member of an organized criminal group that included M.K., D.K. and L.G., O.B. and G.Y.. The Trial Panel found that the offence under Count 2 was committed by the defendant as a member of an organized criminal group that included R.A., O.B. and L.Z.. In respect of both counts the defendant was a member of a group that included three or more persons. Further, continuity of membership is not required. The group existed for the purpose of purchasing, selling, transporting, delivering, exporting from Kosovo and importing into the Federal Republic of Germany through other countries in Europe dangerous narcotic drugs and psychotropic substances.

The Trial Panel found that the defendant organized, supervised and managed the activities of the criminal group. It is clear on the face of the telephone interceptions that the defendant contacted the members of the criminal group, informing them of the date and means of arrival of shipments of drugs, directed their roles and activities and, following the arrests in February instructed other members of the group to switch SIM cards in their mobile telephones.

In terms of the quantity of drugs, on 20 February 2012 police in the Federal Republic of Germany seized 1.496 kgs of heroin. On 10 June 2012 police seized 1.436 kgs of heroin. The

¹⁹⁵ *Corresponding to Articles 273 and 279 of the Criminal Code of the Republic of Kosovo, Law 04/L-082 of 2012 (new code)*

Trial Panel finds that these were large commercial quantities. The defendant was convicted of two counts under Article 229 paragraph 3 of the CCK for his part in the commission of serious crimes. Those offences were committed in order to obtain a financial benefit.

Information obtained from banks in Kosovo disclosed no bank accounts in the defendants' name. However, it would be somewhat fanciful to suggest that the defendant was importing large quantities of heroin into Germany without his obtaining a financial benefit. Indeed, on 18 February 2012 the Defendant instructed M.K. to go to Aubing the next day and to collect some "things" that he should then take to Karlsfeld. He told M.K. that he would receive for himself 300 Euros from a young man and a further 2,000 Euros that was for the Defendant. There was also the evidence of a Western Union money transfer that L.Z. had sent in the name of the defendants' common law wife M.A..

The Trial Panel found that F.F. was an intended recipient of a consignment of drugs. However, the Trial Panel did not find that he was part of the organized criminal group.

The Trial Panel found proved to the required standard the elements of Article 229 paragraphs 1, 2 and 3 and that are implicit in the offence of 'trafficking' under paragraph 3 of the said Article. Trafficking is distinct from 'smuggling' which is the secret cross-border transportation of drugs. Smuggling is an ingredient of trafficking. However, trafficking also includes the cross-border export and import, purchase, control, possession with the intent to sell or distribute, sale or offering for sale controlled substances. Paragraph 4 of Article 229 is subsumed in Article 274.

Therefore, the Trial Panel found that the defendant has committed the criminal offence of organized crime, in violation to Article 274, par 1 and 3 in conjunction to Article 229, par 3 of the CCK because between 1 January and 10 June 2012, the Defendant, on the territory of Kosovo, organized and participated in the purchase, possession, sale, transportation, delivery, exportation from Kosovo and importation into the Federal Republic of Germany of two shipments of heroin, specifically, 1.496 kg of heroin seized on 20 February 2012 in Munich, Federal Republic of Germany¹⁹⁶, from a Toyota Corolla motor vehicle registration number EBE-A-2389 driven by M.K. in which D.K. was being carried and 1.436 kg of heroin seized on 10 June

¹⁹⁶ Count 1

2012 in Munich, Federal Republic of Germany¹⁹⁷, from an Opel Astra motor vehicle registration number XXX driven by R.A. and found in the possession of R.A., O.B. and L.Z.; within a structured group together with L.G., M.K., D.K., G.Y., O.B., L.Z., R.A. and other unidentified co-perpetrators; actively participating in the criminal group; and organising, establishing, supervising, managing and directing the activities of the said group; in order to obtain, directly or indirectly, a financial or other material benefit.

G. SENTENCING

The Trial Panel, prior to addressing precisely the penalty to be imposed in relation to V. and prior to determining the aggravating and mitigating factors in this case, must pay careful regard to decisions of both the Supreme Court of Kosovo, and latterly, the Court of Appeal in relation to cases where an accused person has been convicted of organised crime.

Sentencing on the Organised Crime count

The cases of **S.A. and others** (Supreme Court of Kosovo, decision of 02 October 2012)ⁱ and **J.P.** (Kosovo Court of Appeals, decision of 22 October 2013)ⁱⁱ appear to the trial panel to establish the following propositions:-

- a. That a conviction for the offence of organised crime requires proof of the commission of an 'underlying crime'.
- b. That the commission of the underlying crime is a constituent part of the offence of organised crime.
- c. That the primary offence, therefore, is one of organised crime.
- d. That to permit a sentence to be structured otherwise would be tantamount to double penalization.ⁱⁱⁱ

¹⁹⁷ Count 2

- e. That, in structuring a sentence for organised crime, the sentence should be imposed on that offence, committed in conjunction with other offences.
- f. That a single sentence for organised crime should be imposed^{iv}.

The trial panel in this case therefore propose to proceed to sentence V. to a term of imprisonment for the offence of organised crime in violation of Article 274, paragraphs 1, and 3 of the CCK, committed in conjunction with two offences of the unauthorised purchase, possession, distribution and sale of dangerous narcotic substances in violation of Article 229, paragraph 3 of the CCK. The Court will therefore impose one sentence only, on the organised crime count, and therefore any issues of sentence aggregation do not arise in this case.

The structure of the sentence.

1. Firstly the court considers it appropriate to determine where on the range of seriousness for the offence the conduct of the defendant stands.
2. The Trial Panel will then identify the aggravating factors, factors which are relevant but might be treated as 'neutral' in terms of sentence and then identify mitigating factors. The Court will then weigh up the factors and arrive at the sentence to be imposed.
3. The Trial panel notes that there are three counts on the Indictment, and that the Accused has been found guilty on the organised crime count.
4. The Trial Panel notes that the offence of participating actively in an organised crime group is a serious offence in the Republic of Kosovo. Under Article 274 paragraph 3 the Court may impose a term of imprisonment of between seven (7) and twenty (20) years, together with a fine of up to €500.000. Accordingly the Trial Panel has a very broad discretion as to the appropriate penalty to be imposed.
5. The Trial Panel has referred herein its' factual findings on the responsibility of the defendant.

Before proceeding to indicate the notional sentence this crime should attract, the Trial Panel

considers it appropriate to identify the aggravating factors that are present in this case:-

1. Firstly, the Trial Panel found that the defendant organized, supervised and managed the activities of the criminal group. This factor is highly significant in determining his culpability.
2. The Trial Panel also considers the quantity of drugs seized, namely 1.496 kgs of heroin and 1.436 kgs of heroin respectively, are large, 'wholesale' quantities. The ability to arrange for the supply and distribution of wholesale amounts of heroin clearly suggests the Defendant was quite far up the hierarchy in this regard too and the Court views the quantity of drugs seized as being an aggravating factor in terms of the organised crime count.
3. That the offences were committed in order to obtain a financial benefit is undoubtedly an aggravating factor, and suggests an absence of any compulsion e.g to feed a drug habit of his own, that might perhaps neutralize (at least in part) the financial incentives to commit the offence.

Factors which neither aggravate nor mitigate the penalty:

4. In terms of the previous convictions of the Accused, the Court is of the view that they do not, in themselves, amount to an aggravating circumstance in the case. They are however - of course - relevant, once they are properly admitted as evidence before the Court. In this case the Trial Panel express the view that the fact the accused was previously convicted in Germany for the commission of narcotics offences is highly significant and serves to neutralize almost entirely any mitigation that the defendant might claim he is entitled to in this case. Therefore, the greater the number of previous convictions, the greater cumulative loss of mitigation.
5. The Court similarly notes that an accused is entitled to fully test the evidence against them and run their case in the way that they wish (once it does not amount to an abuse of process) and that a plea of not guilty is something an accused person will never be punished for. It does, however, neutralise a portion of the mitigation an

accused might otherwise be entitled to e.g by demonstrating remorse, saving Court time etc.

The Court however identifies the following mitigating factor in this case:-

1. The defendant is married with three children and they will be deprived of the society of their father for some time to come.

The Trial Panel believes that taking into account the aggravating factors, the loss of mitigation for the reasons recited above and the decidedly less weighty mitigating factors, that the correct sentence that the defendant should accordingly be sentenced to ten (10) years imprisonment.

That sentence shall be backdated to the date the defendant was remanded in custody, namely 23 January 2013.

The Accused is also fined €20,000 in light of the gravity of the offence and because of the finding of the Court that he was undoubtedly engaged in this activity for profit and levies costs on him in the sum of €4.600. These costs are levied in circumstances where, through his Counsel, the Defendant denied that voices on the interceptions were his and the Court determined that, in the interests of justice, an expert should be appointed ex-officio to consider this contention. Since the expert has reached the conclusion he has the defendant is liable for these costs also.

For the reasons stated herein, the Trial Panel finds as in the enacting clause of this Judgment.

Judge Malcolm Simmons

Presiding Judge

Judge Franciska Fiser
Panel Member

Judge Faik Hoxha
Panel Member

Sonila Macneil
Recording Officer

LEGAL REMEDY: Authorized persons may file an appeal in writing against this Judgment to the Appeals Court of Kosovo through the Basic Court of Prishtine/Pristina within fifteen (15) days from the date the copy of the Judgment has been received, pursuant to Article 380 (1) CPC.

ANNEX I

Witnesses

Vive Voce

A. Expert Witnesses

Paul B. of Audio Forensic Services

B. Expert Evidence

Report dated 18 December 2013 of Paul B., Audio Forensic Services

C. Witnesses of Fact

1. **M.L.**, Criminal investigator, Munich, Federal Republic of Germany, formerly EULEX Police officer, Organised Crime Investigation Unit (OCIU);
2. **A.S.**, Criminal investigator, Republic of Turkey, seconded as EULEX Police officer, Organised Crime Investigation Unit (OCIU);

ANNEX II

All Orders from the Court and the Prosecutor and related reports, including:

Binder VI, Orders and Applications Volume I:

Ruling on Initiation of Investigation dated 11 May 2012, pages 1 – 8

Letter of Entrustment dated 11 May 2012, pages 9 – 16

Order for Interception dated 16 May 2012, pages 29 – 35

Orders to Carriers (Ipko, Vala, Z-Mobile), pages 36 – 41

Order for Covert Measures dated 19 June 2012, pages 55 - 81

Ruling on Expansion of Investigation dated 26 June 2012, pages 82 – 94

Order for Covert Measures dated 26 June 2012, pages 117 -144

Order for Covert Measures dated 16 July 2012, pages 210 – 218

Order for Covert Measures dated 1 August 2012, pages 219 – 224

Order for Covert Measures dated 2 August 2012, pages 240 – 255

Ruling dated 2 August 2012, pages 272 – 276

Order dated 6 August 2012, pages 277 – 294

Order dated 26 June 2012, pages 314 - 330

Ruling on Prosecution Appeal dated 23 August 2012, pages 343 – 352

Order for Covert Measures dated 7 September 2012, pages 367 – 375

Order for Covert Measures dated 24 September 2012, pages 391 – 401

Prosecutors Order dated 24 September 2012, pages 402 – 415

Order for Amendment dated 24 September 2012, pages 416 – 421

Binder VII, Applications and Orders Volume II:

Order for Covert Measures dated 6 October 2012, pages 17 – 37

Order for Covert Measures dated 22 October 2012, pages 54 – 74

Ruling on Extension of Investigations dated 19 November 2012, pages 87 – 94

Order for Covert Measures dated 17 December 2012, pages 111 – 120

Arrest Order dated 22 January 2013, pages 135 – 154

Search Order dated 22 January 2013, pages 170 – 189

Arrest Order dated 22 January 2013, pages 203 – 218

Ruling on Detention on Remand dated 23 January 2013, pages 219 – 228

Letter of Entrustment dated 30 January 2013, pages 259 – 262

Order for Disclosure dated 30 January 2013, pages 277 – 284

Ruling of Court of Appeals dated 31 January 2013, pages 285 – 292

Ruling on Extension of Detention on Remand dated 21 February 2012, pages 305 – 316

Order for Examination dated 22 February 2013, pages 317 – 324

Ruling of Supreme Court dated 24 April 2013, pages 366 – 374

Ruling on Extension of Detention on Remand dated 21 June 2013, pages 398 – 409

Order for Disclosure of Financial Data dated 27 June 2013, pages 425 – 440

Ruling of Court of Appeals dated 5 July 2013, pages 466 - 479

ILA Transfer Documents between SPRK and the Federal Republic of Germany

Decision to approve the transfer of criminal proceedings dated 22.08.2012, Binder VI, Applications and Orders Volume I, pages 331 - 336

Information on decision to approve the transfer of criminal proceedings dated 22.08.2012, Binder VI, Applications and Orders Volume I, pages 337 - 338

Response to request for transfer of criminal proceedings dated 22.08.2012, Binder VI, Applications and Orders Volume I, pages 339 - 342

Request for International Legal Assistance to the German Authorities, Binder VI, Applications and Orders Volume I, pages 145-194

Court order for Search and Temporary Confiscation dated 22.01.2013, Binder V, Evidence from Searches and Police Reports Kosovo, pages 222 - 228

All Police reports from the Federal Republic of Germany and from EULEX OCIU Kosovo

Preliminary Investigation Report dated 20.06.2012, Binder V, Evidence and Police Reports Kosovo, pages 38 - 41

Investigative Report, Bavaria, dated 02.07.2012, Binder II, pages 261-286

Investigative Report, Southern Bavaria, dated 06.08.2012, Binder II, pages 1 - 16

Synopsis/Overview regarding the delivery of 15.kg of heroin, dated 12.11.2012, Binder II, pages 17 - 52

Investigative Reports dated 12.11.2012 (Binder II, pp. 20-33, 37-52) and 02.07.2012 (Binder II, pp. 263-273, 276-286)

Final Report dated 15.01.2013, Binder V, Evidence from Searches and Police Reports Kosovo, pages 204 - 221.

Record of Telephone Subscriber Details, A.V. and T.V.. Binder III, Tab 22

Subscriber details for a call made between S.V. and A.V. on 12.02.2012 at 08:51:05 hrs, Binder III, pp.65A

PTK/IPKO Subscriber Report, Binder V, Evidence from Searches and Police Reports Kosovo, pp. 284-295
Interim Report on B.A. dated 24.05.2013, Binder V, Evidence from Searches and Police Reports Kosovo, pages 284 - 295

Disclosure of Financial Data Report, Western Union, Binder V, pages 296 - 315

Report on Disclosure of Financial Data for M.A. dated 12.07.2013, Binder of Evidence from Searches and Police Reports I, pages 296 - 315

Report on verification of persons.

All surveillance reports and photographs for suspects, narcotics and vehicles taken in the Federal Republic of Germany

Report on Surveillance Activities of 10.06.2012, dated 13.06.2012, Binder II, pages 366 - 369

Records in the File Case of K. on the Toyota Corolla vehicle, registered to S.V., dated 20.02.2012, Binder II, pages 87 - 88, 105 - 106

Assessment of Exhibits M.K. dated 16.08.2012, Binder II, pages 123 - 157

Photograph Album of Vehicle and Narcotics dated 21.02.2012, Binder II, pages 53 - 86

All reports on the arrests of suspects in the Federal Republic of Germany

Records in the file on arrest of M.K. dated 20.02.2012, Binder II, pages 87 - 88, 105 - 106

Records in the file on arrest of L.G., Binder II, pages 29, 47

Reports on searches of those suspects arrested in the Federal Republic of Germany and reports of exhibits seized from the properties/vehicles searched in the Federal Republic of Germany

Notes on the File of the House Search, Munich, xxx dated 28.02.2012, Binder II, pages 87 - 122

Evaluation Report for items seized from the accommodation of M.K., dated 28.02.2012, Binder II, pages 94 - 104, 112 - 122

Search Report – Control and Exhibits for Y.G. dated 09.05.2012, Binder II, pages 211 - 249

Case Record Regarding the Search of Opel Vehicle, relating to R.A., dated 10.06.2012 Binder II, pages 313 - 324

Photograph Album of Vehicle and Narcotics dated 14.06.2012, Binder II, pages 287 - 312

Case Record for R.A.i dated 14.08.2012 Binder II, pages 313 - 324

Evidence Evaluation Report for R.A.i dated 31.10.2012, Binder II, pages 325 - 351

Search and Seizure Report for O.B. dated 10.06.2012, Binder II, pages 370 - 373

Statement of Seized Items for O.B. dated 10.06.2012, Binder II, pages 374 - 381

Examination of Items of B.O. dated 25.07.2012, Binder II, pages 382 - 407

File Note for L.Z. dated 10.07.2012, Binder II, pages 408 - 415

Examination of Exhibits for L.Z. dated 14.08.2012, Binder II, pages 416 - 427

Search Report for L.G. dated 19.09.2012, Binder II, pages 180 - 210

Forensic reports on narcotics seized from the Federal Republic of Germany

Expertise, Department of Narcotic Substances, 21.08.2012, Binder II, English pp. 250-255, Albanian pp. 256-260

Report on Examination of Narcotics dated 04.12.2012, Binder II, English pp. 312A-312C, Albanian pp. 312D- 312F

Order for Arrest, European Arrest Warrant, Munich, Federal Republic of Germany, for A.V. dated 10.09.2012, Binder II, pages 428 - 433

Reports on the Search and Arrest of the Defendant A.V. in Kosovo 23.01.2013

OCIU Report on the Search of the Defendant A.V.'s premises in Pristina and vehicle, Kosovo dated 24.01.2013, Binder V, Evidence from Searches and Police Reports Kosovo, pages 269 - 274

Photo album of the search of the defendant A.V.'s premises and vehicle from 23.01.2013, Binder V, Evidence from Searches and Police Reports Kosovo, pages 236 - 268

Report on the seized passport of A.V., Binder V, Evidence from Searches and Police Reports Kosovo, pages 275 - 279

Report on the arrest of A.V. dated 24.01.2012, Binder V, Evidence from Searches and Police Reports Kosovo, pages 230 - 235

Interceptions

Interceptions conducted between January 2012 and October 2012 by the German Police and by EULEX OCIU

All other relevant interception audio recordings and transcripts, including for SMS messages

Court Orders for Interception, Germany, Binder III, Tab 23

Interception Transcripts, Binder IV

Police reports on the lawful intercepts of various telephone lines from the Federal Republic of Germany, Binder IV

Police reports on interception of telecommunications in Kosovo

Binder V, Evidence from Searches and Police Reports Kosovo, containing the following:

OCIU 15 day report dated 4 June 2012 of interceptions for the period 18.05-01.06.2012, pages 7 – 15

OCIU 15 day report dated 16 June 2012 of interceptions for the period 02.06-16.06.2012, pages 22 – 28

OCIU 15 day 15 day report dated 1 July 2012 for the period 17/06-01/07/2012, pages 42 - 47

OCIU 15 day report dated 16 July 2012 for the period 01/07-16/07/2012, pages 52 – 57

OCIU 15 day report dated 1 August 2012 for the period 17/07-31/07/2012, pages 76 - 81

Interim compilation report dated 2 August 2012, pages 82 – 85

OCIU 15 day report dated 16 August 2012 of interception for the period of 01/08-15/08/2012, pages 90 – 98

OCIU 15 day report dated 31 August 2012 of interception for the period of 16/08-31/08/2012, pages 108 – 122

OCIU 15 day report dated 16 September 2012 of interception for the period of 01/09-16/09/2012, pages 123 – 126

OCIU 15 day report dated 1 October 2012 of interception for the period of 17/09-01/10/2012, pages 146 – 154

OCIU 15 day report dated 15 October 2012 of interception for the period of 01/10-15/10/2012, pages 161 – 169

OCIU 15 day report dated 30 October 2012 of interception for the period of 16/10-30/10/2012, pages 170 – 175

OCIU 15 day report dated 15 November 2012 of interception for the period of 01/11-15/11/2012, pages 176 - 179

OCIU 15 day report dated 5 December 2012 of interception for the period of 16/11-01/12/2012, pages 180 – 183

OCIU 15 day report dated 17 December 2012 of interception for the period of 01/12-15/12/2012, pages 190 - 195

OCIU 15 day report dated 2 January 2013 of interception for the period of 15/12-01/01/2013, pages 196 – 199

Statements of the defendant

Pre-Trial Testimony of the Defendant A.V. to the Prosecutor dated 15.05.2013, Binder V, pages 316 - 330 and

Pre-Trial Testimony of the Defendant A.V. to the Prosecutor dated 30.05.2013, Binder V, pages 345 - 358

Other Documents

Judgment of the District Court of Munich in case number 3 KLs 371 Js 117752/12

Judgment of the District Court of Munich in case number 3 KLs 371 Js 157244/13

PED – OCIU IT Forensics Unit Evidence Examination Report dated 13 March 2013

Letter dated 7 February 2013 from ARBK to A.S.

Letter dated 8 February 2013 from Kosovo Ministry of Finance to A.S.

Letter dated 8 February 2013 from Banka Ekonomike to Basic Court Pristina

Letter dated 7 February 2013 from DMTH to Basic Court Pristina

Letter dated 12 February 2013 from Raiffeisen Bank to Basic Court Pristina

Letter dated 15 February 2013 from Banka Per Biznes to Basic Court Pristina

Letter dated 6 February 2013 from BKT to Basic Court Pristina

Evidence Examination Report (IT Forensics Unit) dated 13 March 2013

Excerpt from the Federal Central Register dated 21 May 2013

ⁱ Supreme Court of Kosovo Reference Ap-Kz no. 61/2012; 02 October 2012

ⁱⁱ Court of Appeals Reference PAKR 4/2013

ⁱⁱⁱ Paragraph 53 of JP, adopting reasoning of Paragraph 48 of SA

^{iv} Reasoning of paragraph 55 of J.P. Judgment.