

**BASIC COURT OF PRISTINA**  
**Case number: P Kr 448/2014**

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

**This judgment is dated 7 August 2015**

***IN THE NAME OF THE PEOPLE***

**THE BASIC COURT OF PRISTINA** in the Trial Panel composed of EULEX Judge Marie Tuma, presiding and Judge Shpresa Hasaj-Hyseni and EULEX Judge Vitor Hugo Pardal, panel members and Muhamet Musliu, as Recording Officer, in the criminal case against the defendants in the criminal case against the defendants G.A. RR.A. E.G., A.S. and H.G.

**CHARGED** in the Indictment of the EULEX Special Prosecutor of the Special Prosecution Office of the Republic of Kosovo (SPRK) PPS no.77/2013, dated 22 August 2014 and filed on 25.08.2014, in the following Counts;

**Count 1 – A.S.**

**Participation in or organisation of an organised criminal group** with intention to commit one or more criminal offences, contrary to Article 283, 1 and 2, Criminal Code of Kosovo (CCRK), punishable by a fine of up to five hundred thousand (500.000) Euros and imprisonment of at least ten (10) years.

**Because**

From March 2013 to November 2013, the above named defendant, in the territory of Kosovo, namely in Pristina, committed the offence of participation and organisation of an organised criminal group, by:

1. Organising, establishing, supervising, managing and directing the activities of an organised criminal group consisting of RR.A. G.A. E.G. H.G. E.G. I.E. A.D. P.F. and others unidentified perpetrators;
2. with the intent to commit one or more criminal offences punishable by imprisonment of at least four years, namely with the intent to commit a robbery in a luxury Rolex Boutique watches in the City Centre Mall in Manama, City of Bahrain, Kingdom of Bahrain;
3. with the intent and with knowledge of either the aim and general activity of the organised criminal group, actively taking part in the group's criminal activity, knowing that such participation would contribute to the achievements of the group criminal activity – in order to obtain, directly or indirectly, financial and other material benefits;

**Count 2 – G.A. E.G. H.G. and RR.A.**

**Participation in an organised criminal group** with intention to commit one or more criminal offences, contrary to Article 283, par. 1, CCRK, punishable by a fine of up to two hundred fifty thousand (250.000) Euros and imprisonment of at least seven (7) years.

**Because**

From March 2013 to October 2013, the above named defendants plus A.D. P.F. E.G. I.E. and other unidentified perpetrators, on the territory of Kosovo, Pristina, committed the offence of participation in an organised criminal group, by:

- (1) Accepting to form a group of persons under the leadership of the defendant DJ. DJ. with the intent and with knowledge of either the aim and general activity of the organised criminal group and with the intention to commit one or more criminal offences punishable by imprisonment of at least four years;
- (2) Namely with the intent to commit a robbery in a luxury Rolex Boutique watches in the City Centre Mall in Manama the capital of Bahrain, Kingdom of Bahrain;
- (3) and actively taking part in the group's criminal activities, knowing that such participation would contribute to the achievements of the group criminal activities – in order to obtain, directly or indirectly, financial and other material benefits.
- (4) The defendants decided to split tasks upon a plan commonly agreed between them all. It was therefore decided that A.S. G.A. RR.A. E.G. A.D. and P.F

would travel to the Kingdom of Bahrain to commit the robbery, while H.G would stay in Kosovo providing for backup to the group. In deed after the commission of the crime HG was very busy providing help to the group in order to conceal at least one of the robbed watches. EG agreed to go to the Kingdom of Bahrain after the commission of the crime for the disposal of the watches, as the perpetrators were supposed to leave them behind in order not to draw attention to the Custom, Border and Airport authorities in the Kingdom of Bahrain. I.E. had the task to meet EG in Bahrain City for the handover of the watches and take them away for a place still to be revealed.

**Count 3 – A.S. G.A. E.G. and RR.A.**

**Robbery**, in violation of Article 329, par. 1, 2, 3 and 4 CCRK punishable by imprisonment of three (3) to fifteen (15) years.

**Because**

- (1) After having agreed the formation of the organised criminal group, the defendants decided to divide the tasks as was previously agreed by them. While H.G. stayed in Kosovo for the backup of the group, A.S. G.A. E.G. RR.A. P.F. and A.D. flew to the Kingdom of Bahrain where they stayed in three different hotels in the region of the capital, City of Bahrain and very close to the City Centre Mall, in Manama.
- (2) On the 10<sup>th</sup> September 2013, close to 23:00 hours, A.S. G.A. E.G. RR.A, P.F. and A.D. disguised in female Islamic attire, with their bodies and faces covered, approached the Rolex Watch Boutique in the City Centre Mall, Manama, City of Bahrain.
- (3) Once in the vicinity of the Boutique, the defendants attacked Mr. M.Z. the unarmed security guard that was on duty, protecting the Mall. They attacked him by spraying pepper spray into his eyes, at least three or four times, in order to make any action by him impossible. The security guard experienced severe eye burning and was unable to defend himself while of one the defendants hit him with a wooden stick on the back of his head causing him to fall on the floor, rendering his resistance impossible.
- (4) Following this action, the defendants smashed the window and glass door of the Rolex Boutique which at the time was closed. They entered the Boutique and smashed several showcases where valuable wrist watches were displayed.
- (5) In a matter of only two minutes the defendants grabbed seventy (70) Rolex wrist watches and nine (9) Theodore wrist watches that were

displayed inside the showcases of the Boutique and left the place taking with them seventy one (79) wrist watches.

- (6) The stolen wrist watches worth five hundred and eighty three thousand, nine hundred and thirty (583 930) Bahrainian Dinars, which is equivalent to one million, one hundred and sixty two thousand, seven hundred and sixty seven Euros and eight Cents (1,162 767.08).
- (7) The destruction of the Rolex Boutique caused a material damage of fifty thousand Bahrainian Dinars which is equivalent to ninety nine thousand, five hundred and sixty three Euros and ninety one Cents (99,563.91).
- (8) The owners of the Boutique were forced to close this Boutique for several days due to the need for reconstruction of the shop and showcases that were destroyed. They were not able to do any business during this period of repair, thus suffering additional material losses.
- (9) The defendants soon after the robbery left the City Centre Mall in possession of the 79 watches, in a car previously rented by them, but with a stolen registration plate from another vehicle.
- (10) They concealed 63 watches in one apartment rented by them in the area of Manama and returned to the hotels where they were staying, bringing with them the remaining watches.
- (11) On the following day, they left the Kingdom of Bahrain by aeroplane, returning to the Balkans, bringing with them the remaining watches.
- (12) The 63 watches left behind were retrieved some days later by another member of the group, E.G. who accordingly to the plan commonly accepted by the members of the group and upon instructions of A.S. flew at a later date from Kosovo to Bahrain. This was in order to pick up the watches from the apartment where the watches had been hidden. Then E.G. went to a hotel in the City of Bahrain, where he met another member of the group, the Turkish citizen I.E. who was there waiting for him and handed over him the 63 watches.
- (13) At the time when E.G. was handing over the 63 watches to I.E. they both were arrested by the Bahrainian Police and were remanded in detention on remand. They are currently being tried for the aforementioned crimes.
- (14) The 63 watches were retrieved and delivered back to the Rolex Boutique, but they are damaged.
- (15) 16 watches are still to be retrieved.
- (16) Upon returning to Kosovo, H.G. who was a member of the organised criminal group, but had not travelled to Bahrain, was instructed to help the above mentioned defendants to conceal and hide at least one stolen watch.

H.G. had full knowledge of the robbery and the theft of the watches in Bahrain. Furthermore, the Prosecution say, that since they all were aware of the efforts of the authorities to apprehend the suspects and to recover the watches, the group worked together to secure the proceeds from the crimes and tried to conceal themselves from the crime.

#### **Count 4 – H.G.**

**Unauthorised ownership, control or possession of weapons** in violation of Article 374, par. 1 and 2 CCRK, Law no. 03/L-246, Articles 1.20, and punishable by imprisonment of two (2) to ten (10) years

#### **Because**

1. From a date to be ascertained until 8 October 2013, in Pristina, Kosovo, in the house where HG was living, (street IK, number 377), the defendant kept in his possession and control, two hundred and seventy seven (277) calibre 7.62 mm live bullets; four hundred and twenty five (425) 9 mm live bullets; three hundred and thirty three (333) 7.65 mm live bullets; fifty (50) 9 mm live bullets and nineteen (19) 12 mm live bullets (in total one thousand one hundred and four ammunitions – 1104).
2. The defendant has no legal licence or authorisation to keep this ammunition in his possession and control.

**HAVING** held the Main Trial sessions in open court on 19 and 24 November 2014; 10, 11 and 16 December 2014; 14, 27, 28 and 29 January 2015; 3 and 11 February 2015, 18 May 2015, 16 and 17 June 2015; 22 July 2015; 5, 6 and 7 August 2015, in the presence of the accused G.A. RR.A. E.G. A.S. and H.G, and their Defence Counsels B.T.<sup>1</sup> and A.H. (for A.S.), R. K.<sup>2</sup> and Z. J. (for GA), S. J.<sup>3</sup> (for E.G.), N. P.<sup>4</sup> (for RR.A.) and Z.P.<sup>5</sup> (for H.G.) and EULEX Special Prosecutor Romulo Mateus of the SPRK;

**AFTER** deliberation and voting held on 6 August 2015, renders the following;

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<sup>1</sup> Replaced by att. M. G. on 3 February 2015; Power of Attorney presented to the Court.

<sup>2</sup> Replaced by att. A. B. on 27 January 2015; Power of Attorney presented to the Court.

<sup>3</sup> Replaced by att. D. G. on 29 January 2015; Power of Attorney presented to the Court.

<sup>4</sup> Replaced by att. RR.A. on 15, 16 December 2014 and 28 January 2015, and by att. F.G. on 7 August 2015; Power of Attorney presented to the Court.

<sup>5</sup> Replaced by att. Z. Gj. on 5, 6 and 7 August 2015; appointed ex-officio.

## **JUDGMENT**

### **I.**

**A (aka D) S (aka D)**, father's name xxxx mother's name xxxx, born on xxxx, in xxxxx, gender male, residing in xxxx nationality Albanian, citizen of Kosovo and Macedonia, married, ID number xxxx,

Pursuant to Article 364, 1.3 of the CPCRK,

**Is Acquitted** from count 1 of the Indictment - Participation in or organisation of an organised criminal group with intention to commit one or more criminal offences, contrary to Article 283, par. 2 of the Criminal Code of Republic of Kosovo (CCRK), punishable by a fine of up to five hundred thousand (500.000) Euros and imprisonment of at least ten (10) years.

**Because** it has not been proven that the accused has committed the act which he was charged with.

### **II.**

Pursuant to Article 365 of the CPCRK, defendant AS with personal data as mentioned above,

### **Is Guilty**

#### **Because**

From at least March 2013 to October 2013, defendant A.S. together with G.A. E.G. and RR.A. plus A.D. P.F. E.G. I.E. and other unidentified perpetrators, on the territory of Kosovo, Pristina, accepted to form a group of persons, under the leadership of an unidentified person, with the intent to commit a robbery in a luxury Rolex Boutique watches in the City Centre Mall in Manama the capital of Bahrain, Kingdom of Bahrain, actively did take part in the group's criminal activities, knowing that such participation would contribute to the achievements of the group's criminal activities – in order to obtain, directly or indirectly, financial

and other material benefits. After having agreed the formation of the organised criminal group, defendant AS together with G.A, E.G, RR.A, P.F and A.D. flew to the Kingdom of Bahrain where they stayed in three different hotels very close to the City Centre Mall in Manama. On the 10<sup>th</sup> September 2013, close to 23:00 hours, A.S, G.A, E.G, RR.A, P.F and A.D, disguised in female Islamic attire, with their bodies and faces covered, went to the Rolex Watch Boutique in the City Centre Mall, Manama, City of Bahrain and attacked the security guard, MZ, where one member of the group sprayed pepper spray into his eyes, as well as one member of the group hit him with a wooden stick on the back. Having neutralized the security guard, the group which included these defendants smashed the window and glass door of the Rolex Boutique which at the time was closed and entered the Boutique and smashed several showcases where valuable wrist watches were displayed, and immediately thereafter the defendant AS together with the other members of the group robbed seventy (70) Rolex wrist watches and nine (9) Theodore wrist watches that were displayed inside the showcases of the Boutique and left the place taking with them seventy nine (79) wrist watches worth five hundred and eighty three thousand, nine hundred and thirty (583 930) Bahraini Dinars, which is equivalent to one million, one hundred and sixty two thousand, seven hundred and sixty seven Euros and eight Cents (1,162 767.08).

Soon after the robbery, the defendant A.S. together with the aforementioned members of the group left the City Centre Mall in possession of the 79 watches, in a Toyota car previously rented by one member of the group, and on the way back to their hotels switched to another vehicle – a Mitsubishi Gallant, previously rented by RR.A. and concealed 63 watches in one apartment, rented by one member of the group, in the area of Manama and returned to the hotels where they were staying, where the following day, they left the Kingdom of Bahrain by different flights for separate destination countries to Balkan region.

The 63 watches that were left in the apartment, were picked up some days later by E.G. who upon the instructions of two individuals from Albania, flew at a later date from Kosovo to Bahrain in order to pick up the watches from the apartment where the watches had been hidden. Then E.G. went to a hotel in the City of Bahrain, where he met I.E. in order to deliver the Watches to I.E. Both E.G. and

I.E. were arrested and convicted by Bahraini's authorities, and the 63 watches were retrieved and delivered back to the Rolex Boutique.

**THEREBY**, defendant A.S. has committed the criminal offence of Organized Crime, in violation of Article 283, par 1 of the CCRK in conjunction with the criminal offence of robbery, in violation of Article 329, par 3 of the CCRK.

**HAVING** been convicted of the criminal offence of Organized Crime, in violation of Article 283, par 1 of the CCRK in conjunction with the criminal offence of robbery, in violation of Article 329, par 3 of the CCRK, and pursuant to Articles 4, 41, 42, 43, 45, 46 and 74 of the CCRK, the defendant A.S. is sentenced to a punishment of **12 (twelve) years imprisonment** and a **fine in the sum of 12, 500 (twelve thousand five hundred) Euros**, to be paid within 30 days, after this judgment becomes final.

### **III.**

Pursuant to Article 365 of the CPCRK, the defendants;

**G.A.** nickname 'G', father's name xxxxx mother's name xxxx, born on xxxxx, in xxxxx, gender male, residing in xxxxx, nationality Albanian, citizen of Kosovo, married, xxxx, occupation carpenter, secondary school completed, ID number xxx;

**R (aka R) alias R**, nickname 'xxxx, father's name xxxx mother's name xxxx born on xxxxx, in xxxxx gender male, residing in xxxxx, , nationality Albanian, citizen of Kosovo, married, xxxx, occupation used car salesman, secondary school completed; ID number xxxxx;

**E.G.** father's name xxxx, mother's name xxxx. born on xxxxx, in xxxxx gender male, residing in 'xxxx, nationality Albanian, citizen of Kosovo, married, xxxx, occupation businessman, ID number xxxxx;

**ARE GUILTY**

## **Because**

From at least March 2013 to October 2013, the defendants G.A. RR.A. and E.G. together with defendant A.S. plus A.D. P.F. E.G. I.E. and other unidentified perpetrators, on the territory of Kosovo, Pristina, accepted to form a group of persons, under the leadership of an unidentified person, with the intent to commit a robbery in a luxury Rolex Boutique watches in the City Centre Mall in Manama the capital of Bahrain, Kingdom of Bahrain, actively did take part in the group's criminal activities, knowing that such participation would contribute to the achievements of the group's criminal activities – in order to obtain, directly or indirectly, financial and other material benefits. After having agreed the formation of the organised criminal group, the defendants G.A, E.G, RR.A and A.S. together with P.F. and A.D. flew to the Kingdom of Bahrain where they stayed in three different hotels very close to the City Centre Mall, in Manama. On the 10<sup>th</sup> September 2013, close to 23:00 hours, GA, EG, RRA, AS, PF and AD, disguised in female Islamic attire, with their bodies and faces covered, went to the Rolex Watch Boutique in the City Centre Mall in Manama, City of Bahrain and attacked the security guard, M.Z, where one member of the group sprayed pepper spray into his eyes, as well as one member of the group hit him with a wooden stick on the back. Having neutralized the security guard, the group which included these defendants smashed the window and glass door of the Rolex Boutique which at the time was closed and entered the Boutique and smashed several showcases where valuable wrist watches were displayed, and immediately thereafter the defendants G.A. E.G. RR.A. and A.S. together with the other members of the group robbed seventy (70) Rolex wrist watches and nine (9) Theodore wrist watches that were displayed inside the showcases of the Boutique and left the place taking with them seventy nine (79) wrist watches worth five hundred and eighty three thousand, nine hundred and thirty (583 930) Bahrainian Dinars, which is equivalent to one million, one hundred and sixty two thousand, seven hundred and sixty seven Euros and eight Cents (1,162 767.08).

Soon after the robbery, the defendants G.A. E.G. RR.A and A.S. together with other members of the group left the City Centre Mall in possession of the 79 watches, in a Toyota car previously rented by one member of the group, and on the way back to their hotels switched to another vehicle – a Mitsubishi Gallant, previously rented by RR.A. and concealed 63 watches in one apartment, rented by

one member of the group, in the area of Manama and returned to the hotels where they were staying, where the following day, they left the Kingdom of Bahrain by different flights for separate destination countries to Balkan region.

The 63 watches that were left in the apartment, were picked up some days later by E.G. who upon the instructions of two individuals from Albania, flew at a later date from Kosovo to Bahrain in order to pick up the watches from the apartment where the watches had been hidden. Then E.G. went to a hotel in the City of Bahrain, where he met IE in order to deliver the Watches to I.E. Both E.G. and I.E. were arrested and convicted by Bahraini's authorities, and the 63 watches were retrieved and delivered back to the Rolex Boutique.

**THEREBY**, defendants G.A, E.G. RR.A. have committed the criminal offence of Organized Crime, in violation of Article 283, par 1 of the CCRK in conjunction with the criminal offence of robbery, in violation of Article 329, par 3 of the CCRK.

**HAVING** been convicted of the criminal offence of Organized Crime, in violation of Article 283, par 1 of the CCRK in conjunction with the criminal offence of robbery, in violation of Article 329, par 3 of the CCRK, and pursuant to Articles 4, 41, 42, 43, 45, 46 and 74 of the CCRK they are sentenced as follows;

-G.A, is sentenced to a punishment of **11 (eleven) years imprisonment** and a **fine in the sum of 12, 500 (twelve thousand five hundred) Euros**, to be paid within 30 days, after this judgment becomes final

-E.G is sentenced to a punishment of **11 (eleven) years imprisonment** and a **fine in the sum of 12, 500 (twelve thousand five hundred) Euros**, to be paid within 30 days, after this judgment becomes final

-RR.A. is sentenced to a punishment of **11 (eleven) years imprisonment** and a **fine in the sum of 12, 500 (twelve thousand five hundred) Euros**, to be paid within 30 days, after this judgment becomes final.

#### IV.

Pursuant to Article 364, 1.3 of the CPCRK

**H.G.** father's name xxxx. mother's name xxxx, born on xxxx in xxxx, gender male, residing in xxxx, nationality Albanian, citizen of Kosovo, married, xxxx , occupation businessman, ID number xxxx.

**Is acquitted** from count 2 - Participation in an organised criminal group with intention to commit one or more criminal offences, contrary to Article 283, par. 1, CCRK,

**Because** it has not been proven that the accused has committed the act which he was charged with.

#### V.

Pursuant to Article 365 of the CPCRK, defendant H.G.

**Is guilty** for the count 4 of the indictment

#### **Because**

3. From a date to be ascertained until 8 October 2013, in Pristina, Kosovo, in the house where H.G. was living, (street IK , number X), the defendant kept in his possession and control, two hundred and seventy seven (277) calibre 7.62 mm live bullets; four hundred and twenty five (425) 9 mm live bullets; three hundred and thirty three (333) 7.65 mm live bullets; fifty (50) 9 mm live bullets and nineteen (19) 12 mm live bullets (in total one thousand one hundred and four ammunitions – 1104).
4. The defendant has no legal licence or authorisation to keep this ammunition in his possession and control.

**Thereby** the defendant HG has committed the criminal offence of Unauthorised ownership, control or possession of weapons in violation of Article 374, par. 2 CCRK, Law no. 03/L-246, Articles 1.20,

**HAVING** been convicted of the criminal offence Unauthorised ownership, control or possession of weapons in violation of Article 374, par. 2 CCRK, Law no. 03/L-246, Articles 1.20, and pursuant to Articles 4, 41, 42, 43, 45 and 74 of the CCRK, the defendant H.G. is sentenced to a punishment of **3 (three) years imprisonment.**

The ammunition shall be confiscated pursuant to par. 3 of Article 374 of CCRK.

**PURSUANT** to Article 83 (1) of the CCRK the time spent in detention from 8 October 2013 (G.A. RR.A. H.G.), 16 November 2013 (A.S.), and 17 September 2013 E.G. to the date hereof shall be credited towards the sentence.

After hearing the parties, a separate ruling regarding the restrictive measure shall be issued.

The injured parties are directed to pursue their property claim in civil litigation, pursuant to Article 463, par. 2 of the CPCRK.

**PURSUANT** to Articles 450, par. 3 of the Criminal Procedure Code of Kosovo A.S. G.A, RR.A and E.G. shall pay a scheduled amount, assessed in the sum of 300 (three hundred) Euros, and HG in the amount of 200 (two hundred) euro.

## **REASONING**

**A)**

### **i. Competence of the Court and Panel Composition**

The Basic Court in Pristina, Republic of Kosovo, is competent to adjudicate the case, pursuant to Articles 1, 2, par. 1.2, 9 par. 2.1, 15 par. 1.20 and 15, par. 2 of the Law on Courts (L. no. 03/L-199).

The jurisdiction issue is discussed and finalized at length in section ‘Jurisdiction of the Court and other preliminary issues’.

The Trial Panel of Basic Court of Prishtina was correctly composed of a mixed panel of two EULEX Judges and one local Judge pursuant to Article 3 of the Law on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo<sup>6</sup> (as amended by the Law No. 04/L-273) regarding the composition of the Trial Panel<sup>7</sup>.

No objections were raised regarding the composition of the Trial Panel.

### ***-Applicable substantive and procedural law***

The criminal offences the defendants were charged with were committed in 2013.

Pursuant to Article 3, par. 1 of the CCRK, Law 04/L- 082 of 2012 (which entered into force on the 1<sup>st</sup> January 2013), the law in effect at the time a criminal offense was committed shall be applied to the perpetrator. Since the criminal offences were committed in 2013, the Trial Panel decided that the Law no. 04/L- 082 of 2012 is applicable.

In the present case the Indictment was filed on 22 August 2014, a time when the Criminal Procedure Code of Republic of Kosovo (CPCRK), Law 04/L-123 of 2012 in force since the 1<sup>st</sup> January 2013 was applicable. Therefore, the Trial Panel decided that the applicable procedural law is the Law 04/L-123.

## **ii. Procedural History**

On 23 September 2013, the Prosecutor at the Office of the Special Prosecution of the Republic of Kosovo (hereafter “SPRK”) received a report that a number of suspects believed to be from the Balkan region had committed a robbery in Bahrain on 10 September 2013. Arising from the receipt of this information a number of Orders for Covert measures were made by the Pre-Trial Judge of Basic

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<sup>6</sup> Law No. 03/L-053.

<sup>7</sup> Majority of EULEX Judges with the EULEX Judge presiding.

Court in Pristine. The Pre-Trial Judge also issued orders granting and retroactively approving searches of property.

On 9 October 2013<sup>8</sup>, the SPRK Prosecutor issued a Ruling on Initiation of an Investigation against A.S. (aka DJ. DJ.), G.A, RR.A (aka RR.Z), H.G, E.G, P.F. and A.D. for the criminal offence of participation in an organized criminal group, in violation to Article 283, par. 1 of the Criminal Code of the Republic of Kosovo (CCRK)<sup>9</sup>, assault, in violation of Article 187, par. 2 of the CCRK, grievous bodily injury, in violation to Article 189, par 1 in conjunction with sub-par. 5 of the CCRK, aggravated theft, in violation to Article 327, par 2 of the CCRK, robbery in violation to Article 329, par 4 of the CCRK, falsifying documents, in violation of Article 398, par. 2 of the CCRK. On 9 November 2013 the SPRK Prosecutor issued a Ruling on the expansion of the investigation against EG.

On 8 October 2013 the defendants G.A. RR.A. and H.G. were arrested in the Republic of Kosovo and placed in detention on remand after a detention hearing held on 10 October 2013 before the Pre-Trial Judge of the Basic Court of Prishtine/Pristina, and they remained in custody throughout the main trial. The defendant A.S. was arrested on 16 November 2013 in Kosovo and placed in detention on remand after a hearing before the Pre-Trial Judge of Basic Court of Prishtine/Pristina on 18 November 2014, and remained in detention since then.

On 28 October 2013, the SPRK prosecutor acting in response to the communication received from the Kingdom of Bahrain through the Ministry of Justice of the Republic of Kosovo, (ref. MD/DBGJ/23385/gc/13 and DLA/2013-2333385) regarding the crime of robbery committed in Bahrain on 10 September 2013<sup>10</sup>, formally accepted the jurisdiction to investigate and prosecute the criminal offence of robbery thus the criminal proceedings to investigate and prosecute this case were transferred from the Kingdom of Bahrain to the Republic of Kosovo pursuant to Article 46, par. 1 of the Law No. 04/L020013 on International Legal Cooperation in Criminal Matters.

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<sup>8</sup> Folders 2, tab 20 – S. et al PPKR.nr. 314/13 Application & Order.

<sup>9</sup> Law no. 04/L-082, applicable as of 1 January 2013.

<sup>10</sup> Binder Prosecutor's Files Vol 3, tab 3.

On 9 December 2013 the defendant E.G. was extradited from Republic of Albania to Republic of Kosovo and was placed in detention on remand after a hearing before the Pre-Trial Judge of Basic Court of Prishtine/Pristina on 10 December 2013<sup>11</sup> and was remanded in custody where he remained throughout the main trial.

On 26 February 2014<sup>12</sup>, the Pre-Trial Judge granted the SPRK's application to hold a Special Investigative Opportunity (hereinafter SIO), that took place on 1, 2, 3 7 and 8 July 2014 (with the Presiding Judge herein as a panel member) and heard evidence from Police officers in charge for investigating the Robbery case in Bahrain, a number of injured parties and witnesses resident in the Kingdom of Bahrain. The Defendants and their defence counsels were given opportunity to cross-examine the witnesses and the injured parties on aspects of their testimony.

An Indictment dated 22 August 2014 was filed with the Basic Court of Prishtine/Pristina on 25 August 2014<sup>13</sup>. On 27 August 2014, a letter was sent to the Chairman of the Kosovo Judicial Council immediately thereafter requesting that the case remain with a EULEX majority composition panel in light of the exigent circumstances of the case. An initial hearing was held on 11 September 2014<sup>14</sup> with a timetable for the filing of submissions by the parties.

On 20 October 2014, the Presiding Judge issued a Ruling rejecting as ungrounded all the Requests<sup>15</sup> of the defendants A.S, G.A, RR.A (aka R.A) E.G. and H.G. for dismissal of the indictment.

First main trial public session took place on 19 November 2014. Having agreed to consider the indictment<sup>16</sup> as read, and after having instructed all the defendants on

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<sup>11</sup> E.G. was arrested on 17 September 2013 at Tirana Airport in Albania.

<sup>12</sup> Binder 11 SIO- S et al PKR 314/13.

<sup>13</sup> On the same date the SPRK suspended investigation against A.D, P.F. and E.G. The Pre-Trial Judge of BC Prishtina has issued a RED Notice against A.D. and P.F. but they are still at large. Further, so far the Bahraini authorities did not positively respond to the ILA request for extradition of EG.

<sup>14</sup> An initial hearing was scheduled for 2 September 2014, however in that session it was established that not all the defendants did receive the Indictment.

<sup>15</sup> The requests were filed by their defence counsels.

<sup>16</sup> In addition, on this date the prosecutor did correct the Indictment because it was mistakenly indicated that it was RR.A .who booked a vehicle but it was PF who did this (pg 20 of the indictment, no 18). On 6 August 2015 defence counsel RP proposed to correct the indictment as the nationality of RRA was mistakenly indicated as Serbian instead of Albanian, which was corrected accordingly.

their rights, none of them pleaded guilty. Following this, all the parties were given opportunity to present their opening statements.

The main trial had to be interrupted for more than one month due to the strike of national counterparts<sup>17</sup>.

In the course of the main trial, there was a sign that the parties were ready to negotiate a guilty plea agreement, and the court did give appropriate time, however they were not able to reach an agreement. The main trial continued normally and this initiative of the parties had no whatsoever impact on the Trial Panel while assessing the criminal liability of the defendants. Evidence was presented mainly from the prosecutor, however, the defendants and their defence counsels were given equal opportunity to present their evidence.

On 28 May 2015<sup>18</sup>, through The International Legal Cooperation Unit within EULEX, the Bahraini authorities were contacted in order to inform the injured parties that they are entitled to submit claims for compensation as well as their closing statements. On the same date, the Court was informed that claims for compensation are about to be received and that the injured parties do not intend to submit any closing statement.

Apart from H.G. who decided to plead his case and requested the Court to acquit him, the defendants A.S, G.A, RR.A and E.G. used the right to remain silent (Article 323 of the CPCRK).

The prosecutor presented his closing speech<sup>19</sup> on 5 August 2015, and requested the Court to find the defendants guilty because it was proved beyond reasonable doubt that they have committed the criminal offences accused with.

The defence counsels B. T. and A. H. (for A.S.), Z. J. and R. K. (for G.A.), R. P. (for RR.A), S. J. (for E.G.), and Z. Gj.<sup>20</sup> (for H.G.) presented their closing

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<sup>17</sup> March 2015.

<sup>18</sup> An email was sent to F.B. from ILA unit as point of contact with the Bahraini authorities.

<sup>19</sup> That is attached to the minutes of 5 August 2015.

<sup>20</sup> Replacing the defence counsel, Z.P. who did file his closing statement in writing on 30 Jul 15, and that is attached to the main trial minutes of 6 Aug 15.

speeches on 6 August 2015, where they all requested the court to acquit their clients in the absence of evidence.

### **iii. Jurisdiction of the Court and other preliminary issues.**

In the course of the main trial, the defence counsels raised the issue of *ne bis in idem* principle because the Kingdom of Bahrain has had already decided on the case against their clients<sup>21</sup>. The court through a Request for International Legal Assistance obtained the Judgments from the Kingdom of Bahrain<sup>22</sup>.

#### **-Position of the parties regarding the *ne bis in idem* issue**

##### 1. The submission of the prosecutor dated 16 February 2015

1.1 The prosecutor in his submission of 16 February 2015 summarises his position that the issue of *ne bis in idem* simply does not apply to prosecutions that have taken place outside of Kosovo and while the principle is applicable ‘vertically’ i.e. within the same jurisdiction, it is not applicable ‘horizontally’ i.e. trial in one country does not necessarily preclude in another country on the same issue – subject to certain conditions. The prosecutor further submits<sup>23</sup> that the charges, although based on similar facts slightly differ to those charged in Bahrain “*due to different legal framework*”. In support of the proposition of vertical rather than horizontal applicability of the *ne bis in idem* principle the prosecutor cites Article 4, protocol 7 of the European Convention for the Protection of Human Rights, which he avers has ‘consistently’ interpreted the application of the principle within a national jurisdiction. He also refers to the principle of ‘complementarity’ wherein the principle is recognised within a national

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<sup>21</sup> Excluding H.G.

<sup>22</sup> Main trial Binder V- Judgment of Fourth High Court of the Kingdom of Bahrain, dated 18.09.2014 by which the defendants A.S. R.A. G.A. and E.G. were sentenced to life imprisonment, and Judgment of the High Appeal Court for serious crimes of the Kingdom of Bahrain, dated 30.12.2014, deciding on appeals of E.G. and I.E.

<sup>23</sup> In page 3 of his submission; paragraph 3, Main Trial Binder V ‘Applications’, Tab 13.

jurisdiction. The prosecutor also raises<sup>24</sup> the issue of human rights norms and their impact on the mutual recognition of judgments, and –impliedly - the likelihood of surrender.

1.2 The prosecutor raises a significant point<sup>25</sup> from an admittedly old case of the Italian Constitutional Court which suggests that their court would treat a foreign judgment as barring a renewed prosecution where “*social and legal-political valuation of human rights acts in the different countries is equal or equivalent*”, This decision is of course persuasive precedent only and does not bind the trial in any way, but does serve to illustrate one of the central strands of the argument that the prosecutor invites the Trial Panel to adopt. The prosecutor also suggests that a commentary on this case suggests that *ne bis in idem* is not recognised as a rule of international law.

1.3 The prosecutor also points to what he perceives to be the central illogicality of the defendant’s arguments on this point, namely that having been tried in Bahrain they cannot be tried in Kosovo, but similarly they cannot be returned to Bahrain and they thereby exclude the competency of both jurisdictions, and in effect to face neither trial nor sanction. He submits that the defendants should be placed (if there is a jurisdiction to do so) on their election – trial in Kosovo or surrender to Bahrain to serve the sentences imposed there.

1.4 The prosecutor also points out that the Kosovo Criminal Procedure Code does not accept convictions in absentia nor permit lifelong imprisonment for the corresponding offences in Kosovo<sup>26</sup>.

1.5 Finally the prosecutor avers also to other legal international instruments, namely, the United Nations Covenant on Civil and Political Rights, Article 14 (7) and the Rome Statue of the International Criminal Court, Article 20, which both recognizes the principle *ne bis in idem* within a certain national jurisdiction or within its own jurisdiction, the same applies to The Statue of

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<sup>24</sup> In page 4 of his submission, paragraph 10.

<sup>25</sup> In page 6 of his submission, paragraph 16 and 17.

<sup>26</sup> The Human Rights Report 2015 notes that the Kingdom of Bahrain sentences are disproportionate amongst other things which could raise a concern of mutual recognition of judgments between Republic of Kosovo and the Kingdom of Bahrain

the International Criminal Tribunal for the Former Yugoslavia (ICTY), Article 10 of the ICTY Statute.

2. The submission of defence counsel B.T. on behalf of AS, dated 16 February 2015

2.1 Mr. B.T. submits that the applicability of the principle of *ne bis in idem* should serve to terminate proceedings in this case. He cites the Constitution of Kosovo and refers –at paragraph 8 of his submission – to “international conventions, drafted in Strasburg (sic) on 15.03.1972, in chapter 5, article 35.1 which states :- “*a person against whom a final and executive judgment has been rendered he cannot be persecuted (sic), sentenced or implement the execution of penal sanction against him in another country*”<sup>27</sup>.

2.2 Mr. B.T. submits that since that convention was adopted by the Former Federal Republic of Yugoslavia and adopted in UNMIK times that this convention should be adopted by the Trial Panel herein.

2.3 He also submits that universal principles of justice cannot be relativized, that they are binding on all parties and have to be adhered to strictly.

3 The submission of defence counsel Z. J. on behalf of G.A. dated 11 February 2015, and the reply filed thereto by the prosecutor on 26 February 2015.

3.1 In his submission Mr. Z.J. makes a virtually identical submission to Mr. T., also drawing support for the proposition that the trial should be stopped by reference to the Constitution of Kosovo and Article 35 of the European Convention on the Transfer of Proceedings in Criminal Matters (“the Convention”). He, too, submits that this law carries over to the present by operation of law and should be adopted by the Trial Panel.

3.2 In response to the submission of Mr. Z.J, the SPRK filed a replying submission on 26 February 2015. This submission is addressed to be a reply

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<sup>27</sup> This convention appears to be European Convention on the Transfer of Proceedings in Criminal Matters made at Strasbourg, 15.V.1972.

to Mr. Z.J. submission only, but in fact it addressed the submission made by both he and Mr. B.T.

3.3 The prosecutor submits that the convention is secondary international law only and, it does not bind Kosovo and, even if it did, and in the alternative, that it does not, it never could bind Bahrain. He also points out that Article 35 was not fully quoted in either submission.

4. The submission of defence counsel S. J. on behalf of EG, dated 25 February 2015.

4.1 In her submission, Ms. S.J. also points to the terms of the Constitution of Kosovo and the ‘European Convention’ (again without an adequate citation for same) and submits that this Convention has been adopted into the Kosovo legal code. She submits that the Law on International Legal Cooperation is relevant and regulates the manner of relationship between governments.

4.2 She also points out, however, that the penalties imposed in Bahrain are significantly greater than could be imposed in Kosovo, she also notes however that her client was absent for the trial in Bahrain and was not given a chance to present his evidence or, for that matter, challenge the judgment in this absence.

5. The submission of defence counsel N. P. on behalf of RR.A. dated 25 February 2015.

5.1 This submission is literally identical to that of Ms. J., save that it names a different defendant and a different lawyer.

***Decision of the Trial Panel.***

**A. Introduction**

1. In determining whether the *ne bis in idem* principle applies to the Bahrain first instance judgment, the Trial Panel have considered the terms of the

Kosovo Criminal Procedure Code<sup>28</sup> and the Kosovo Criminal Code<sup>29</sup>, the Law on International Legal Cooperation in Criminal Matters<sup>30</sup> the Constitution of Kosovo<sup>31</sup>, the International Covenant on Civil and Political Rights, the European Convention on the Transfer of Proceedings in Criminal Matters, European Convention on Human and Fundamental Freedoms and the operation of the Criminal Law in Bahrain. The Trial Panel has also considered relevant case law including the OLIVIERA case dated 30 July 1988, the case of Goktan v France, heard on 2 July 2002, the case of A.P. v Italy UN HRC CCPR/C/31/D/204/1986, and commentary on the *ne bis in idem* principle from international law journals. In this regard, the Trial Panel has also considered Kosovo jurisprudence.<sup>32</sup>

2. In summary, the prosecutor contends that the *ne bis in idem* principle is one that applies within the courts of a particular country, “vertically” in their formulation, but that the principle does not apply “horizontally”, that is between the courts of one country and another. He contends that there is no international customary rule of law to suggest that *ne bis in idem* is an established principle in this arena. Therefore he invites the Trial Panel to accept the proposition that *ne bis in idem* is primarily a domestic issue, and therefore not applicable to the instant case.
3. The defendants, in their turn, summarise their position by suggesting that the Constitution of Kosovo – incorporating the International Covenant on Civil and Political Rights - and (maybe) the European Convention on the Transfer of Proceedings, do not permit trial where final judgment has been rendered in another country.

## **B. The Jurisdiction of the Courts of Kosovo**

4. The Trial Panel must first confirm the factual situation in this case, and note that on 28 October 2013, in a Ruling delivered by the prosecutor, in response to the communication received from the Kingdom of Bahrain through the Ministry of Justice of the Republic of Kosovo, (ref. MD/DBGJ/23385/gc/13 and DLA/2013-2333385) regarding the crime of robbery committed in

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<sup>28</sup> Law no. 04/L-123, applicable as of 1 January 2013.

<sup>29</sup> Law no. 04/L-082, applicable as of 1 January 2013.

<sup>30</sup> Law No. 04/L-031.

<sup>31</sup> Chapter Two; Articles 21 – 34.

<sup>32</sup> BC Gjilan Ruling PPr.Kr. 92/13, dated 05.01.2015.

Bahrain on 10 September 2013<sup>33</sup>, formally accepted the jurisdiction to investigate and prosecute the criminal offence of robbery. The Trial Panel is therefore of the view that, as of that date, at the very latest, the Basic Court in Pristina was vested with jurisdiction to deal with this case. The Trial Panel wish to point out that there is no evidence before it that Bahrain has sought, at any stage of the proceedings, to extradite the defendants to Bahrain to face trial there, or to assert that it has priority to deal with this case.

5. It is also apparent that on 8 October 2013, G.A. and RR.A. had been arrested and were already subject to measures of detention on remand in Kosovo. On 9 October 2013 the SPRK Prosecutor issued a Ruling on Initiation of an Investigation against A.S, G.A, H.G. E.G, P.F. and A.D. and on 9 November the investigation also included EG by a decision to expand the investigation. On 16 November 2013 A.S. was arrested in Kosovo and the following month on 9 December 2013 E.G. was extradited from Republic of Albania to Republic of Kosovo, and placed in detention by a Ruling of the Pre-Trial Judge. All the defendants<sup>34</sup> are citizen of the Republic of Kosovo and have permanent residence in Prishtine/Pristina.
6. Jurisdictional competence to hear this case also derives from Articles 29, 32 of the CPCRK and, Articles 10, 114, 115 and 117 of the CCRK. Article 10 of CCRK states: *'The offence is committed at the location where the perpetrator acted or ought to have acted, as well as at the location where the consequence occurred'*. The Trial Panel is of the view that at least the commission of the criminal offence of organized crime was partly committed within the territory of Kosovo because the organized criminal group was formed within the territory of Republic of Kosovo. Further to this, the discussions on how to divide the tasks, the planning, and the bookings of flights, the tickets for the defendants, the arrangements of hotels as well as the trips were done in the Republic of Kosovo and to be continued in the Kingdom of Bahrain. As a main rule, the territorial jurisdiction according to Article 29 (1) CPCRK, is vested in the basic court within which territory *any act* of a criminal offence has been committed. The members of the criminal group as mentioned above planned, booked and obtained visas etc. within the territory of Republic of Kosovo and to be continued in the Kingdom of Bahrain. As a secondary criterion for jurisdiction in this case

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<sup>33</sup>Binder Prosecutor's Files Vol 3, tab 3.

<sup>34</sup> In addition A.S.is also of Macedonian citizenship.

applies Article 32 (1) CPCRK where it is stipulated that *‘if the place of commission of the criminal offence is not within the territory of Kosovo the court within whose territory the defendant has a permanent or current residence shall have jurisdiction’*. In the present case all of the defendants had permanent and/or current residence in Kosovo. They were all, with the exception of EG, apprehended within the territory of Kosovo, these circumstances makes that for all except E.G. also Article 32 (3) is applicable and gives jurisdiction to the court of Kosovo. However, EG is Kosovo citizen with permanent residence in Pristine/Pristina.

7. Also to be noted is Article 33 of CPCRK that stipulates that if a person commits criminal offences both in Kosovo and outside Kosovo the court which has jurisdiction over the act committed in Kosovo shall have jurisdiction for the criminal offence committed outside Kosovo. This stipulation makes it also clear that the Court in Pristina, Kosovo, has jurisdiction over the criminal offence of organized crime and robbery.
8. The Court also notes that jurisdiction of the Kosovo courts is also based on Articles 114, 115 and 117 of CCRK. Application of criminal law of Kosovo is to be applied when the commission of crime at least was partly committed within the territory of Kosovo, which is the case at hand, Article 114, par 1 of the CCRK. If the criminal offence was committed outside the territory of Kosovo and the defendant is a national of Kosovo and the actual act also is punishable in the other state, in this case Kingdom of Bahrain, which is the case, Article 115 (3). This applies to all defendants. The Trial Panel notes in particular the terms of Article 117, paragraph 2 which set out narrow grounds where criminal proceedings shall NOT be initiated. In circumstances where none of the grounds in paragraphs 2.1, 2.2 and 2.3 of Article 117 CCRK are met – as they are not in this case – then, impliedly criminal proceedings can be commenced in Kosovo. The Trial Panel also notes that there is no material on the case file to suggest that Bahrain ever sought to extradite the four defendants to face trial. This is, in the view of the Trial Panel, a highly significant factor in determining whether the trial in Kosovo can proceed or not.
9. The Trial Panel is of the opinion that when one state by accepting jurisdiction over one criminal offence should not be prevented from prosecuting a wider criminal offence by the same perpetrators within its own territory especially when the acts of the defendants are the same. It is therefore indisputable that the Prosecutor has jurisdiction to prosecute this

case and it follows from that if the prosecutor in the SPRK has jurisdiction that the Courts of Kosovo have competence to hear the case. The Trial Panel also notes that the lack of an extradition treaty between Kosovo and Bahrain is a factor that has to be taken into account regarding the enforceability of the judgments that were issued *in absentia* in the Kingdom of Bahrain and that issue is addressed further below.

10. Furthermore, it is clear that the Courts of Kosovo do not permit trial in absentia. This is a fact that can be deduced from the obligations placed upon a Presiding Trial Judge to inform the accused of their rights at the start of the main trial, Article 323 CPCRK, and sets out the procedure where an accused does not attend the main trial having been summoned (Article 307 CPCRK). Both of these facts mean that the trial that took place in Bahrain could not have taken place in Kosovo under the same circumstances. That alone means that the court must look at Article 72 of the Law on International Legal Cooperation in Criminal Matters.

11. It occurs to the Trial Panel that the enforcement of a foreign judgment will not be permitted if the enforcement would be contrary to the fundamental principles of the legal system of Kosovo under Article 72, paragraph 1, (1.1) of that law. It is the view of the Trial Panel that a right to be present, confront accusers and examine the evidence in person is one of the fundamental rights that adhere to defendants in the Kosovo legal system<sup>35</sup>. That alone would be dispositive of the issue, but the Trial Panel also notes that sub-paragraph (1.6) of the same Article states that the judgment will not be recognised if it was rendered in absentia AND UNLESS the requesting state provides supporting evidence of adequate notification of the proceedings to the defendants. In summary therefore, judgment must be *in absentia* – there appears to be no issue with that here – and, secondly, the other state, in this case Bahrain, must have requested the delivery up of the

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<sup>35</sup> Article 14 of the International Covenant on Civil and Political Rights, a treaty which binds Republic of Kosovo regulates the rights of an accused or defendant. These rights include the right to be present during the trial, the right to defend his or herself and the right to examine witnesses, which cannot be exercised if the trial is in absentia. Also the International Criminal Court in its Article 63 prohibits trials in absentia, which is also the case regarding the Ad hoc tribunals, like the ICTY, which bans trials in absentia. Article 6 (3) of the European Convention on Human Rights and Fundamental Freedoms specifies that everyone charged with a criminal offense has the right to defend himself in person or through legal assistance of his own choosing. In the case *Colozza v. Italy* is stated the object and purpose of Article 6 is for the defendant to be entitled to take part in the trial. A waiver of the right to be present must be clear and unequivocal, ECHR, *Poitrimol v. France*, 1193 18, E.H.R.R. 130, para 31.

defendants to serve their sentence AND provided evidence of service of notification of proceedings.

12. Therefore, in the absence of any request being made by Bahrain for the return of the defendants – indeed in circumstances where the opposite is the case and Kosovo was asked to and agreed to prosecute the defendants the Courts of Kosovo unequivocally have the jurisdiction to try this case.

### **C. The Bahrain judgments and their relevance**

1. Once it is established that the Courts of Kosovo have jurisdiction to try the case the significance of the judgments rendered in the Kingdom of Bahrain must be considered, these are the Bahrain first instance judgment, dated 18 September 2014 sentencing defendants A.S. RR.A, G.A .and E.G. to life imprisonment each, and the Bahrain Appellate judgment, dated 30 December 2014, which sentenced E.G. and I.E. to fifteen years imprisonment each.
2. In interpreting these judgments, and consonant with the obligation upon the Court to safeguard the rights of the accused at all times, and to interpret the codes in an harmonious fashion, the Trial Panel has decided to treat the Bahrain first instance judgment as if it were a final judgment. This arises in circumstances where it is not clear whether the first instance judgment actually crystallised and became a final judgment, for example when the period of time within which an appeal was permitted had elapsed. This interpretation ensures that the matter is considered in the manner most favourable to the accused. It also ensures that the constitutional and statutory safeguards protecting the rights of the accused are applied and nullifies the risk that the Trial Panel might rely upon a mistaken interpretation or impression of the Criminal Procedure Law of Bahrain.

### **D. The NE BIS IN IDEM ISSUE**

3. It is notable that both Article 4 of the CPCRK, Article 14 (7) of the International Covenant on Civil and Political Rights, and Article 35 of the European Convention on Transfer of Proceedings (when reproduced in full as it is incumbent on all counsel to do if they propose to rely on it in support of their arguments) and Article 56 of the Law on International Legal Cooperation in Criminal Matters (which states that transfer will not be

effected unless judgment is final), all refer to *ne bis in idem* or conditions of transfer to serve a sentence ONLY apply when judgment is final. It is clear that the word “Final” in the CPCRK should be given its plain and ordinary meaning and that it must mean when appeals have been heard and all avenues of appeal exhausted, or when the period of time to appeal has elapsed.

4. The Trial Panel has also considered the case of *Oliveira v Switzerland*<sup>36</sup>, referred to by the Prosecutor in his submission and note in this regard the terms of Article 4 of protocol 7 of the European Convention on Human rights where it is stated:-

*ARTICLE 4 OF PROTOCOL NO. 7 of the European Convention on Human Rights*

***Article 4***

*1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of the State.*

It is clear to the Trial Panel that the key point here is that the Convention contemplates a prohibition on re-trial “*under the jurisdiction of the same state*”. In circumstances where the European Convention on Human Rights can be pleaded in the Courts of Kosovo<sup>37</sup> then this statement of the law should confirm that as far as Kosovo law is concerned, a plea of *ne bis in idem* applies as a remedy against a domestic trial ONLY.

5. The Trial Panel has also sought to obtain guidance from available decisions in other cases decided by the Basic Courts of Kosovo and note that in a case from the Basic Court of Gjilan which touched upon the issue of *ne bis in*

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<sup>36</sup> *Oliveira v. Switzerland* (84/1997/868/1080) 30 July 1998.

<sup>37</sup> For example in Articles 433 and 441 of the CPCRK.; and noting the provisions of Article 22, paragraph 2 of the Constitution of Kosovo which renders the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions.

*idem*, that court <sup>38</sup> - when considering whether the *ne bis in idem* principle covered foreign final judgments – opined:

*‘Considering that the alleged facts have been committed in FYROM and that the Primary Court [redacted] has already rendered a final judgment on [redacted] as to the same facts, the Pre-Trial Judge has considered whether the initiation of criminal proceedings for the same acts by the Prosecutor in Kosovo would violate the principle of “ne bis in idem”, as specified in Article 4 of the CPCRK. This principle seeks to prohibit initiation of criminal proceedings against a person, already acquitted or convicted for the same criminal acts or offences<sup>39</sup>. The Judge also took into consideration the fact the proceedings in FYROM were conducted in absentia, which are permitted under Macedonian law but not under Kosovo law. A request for extradition has been presented by the Macedonian authorities to Kosovo Ministry of Justice in 2010, however, the request was not processed any further on the basis that Kosovo does not extradite its own nationals. An international agreement was since concluded between FYROM and Kosovo on extradition but leaving the right for each country to refuse the extradition of their own nationals. An extradition would therefore be unlikely at this stage considering the Ministry did not act on the previous request, that FYROM will not present another request for extradition and that an extradition would in any case require that assurances be provided that a new trial could be conducted for [name redacted] in view of the fact that the first trial was conducted in absentia (sic) and that he would not be further extradited to other countries where he is wanted, such as [redacted]. In the meantime, the Macedonian authorities have provided all the evidence and documents to the Prosecutor in Kosovo. Execution of the FYROM judgment is also considered to be impossible in view of the fact that Kosovo law does not allow for in absentia trials, which could violate the principle of a fair and impartial trial, as provided for by article 31 of the Constitution and through the direct application of the ECHR and its article 6. In the*

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<sup>38</sup> In a decision dated 5 January 2015 (Case against defendant LJ) Basic Court Gjilan/Gnjilane.

<sup>39</sup> Article 10 of the Constitution of Kosovo, Article 14(7) of the International Covenant on Civil and Political Rights.

*opinion of the Pre-Trial Judge, it is not certain that the equality of arms was respected in the FYROM trial and that the rights of the defendant were sufficiently provided for by the ex officio lawyer. Finally, if the Pre-Trial Judge would not consider that these criminal proceedings could be legally conducted according to the Kosovo law, in view of the fact that extradition of [redacted] is unlikely and that the execution of the FYROM judgment is not possible, then this could result in a miscarriage of justice. Indeed, the Pre-Trial Judge believes that the strict implementation of ne bis in idem on decisions or judgments rendered by foreign jurisdictions has to be considered carefully in light of the relationship between sovereign States because the lack of proper international cooperation could lead to a miscarriage of higher principles of justice. The conflict between two judgments in identical cases between members of European Union should be considered differently than similar situations between two sovereign States such as Kosovo and FYROM recently affected by a conflict and with mutual suspicion on the respective justice systems. Nevertheless, the establishing of the criminal offences which can be considered as identical with criminal acts for which defendant was sentenced is a subject of the ongoing investigation and prosecution and will be reassessed during the adjudication of this case. It is assessed that between the risk of miscarriage of justice and the formalistic interpretation of the ne bis in idem principle, the pre-trial decided that justice must be rendered in this instance. The Pre-Trial Judge therefore concludes that the criminal proceedings conducted against [redacted] are not in violation of the ne bis in idem principle’.*

6. The Trial Panel notes that the summary above, although lengthy, provides support for the proposition that even a final judgment from abroad is not enough to trigger the *ne bis in idem* principle because this principle is applicable to national jurisdiction only.

### **E. Conclusion.**

7. The Trial Panel considers that the combined domestic case-law, international case law, together with the provisions of the various international

agreements that Kosovo has agreed to be bound by - and indeed to prioritise over domestic legislation – all confirm that a plea of *ne bis in idem* is applicable to previous domestic judgments ONLY. Moreover, Article 4 of the CPCRK itself is silent as to whether it applies to foreign judgments or not, in the absence of that being stated explicitly, it cannot be interpreted as being something that was obviously intended by the legislator within the meaning of the Article. Indeed, Article 4, paragraph 2 states that a final decision of a court may only be reversed through extraordinary legal remedies as provided for by the code and it is the view of the Trial Panel that these two paragraphs have to be read conjunctively, and therefore final judgment means final judgment within the scheme of the CPCRK and the CCRK.

8. That being so, the Trial Panel considers it unnecessary to determine whether there is a customary rule of law or not that *ne bis in idem* applies between courts of equal jurisdiction in different countries.
9. For all of the reasons set out above, Article 72 of the Law on International Cooperation in Criminal Matters applies which makes referring to the above reasoning that Article 4 of the CPCRK is inapplicable to this case. The Basic Court of Prishtine/Pristina, Kosovo has jurisdiction to adjudicate the current case.

## **B) The Main Trial.**

### **i. Evidence administrated during the main trial.**

During the course of the Special Investigative Opportunity and the Main trial the following witnesses were heard and the following evidence was administrated.

#### *i. Witness Statements*

The following witness statements were contained in the case files and were entered into evidence:

- (1) Bahrain Prosecution interview with M.Z, dated 16 September 2013;
- (2) Bahrain Prosecution interview with J. V.E. R, dated 22 September 2013;
- (3) Bahrain Prosecution interview with J. V. S, dated 25 September 2013;

- (4) Bahrain Prosecution interview with M.M A.Z A., dated 25 September 2013;
- (5) Bahrain Prosecution interview with Captain G.A.S., dated 26 September 2013;
- (6) Bahrain Prosecution interview with I , dated 2 October 2013;
- (7) Bahrain Prosecution interview with EG, dated 2 October 2013;
- (8) Bahrain Police interview with R.P/ , dated 11 September 2013;
- (9) Bahrain Police interview with Sh.R.B. , dated 11 September 2013;
- (10) Bahrain Police interviews with A.A.I. A. M., dated 11 September 2013;
- (11) Bahrain Police interviews with H.A.I. A. M., dated 11 September 2013;
- (12) Bahrain Police interview with MZ, dated 11 September 2013;
- (13) Bahrain Police interview with A.C. , dated 15 September 2013;
- (14) Bahrain Police interview with A.S., dated 16 September 2013;
- (15) Bahrain Police interview with M, dated 15 September 2013;
- (16) Bahrain Police interview with M. A. M, dated 15 September 2013;
- (17) Bahrain Police interview with J.V.S., dated 23 September 2013;
- (18) Bahrain Police interview with M.M. A.Z.I, dated 23 September 2013;
- (19) Bahrain Police interview with A. Y. G. A. A. dated 1 October 2013;
- (20) Bahrain Police interviews with EG, dated 1 October 2013;
- (21) Bahrain Police interview with I , dated 2 October 2013;
- (22) Bahrain Police interview with A.C, dated 2 October 2013.<sup>40</sup>

*ii.*

Kosovo prosecutor's pre-trial testimonies with the defendants and the witnesses

1. Prosecutor's pre-trial testimony with defendant H.G, dated 9 October 2013;
2. Prosecutor's pre-trial testimony with defendant G.A, dated 9 October 2013;
3. Prosecutor's pre-trial testimony with defendant RR.A, dated 9 October 2013;
4. Prosecutor's pre-trial testimony with defendant A.S, dated 17 November 2013;
5. Prosecutor's pre-trial testimony with defendant EG, dated 9 December 2013;
6. Prosecutor's interview B.H, dated 24 October 2013;
7. Prosecutor's interview L.S, dated 11 November 2013;
8. Prosecutor's interview with SH.A, dated 11 November 2013;
9. Prosecutor's interview with G. dated 18 November 2013;
10. Prosecutor's interview with A.B, dated 18 November 2013 and 24 December 2013;
11. Prosecutor's interview with B.B, dated 24 December 2013;

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<sup>40</sup> Witnesses from 1-22 Binder - Prosecution Files Bahrain Doc. Vol 10.

12. Prosecutor's interview with A.G. dated 26 December 2013;
13. Prosecutor's interview with R.G, dated 30 December 2013;

*iii. Viva Voce Witnesses*

The Court heard the following witnesses:

Witnesses J. F. A. R; R.Th.P. , M.Z.; Sh.R.B.; G.A.A.S. A. S.-e; J.V.S. and Sh. T. M. Sh. M. were heard via video link in a Special Investigative Opportunity session held on 1, 2, 3, 7 July 2014<sup>41</sup>.

**ii. Witnesses' testimonies heard during the main trial**

**Police officers incapacity of witnesses:**

R.B heard on 24 November 2014;

N.G heard on 24 November 2014;

M.A heard on 24 November 2014;

A.M heard on 16 December 2014;

XH.M heard on 16 December 2014;

SH.A. heard on 16 December 2014.

**Other Witnesses:**

A.B, sales manager at Venetta Travel Agency, heard on 29 January 2015 3 February 2015;

B.H, goldsmith, heard on 14, 27 and 28 January 2015;

SH.G. heard on 28 January 2015;

**Bahrain witnesses heard via video link**

I.E. was heard via video link on 10 December 2014;

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<sup>41</sup> Another hearing was arranged for 8 July 2014 and there were supposed to be heard IE and H A I A. M. however this did not happen because the hearing was interrupted due to sickness of defendant RRA.

M.S. was heard on 11 December 2014;

**Material evidence:**

As for the evidentiary proceedings, Pursuant to Article 311, para 1 of the CPCRK, after hearing the parties, it was agreed by everyone to consider as read, administrated or examined, the evidence obtained by SPRK as well as pieces of evidence collected by Bahraini authorities and transferred to the Republic of Kosovo. Further, in this regard the defence counsels B.T. and A.H. submitted with the court a joint proposal, dated 22 June 2015, proposing not to consider some pieces of evidence, as listed out in this submission under paragraphs 3, 4, 5, 6 and 7, with the reason that these pieces of evidence either do not relate with current proceedings or they show procedural actions undertaken by the prosecutor and/or the Pre-Trial Judge and as such cannot be treated as evidence.

The Court shared same opinion with the Defence regarding the majority of the items as mentioned in defence motion. Further, regarding the proposal under no. 5, since the sergeant R.B. was heard as witness on 24 November 2014, the summary of his conversation with EG is admitted as well. Also, defence proposal to admit and administer as evidence Ramadan Schedule/Vaktia e Ramazanit for 2013 and 2015 was admitted as evidence.

***List of prosecution evidence***

*Binder I- Police files Vol.1,*

Transcription of a phone conversation held between the Bahraini Police Officer responsible for the investigation and Captain Jeton Krasniqi of Kosovo Police where the robbery details were given in this conversation. In brief it is explained that the passport copy used to rent a car used to commit the crime was matched with the Entry CCTV footage from the Bahrain international Airport which led to the identification of one of the suspects, P.F. Further, the connection with Farhat Travel Agency, Venetta travel Agency and Victoria Visa Agency is established by the authorities. Page 2-9: boards with pictures of the suspects, their passports, the Hotels where they stayed, dates of entry and dates of exit from Bahrain regarding three different trips made by the suspects during 2013, *Tab 2, page 1.*

List of the stolen watches, with models and serial number, provided by the Bahrani Police<sup>42</sup>, *Tab 7, pages 66-67.*

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<sup>42</sup> The list indicates 81 watches, however later on was established there were 79 Watches.

Copies of first page of passports of defendants A.S, RR.A, G.A and E.G, as well as those related to P.F. and A.D. Also (page 69) copy of a passport of a person named Andreas Stavros- Copy of the fake passport and the forged stamp, *Tab 8, pages 70-79.*

Informative report regarding 'Victoria' - Summary of a telephone conversation held between Sgt. R.B. from Kosovo Police and the American/Kosovar citizen arrested in Bahrain, EG dated 2 October 2013, ref.no. 2013DKKO0034, *Tab 15, pages 120, 121.*

A print-out of the Kosovo Police Information System -Person Details concerning RRA aka as RRA, *Tab 21, page 284.*

House search report, dated 8 October 2013, regarding RRA's house, *Tab 23, pages 287-306.*

Search report - Certificates of registration of Victoria Visa Agency, located in Pristina, Kosovo, *Tab 24, page 308-309.*

House search report, dated 8 October 2013 regarding GA's house, *Tab 25, page 341/326.*

#### *Binder II- Police files Vol. 2*

House search report – AS's house; Print out of travel tickets (Plane tickets) Pristina/Frankfurt/Bahrain/Frankfurt/Pristina, outbound date 24 January 2013, inbound date 2 February 2013 in the names of DJ. DJ. and B.B; tickets Pristina/Istanbul/Bahrain/Istanbul/Pristina, same dates, in the names of RRA and A.G.; Print out of travelling tickets (Plane tickets) Pristina/Vienna/Dubai/Bahrain/Dubai/Vienna/Pristina, outbound date 26 January 2013, inbound date 5 February 2013 in the names of DJ. DJ. and B.B.; Copy of a handwritten list with brands of watches including the words "4 x Rolex"; Copy of a 7 day business eVisa for Bahrain in the name of RR.A, expiry date: 19<sup>h</sup> February 2013; Hotel confirmation for Pars International Hotel, standard twin room with breakfast in the names of DJ. DJ. and A.G; Copy of a 7 day business eVisa for Bahrain in the name of DJ DJ , expiry date: 19 February 2013; Hotel confirmation for Delmon International Hotel, standard twin room with breakfast in the names of DJ .DJ. and RR.A; Copy of a 7 day business eVisa for Bahrain in the name of DJ. DJ. , expiry date: 20 February 2013; Copy of a 7 day business eVisa for Bahrain in the name of A.G., expiry date: 20 February 2013; Copies of identity card from Republic of Macedonia in the name of AS and identity card issued by the Republic

of Kosovo in the name of AS; Copy of the first page of AS' passport (Republic of Kosovo), *Tab 26, pages 25, 26, 50, 68, 70, 71, 72, 75, 88 and 90.*

*Binder III- Police files Vol. 3*

Police Informative Report, dated 7 October 2013, ref. 2013-DKKO-034 confirming the phone number 045-412-..8 is in use by GA and phone number 049-495-..5 is in use by AS, *Tab 3, pages 44-46.*

House search report, dated 8 October 2013, HG's house with pictures and description of seized ammunitions, *Tab 5, pages 65-81.*

Police request, dated 11 October 2013, ref.no.: 2013-DKKO-034 for issuance of an order for examination of digital appliances seized to the defendants revealing the following: A mobile phone and a sim card were seized in the possession of G.A; a mobile phone and two sim cards were seized in the possession of RR.A; 21 sim cards were seized in the possession of A.S. *Tab 12, pages 184-189*

Letter from the Ministry of Justice of the Republic of Kosovo transmitting a letter from the Kingdom of Bahrain asking for transfer of the criminal proceedings against DJ. DJ. , G.A. and RR.A, *Tab 18, pages 207-208*

Police report, dated 21 October 2013, with photographs of all items seized to AS, H.G, RR.A, and G.A .that were sent to Examination Unit, as well as the evidence that was not sent to examination unit, *Tab 20, pages 216-238.*

Correspondence dated 28 October 2013 sent by V.E. to prosecutor Robert Kucharski, sending the printouts of the Boarding Management System (BMS) with dates of entry and exit of the suspects: some of the data registered on the BMS records are consistent with the scheduled trips booked on Veneta Travel Agency, as well as the fingerprints, *Tab 24, pages 305-336.*

*Police files Vol. 4- Venetta Search documents*

All Veneta Travel Documents – read out in the court session when witness A.B. gave his testimony on 29 January and 3 February 2015.

*Binder Police Files Vol. 5*

Handover of 1 CD with IMEI cartography data from VALA. The handover note was dated 25 October 2013, and was done by Sgt R.B. to SPRK, *Tab 3, pages 21-52;*

Handover, dated 28 October 2013, of 1 CD with the incoming and outgoing data from VALA. Emails from Captain G. in Bahrain to V.E. regarding finding the CCTV from hotel of two of the suspects. Request from Kosovo Police to the Bahrain authorities to hand over the police files, *Tab 4, pages 53-61*.

Search Report, dated 23 October 2013, of the residence of G.A. in order to seize footwear that matches the footwear worn by the defendants in the CCTV footage from Bahrain. Attached to the report are the photos of seized trainers, *Tab 7, pages 157-172*.

Search Report, dated 24 October 2013, of residence of N.Z. father of defendant RR.A.-Z. , to seize footwear that matches the footwear worn by the defendants in the CCTV footage from Bahrain. Attached are the photos of the place where the shoes were kept, *Tab 8, pages 173-189*.

Search Report, dated 24 October 2013, of RR.A. in Detention Centre in Prishtina to seize footwear that matches the footwear worn by the defendants in the CCTV footage from Bahrain. Attached to the report are the photos of seized trainers, *Tab 9, pages 190-198*.

Information Report, dated 28 October 2013, concerning phone number 044 ... .. belonging to AS's wife, stating that this number was also used by AS, *Tab 10, page 199-204*.

Report, dated 5 November 2013, concerning the search of SHG house in 2007 and the items seized. This report confirms that the police officers had taken all illegal ammunitions from the specific residence in 2007, *Tab 15, pages 224-226*.

Record on search conducted on 18 October 2013 in the residence of RR.A./Z. and lists of seized items, *Tab 25, pages 294-302*.

Interception of telecommunications (only relevant ones with the dates indicated in the reasoning) contained in Binder I-Police files Vol 1, Binder III-Police files Vol 3, Binder-Police Files Vol 5, and Binder VI-Police files Vol 6.

*Binder VII-Police Files Vol. 7*

Official Memorandum regarding the forensic report on DNA Analysis, dated 2 April 2014, ref.no. AKF/2014-0753/2014-607 – establishing that G.A.'s DNA matches a sample of human tissue taken from a stick found at the crime scene, *Tab 9, pages 91-103*.

Report from Kosovo Agency on Forensic, dated 11 August 2014 informing the prosecutor that the expertise of the spray (Nato spray) cannot be conducted in this institution, *Tab 13, page. 108.*

*Binder V –Prosecutor’s Files , Vol. 1*

Request for International Legal Assistance sent to Albania, dated 7 October 2013 regarding E.G. *Tab 14, pages 146-151.*

*Binder VI –Prosecutor’s Files, Vol. 2*

List of items seized in the house search of A.S, *Tab 13, pages 150-156.*

Official Note on items seized in the house search of A.S, *Tab 14, pages 157-210.*

*Binder – Prosecutor’s file Vol. 3*

Ruling accepting the transfer of proceedings from the Kingdom of Bahrain, dated 28 October 2013, *Tab 3, pages 22-23.*

*Binder –Prosecutor’s Files , Vol 6*

Picture of Rolex watch, *Tab 2 page 33 and 34.*

Record of inspection of a CD regarding DNA and fingerprint tests, *Tab 6, pages 62-68A plus the attachments – 2,3, 4,6 and pictures of the fingerprints.*

*Binder Prosecution Files, Bahrain Doc., Vol 7*

Information from the Kingdom of Bahrain regarding the Robbery at Rolex Boutique and details of the suspects, *Tab 2, pages 17-45.*

Bahrain Penal Code 1976 (relevant provisions), *Tab 5.*

*Binder Prosecution Files, Vol 8*

DNA samples- Interpol Report, *Tab 4, pages 164-165.*

Pictures regarding house searches, *Tab 5, pages 166-172.*

Report Regarding DNA Samples collected from E.G, RR.A, G.A. and A.S, *Tab 13, pages 322-336.*

*Bahrain Investigation Material, File Ii*

International Red Notices- Including CCTV stills of the scene of crime, *Tab 2, pages 5-25.*

Initial Police Report of Bahraini Police after having been informed about the robbery at Rolex boutique, and the Minutes of the proceedings – the Reports on the units attending the scene on 11 September 2013, *Tab 3, pages 26-55.*

Survey of the CCTV footage - the defendants leaving and returning to their hotels, *Tab 18, pages 136 and 138.*

Circulation of details of the Grey Jeep, registration plate 8079, *Tab 21, page 145.*

*Bahrain Investigation Material, File Iii*

Summary of the investigative review from Prosecutor's assistant M.S. to Director of Capital Governorate Police Directorate, *Tab 1, pages 1-3.*

Forensic examinations of the crime scene findings and of victim BZ, *Tab 4 and 7.*

Second Entry records of arrival of P.F; A.D; DJ. DJ. and G.A, *Tab 11, pages 61-63.*

Third entry records of arrival of P.F; A.D; DJ. DJ , G.A, E.G and RR.A, *Tab 12, pages 64-66.*

Further investigations turn-up indicating the time the defendants left their hotels and their activities in the days before the robbery. They leave and return to their hotels within similar times of going to the mall, committing the attack and robbery and then return back, *Tab 19, 87-94.*

Search report of the room occupied by IE where 63 Watches were found, *Tab 20, pages 95-97.*

Entry and exit records for E.G, *Tab 22, pages 102-104.*

Suspects identified wearing the black veils, *Tab 28, pages 131-162.*

CCTV stills of the suspects in the mall and the hotels, *Tab 29, pages 163-168.*

Interview with E.G. when he informed the Bahraini police he came to Bahrain on 29 September 2013 and stayed in the apartment, he was told to meet IE at the Ramadan Palace Hotel, *Tab 30.*

Investigative Minutes of Public Prosecution of Kingdom of Bahrain- Information about two defendants: IE and EG who were detained for 6 days; the handover of 63 watches, *Tab 31, pages 227-233.*

*Binder – Bahrain Investigation Material 2*

Summary of the investigative steps, *Tab 1, pages 1-8.*

Passports and visa information of the defendants, *Tab 5, pages 120-146.*

Summary of the hotel and flight details for the defendants, and movements of P.F, *Tab 6, pages 147-203.*

Movement details of D.J DJ. (A.S.), A.D, G.A, E.G, RR.A, *Tab 7, pages 204 -263.*

Car Hire documentation and inventory of stolen items, *Tab 9, pages 303-318.*

Car Hire documentation and photos of A.D. and DJ .DJ. in the robbery, *Tab 10, pages 319-327.*

Business visa information and summary of hotel reservation, *Tab 11, pages 328-467.*

*Binder – Bahrain Investigation Material 3*

Travel and accommodation information for the Defendants, *Tab 1, pages 13-103.*

Medical report for M.Z. confirming he was exposed to spray on his eyes, *Tab 2, pages 109-111, and Tab 11 pages 148-159 .*

Annexes: The vehicle seized items; Copies of passports and driving license; Copy of the fake and the original entry seal; photo of the first defendant outside Bahrain Airport; photo first and second defendant leaving Bahrain Airport after the commitment of the crime; copy of passports of first defendant, the original and the fake one; vehicle data report, *Tabs 12-19 all pages.*

Booking in Hotel Holiday Vila, *Tab 29, pages 243-308.*

Ballistic report, dated 14 August 2014 regarding the ammunition confiscated from House of H.G, *Post Indictment -Prosecution File, Binder 1, tab 13.*

***Defence evidence***

Ramadan Schedule/Vaktia e Ramazanit for 2013 and 2015, *Main trial Binder VII, Tab 3.*

## **Witnesses' testimonies:**

### ***Summary of witnesses' testimonies***

#### *a) Those of the Special Investigation Opportunity Sessions*

The sales manager at the Rolex Boutique in City Center Mall in Manama, Bahrain, **J.R.** gave evidence during the Special Investigation Opportunity Hearing on 1 July 2014. He stated that he worked as a sales manager in the specific Rolex Boutique, a shop which was located on level one in the City Center Shopping Mall in Manama. He came to the shop in the morning of 11 September 2013 after the robbery had taken place. He then observed the broken glass, that all watches were taken, and he stated that the police officers were present in the shop as well. Further, he stated that he did an inventory list of the stolen watches; it was seventy nine (79) watches, Rolex and Theodore watches. The shop was closed for ten days. He stated to have observed blood stains on the broken glass and that the forensic team from the police did take this forensic evidence with them. He also stated that the police were given the copies of the video recording from the different cameras of the robbery.

Regarding the damages in the Rolex Boutique, witness J. R. stated that the main door was broken, all standing show cases were broken and two standing wall show cases were broken as well.

Regarding the blood stain, he stated that the glass show case was 4-5 feet high, and that the side of the show case is made of wood and the other side is made of glass, so when the glass was broken it fell on the tray and he saw blood there. He also stated that on the broken glass pieces of the show case there was blood. The broken glass with the blood stains were inside the show case where the watches were displayed. Witness, J.R. finally stated that in the shop were five video cameras of which one was facing the door, one camera was in front of the safe and the other cameras was facing the show cases.

Witness **R.TH.P.**, the manager of the Rolex Boutique, gave evidence in the Special Investigative Opportunity on 1 July 2014. He stated that he arrived to the Rolex Boutique at around 11:30 pm to midnight on 10 September 2013, and had observed the front door was broken, that all show cases were broken, the window display

was broken and many watches were missing. He also stated that both the police and the management of the shop were present when he arrived.

Witness R.TH.P. Further stated to have done an inventory list; He concluded that in total 79 watches were stolen of which 70 watches were Rolex watches and 9 watches were Theodore watches. The account department of the Rolex Boutique checked the number of the stolen watches and could confirm that the number and branches of watches were correct. He also stated that seven of the watches, Rolex watches that were left in the shop were damaged. When asked, he explained that after each shift an inventory was done in order to count how many watches were there. The Witness R.TH.P. testified that the shop received 63 watches back from the police, however the watches were damaged. He also stated that 16 Rolex watches are still missing.

He further stated to have observed blood on a show case and how the show case with the blood stain was taken by the police. He does not know how many blood stains there were. The witness finally stated that all four show cases were damaged and watches were taken from two show cases and from one window show case.

The injured party, **Mr. M.Z.** gave evidence during the Special Investigative Opportunity on 2 July 2014, and stated he was on duty as a security guard at the Shopping Mall on 10 September 2013, and at around 11:20 pm or 11.00 pm he saw 5-6 people wearing the so called *abaya* with a baby trolley.

All of the sudden, one or two of them took a spray and sprayed in his face. He tried to call one of his colleagues by the walkie-talkie. The witness stated that somebody from the group of people hit him on his back and then he fell down to the ground. Mr. Z. said he could not see anything. However he heard that something was broken in a shop. Further, the witness stated that he screamed and shouted for help, and when his colleague arrived, the witness Mr B., the 5-6 people dressed in *abaya* left and the group threw a screwdriver at him.

The witness further stated that when group left they run and had an iron rod with them that the group broke the door of the sliding glass door in order to get out of the shopping mall. When asked, the witness stated that the group entered into the shopping mall at gate 5, and that he could not see the faces of the persons that were in the group because they were dressed in *abaya*, however, while running away

they behaved like men. The witness finally stated that after the incident, he was sent to hospital with an ambulance, and according to him his eyes were burning for 8-9 days.

The witness **Mr. SH.R.B.**, security officer at the shopping mall, gave evidence during the Special Investigative Opportunity Hearing on 2 July 2014. He stated that he worked as a security officer in the shopping mall and that he wore a uniform as a security officer. On the occasion he heard a loud sound that somebody was screaming for help, witness stated he ran to support his colleague MZ.

Witness Mr. B. confirmed the observations by his colleague, witness Mr Z, stating that he saw the broken glass and the broken show cases in the Rolex Boutique. The witness also stated that after arriving at the Rolex Boutique he called the supervisor and also the police.

The witness also stated that he run after the group of people but stopped when the group of people broke the glass sliding door and they threw something on the sliding door and broke it.

The witness **G.A.A.E.A.S.** police officer and the lead investigator of the criminal case in the Kingdom of Bahrain gave evidence on 3 July 2014, and stated that police arrived to the crime scene in the shopping mall shortly after the robbery. The forensic team at the police in the Kingdom of Bahrain arrived to the crime scene in order to collect evidence. The witness stated that he himself arrived two days after the robbery to the crime scene. This witness described the actions and findings of the police investigators in the Kingdom of Bahrain regarding the robbery in the Rolex Boutique.

He watched the CCTV footages that were obtained from the Rolex Boutique. In the course of the investigation he could conclude that the car that was used by the group of people, a Toyota Fortuner, to escape from the crime scene had stolen registration plates from another car. The stolen plates were from another parked car at another shopping mall. The police later on found the Toyota Fortuner car that was abandoned and inside it was a veil and an ax. He explained that this car was rented at 'Bahrain Rent a Car', and the rental agreement was concluded with a person named A.S. The witness stated that this person had used a Greek ID when renting the car, and the passport used by the person named A.S. was a falsification

because both the passport and the entry stamps were forged. This was demonstrated by the Kingdom of Bahrain that part of the stamp being incorrect in that it was not written in Arabic.

The witness further stated that the police then checked the Border Management System (BMS) and found that the person A.S. had never entered the Kingdom of Bahrain. The police then started to watch the CCTV footages of the International Airport in Bahrain in order to check people's faces going outbound on the days directly after the robbery and found a match; they found a similar man's face as A.S. The male who matched the picture was PF who left the International Airport in the morning after the robbery in the shopping mall.

The witness explained that the police discovered that PF, according to the CCTV, had arrived at the Airport in a Toyota Corolla car. Through the driver of that car the police was able to establish that PF stayed at the "Safir Hotel" in Manama City, along with another person, A.D. The police checked how they came to Bahrain and the hotel, and by that it was established that the reservations were done by a company in Bahrain called "Farhat". The police in Bahrain could thereafter by contacting this company establish that six persons came to the Kingdom of Bahrain on the same reservation done by a company in Pristina; Venetta Travel Agency and Vita Travel Agency.

Further, the witness stated that the police found six reservations in six different names; E.G, A.S. (DJ. DJ.), G.A, E.G, P.F. and A.D. and, these persons stayed at different hotels in Manama City, Bahrain. The witness stated that the investigation concluded through the "Farhat" Travel Agency that three trips were made; the first trip to Kingdom of Bahrain was made by AS, PF and AD between 6-12 July 2013, the second trip was made by the aforementioned persons including G.A. between 29 July – 5 August 2013, whereas in the last trip to the Kingdom of Bahrain that was done on 5 September 2013, all the defendants participated.

The witness further stated that the police established through the CCTV footage the defendants stayed at different hotels before the robbery took place; P.F. and AD stayed at Holiday Villa Hotel, while A.S. (DJ. DJ. ) and G.A .stayed at Al Safir Hotel, and E.G. and RR.A. stayed at Pars International Hotel. All these hotels were located about 15-20 minutes away from the City Center Shopping Mall in Manama

City. Further, the Witness stated that about three to four hours before the robbery, the different persons left their respective hotels; P.F. and AD left Holiday Villa, A.S. (DJ. DJ.) left Al Safir Hotel and E.G. and RR.A. left the Hotel Pars International and that this can be seen on the CCTV footage. In this regard, witness stated that it can also be seen on the CCTV footage that they did carry some bags and plastic bags when leaving the hotels. The witness also stated that after the robbery, the perpetrators returned back at different time to their respective hotels, which can be seen on the CCTV footages.

The witness further stated that the police investigation showed that RR.A. also rented a car, a Mitsubishi Gallant, at "Oscar Rent a Car" on 5 September 2013. Later on the police found the abandoned car and could seize a driving license from the car and this driving license was in the name of RR.A. The abandoned car Toyota Fortuner was discovered by the Police in Bahrain and inside it was found a veil and an ax.

The witness also stated that in cooperation with the Kosovo police it was established the person "DJ. DJ." is A.S.

The witness also explained the outcome of the investigation regarding the person E.G. who used an American passport. At the time he was already in Bahrain and the police had issued an arrest warrant against him, according to the witness.

The witness stated that the contacts the Bahraini Police had with the Turkish Airlines resulted in that E.G. could be arrested and that E.G. confessed everything when interrogated by the police. When asked, this witness stated that EG told the police how the stolen watches were in a rented apartment, that A.S. (DJ. DJ.) rented the apartment at Delmon Plaza, and that how E.G. had handed over the watches to another person, a Turkish employee, I.E. The witness said how 63 Rolex watches were found by the police in the latter's hotel room. In this regard, the witness then explained the next investigative step was to arrest I.E. I.E. who confessed and had said; *"He got instructions from a person from Kosovo to take the watches from Bahrain to be delivered to a person in or from Kosovo"*.

The witness then explained a part of CCTV footage from a hotel where it can be seen that A.S. was wearing the same shorts before the robbery and when he returned back to this hotel.

When asked about the blood stains that were taken from the crime scene, the witness stated that the Forensics dealt with that.

The witness Mr. G.A.A.E.S. saw the CCTV and commented the following: *‘At 06:53 pm PF and AD are leaving the hotel before the robbery. E.G. and E.G. are leaving. G.A. is arriving at the hotel. At 20:13 G. and E.G. followed by RR.A. at 20:35 left the hotel. On the CCTV footage the car used at the crime can also be seen’.* Further, at the CCTV footage, according to the witness, it can be noticed how P.F. and A.D. are coming to the hotel with a taxi at 12:27 am, as well as how both of them can be seen in the lift of the hotel, then the Witness continued saying *“now we see A.S. and G.A. and we see DJ. DJ. has changed his T-shirt, the T-shirt- he wore when he committed the crime is in his hands, the one he is wearing now belongs to E.G.”.* And finally that E.G. and RR.A. are coming back to their hotel.

Further on the CCTV footage the witness described; *‘P.F. and A.D. at 01:11 are leaving for the airport in Bahrain (directly after the robbery), that A.S. and G.A. are checking out from the hotel in order to go to the airport at 12:20 and last E.G. and RR.A. are checking out in order to go the airport at 03:04’.*

Witness commented the footages from the airport as well, and stated on how it can be seen- *“first Dj. and G.A left on Turkish airlines. Now we can see P.F. and A.D: they with the white shirts, and E.G. and RR.A.; they left on Etihad airlines”.* The witness comment on the attachment 25, where it can be seen that E.G. left and came back to the hotel with the same bag and that he was wearing the same shoes.

The last witness that was heard during the Special Investigative Opportunity was the witness **J.V.S.**, sales executive at ‘Oscar’ Rent a Car in Bahrain who gave evidence on 3 July 2014. This witness stated that on 5 September 2013, RR.A. rented a car, a Mitsubishi Gallant.

The Trial Panel allowed a lineup of the defendants and this witness positively identified RR.A, as well as pointed out EG<sup>43</sup> as one of the persons that were together with RR.A. at ‘Oscar’ Rent a Car.

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<sup>43</sup> Witness mistakenly pointed out to HG as a person to have been together with RA.

This witness stated that the car was not returned to their company and they found out by the police that the car was found abandoned, the key was missing and the car had a scratch. Further, the fact that RR.A. rented the car was not disputed by his defence.

*b) Summary of witnesses' testimonies heard during the main trial sessions*

The police sergeant at Kosovo Police, **R.B.** gave evidence on 24 November 2014 in front of the Main Trial Panel. The witness stated that the Kosovo Police started an investigation and also took some investigative measures such as covert measures and house searches. When asked by the prosecutor, the witness stated that a house search was conducted 2007 in the house of SH.G. and ammunition was found, and confirmed that the police did search the complete residence and as well as that all ammunition was removed from the whole residence at the time. Witness confirmed that the searches in the premises of H.G, A.S, and the Travel Agency "Venetta Travel" were done upon the Pre-Trial Judge's orders. When asked for details, witness rather preferred to refer to the respective reports<sup>44</sup> as they contain most accurate information. Further, witness confirmed to have had a conversation, through the phone, with E.G. and nor did want to add or change anything that was written in the report<sup>45</sup> the witness presented to the prosecutor.

Kosovo Police officer, **N.G**, gave evidence in front of the Trial Panel on 24 November 2014. He stated that he was part of the house search in HG's house on 8 October 2013. He said that the house in which H.G. lived is comprised of several floors and H.G. lived on one floor. He seized ammunition of different calibers in a bedroom inside a wardrobe.

The witness stated that he was told by the persons present at the search what part of the house H.G. lived in. The witness stated the police was convinced which floor belonged to H.G. and where he lived. The police searched the complete floor. The floor comprised of two bedrooms, one living room, a kitchen and a corridor, and that there was free access to all rooms on the floor for everyone.

The witness stated to have been told by family members that the room the ammunition was found belongs to H.G.'s father. When asked by the Trial Panel,

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<sup>44</sup> Dated 8, 12 October and 16 November 2013.

<sup>45</sup> 2 October 2013.

witness stated HG, all the time, accompanied the police while conducting the search, and when that specific room was searched H.G. did not say to whom the room belongs but only after having found the ammunition, H.G. denied to have any connection with the ammunition.

Kosovo police officer, **M.A**, was heard during the main trial session on 24 November 2014. He stated to have participated at A.S.'s house search on 8 October 2013, together with his colleagues, and that there were present the prosecutor, wife and children of AS, and his defence counsel, A.H..

When asked about the items seized, witness rather referred to the report as it contains most accurate information and confirmed he was compiling the report-listing the items that were seized. At a moment, the prosecutor showed the witness with a pair of shorts, and after having checked the record of the search, the witness confirmed that the shorts were taken during the second search at AS's apartment-in his bedroom. Further, witness explained that the second house search was conducted on 16 November 2013 based on some pictures provided by the prosecutor; therefore the police were looking for specific items such as clothing pants, some sneakers and everything else resembled to those items from the pictures.

When asked by the Trial Panel, witness explained that his role during the second search was to assist his colleagues in identifying the items that resemble the items in the photos; however it was R.B., as leader of the case, who decided if a certain item resembles the items from the photos.

On 10 December 2014 **I.E.** gave evidence via a video link from Bahrain. When asked, he stated to have been convicted by Bahraini authorities for concealing the watches from the robbery at the City Center Mall in Manama, Kingdom of Bahrain, on 10 September 2013. In relation to this case, he stated to have arrived to the Kingdom of Bahrain on 28 September 2013, and stayed at Ramadan Palace Hotel. He stated that on 1 October 2013 E.G. came to his hotel room and brought the watches, however he did not bring the documents in order to ship the watches abroad. He confirmed there were 63 watches; Rolex and other watches. Further, witness IE stated that he was asked by E.G. to keep the watches because he would bring the documents later, however E.G. got arrested before he came with the

documents. The witness I.E. also stated that he was arrested on the same day and the watches remained in the hotel room and got seized by the police.

The witness **M.S.**, gave evidence on 11 December 2014. The witness stated he worked as a customer coordinator at 'Bahrain Car Hiring', in Bahrain. He stated that a Toyota Fortuner was rented at the 'Bahrain Car Hiring' on 8 September 2013. The witness referred to a rental agreement<sup>46</sup> while he personally did not deal with the rental agreement for this car. However the witness confirmed that the Toyota Fortuner, showed on picture by the prosecutor, belonged to the fleet of cars at the car rental.

The Kosovo police officer, **A.M.**, gave evidence on 16 December 2014. He stated that he together with other police officers conducted a search at Venetta Travel Agency in Pristina, Kosovo. This witness had a vague memory about the search, however referred to the police report<sup>47</sup> that was compiled during the search and properly signed by the police officers in the chain of command. In this regard, he stated that the report did contain truthful information. The witness stated that as far as he remembered the names of suspicious persons matched with the names of the persons who travelled abroad.

On the same day, 16 December 2014 the police officer **XH.M.** gave evidence in front of the Trial Panel. The witness described that he was part of a house search at the house of A.S. in Pristina, Kosovo, in which a pair of shorts were seized. The witness stated that according to the information he and his colleagues had, a serious robbery had happened and a picture was shown on which a person was shown with a pair of shorts on when the robbery took place and the police officers in Pristina, Kosovo, were searching for a similar pair of shorts. The witness stated he and his colleagues found at the residence of AS a similar pair of shorts as was shown on the picture. The witness stated he signed the report regarding the seizure of the shorts.

Police officer, **SH.A** , Kosovo police, gave evidence on the same day on 16 December 2014. The witness stated he and his colleagues conducted the search at H.G.'s residence in Pristina. He stated that they found ammunition in H.G.'s apartment/house. The witness also stated that HG indicated to them where he lived

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<sup>46</sup> Binder Bahrani Investigation Material, vol. 3, tab 30

<sup>47</sup> Police report dated 9 October 2013.

after they had asked him. He further stated that police officers found a considerable amount of ammunition. Then the witness answered on the question by the prosecutor that H.G. did not have any reaction when the ammunition was found. The prosecutor asked the witness if there was any excuse at some point or other ownership in relation to the ammunition and the witness answered "No, there was nothing mentioned there." The witness finally stated that during the search H.G.'s mother was present and she did not say anything about the ownership of the ammunition; she did not say that the ammunition belonged to H.G.'s father. The defence counsel of H.G., Mr Z. P., asked the witness how he did believe that it was H.G.'s ammunition whereupon the witness answered that the ammunition was found in H.G.'s apartment.

The witness Mr **B.H.** goldsmith at Besa shop in Pristina, Kosovo, gave evidence on 14, 27 and 28 January 2015. He confirmed that A.S. used to come to his store like everyone else. One visit took place around 24 September 2013<sup>48</sup> and that visit was made by A.S. who was with two other persons unknown to him. The witness stated that he had seen A.S. wearing a wristwatch at that particular visit and the witness saw half of the watch. The prosecutor confronted the witness with his earlier pre-trial statement dated 24 October 2013<sup>49</sup>, Volume 1, page 73 and also Interpol documents page 16. The witness after the questioning from the prosecutor said that perhaps, did a person (referring to A.S., note by the Court) wear the 3<sup>rd</sup> watch from the left, a Rolex watch. The witness did also state that he told A.S. that he was not interested in that watch although the watch was not offered to him. Witness was reminded that in his previous statement he stated there were stones around the watch. Further, the witness was reminded that in his previous statement when he was shown the pictures, witness stated 'it is possible and resemble with the one I saw in his wrist', and his answer to this was 'yes, it is possible'.

The witness **Sh.G.**, father of H.G. gave evidence on 28 January 2015. He stated that in 2007 the Kosovo Police in Pristina conducted a search at his house and confiscated a large amount of ammunition and according to him this was a left over from the 1999 war in Kosovo. He stated that the ammunition remained in the house after the 2007 house search. He stated he served a sentence in prison and when he came out from prison he had placed some of the bullets in a wardrobe in

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<sup>48</sup> Witness confirmed this only after the prosecutor refreshed his memory.

<sup>49</sup> Pre-trial testimony of Defendants and Witnesses - Prosecution File.

the house. The witness also later in this testimony stated the police during the 2007 search took everything they found and for that reason he was sentenced to imprisonment. He also stated he was in prison when the 2013 house search took place. The witness stated he did not sleep or use the bedroom in which the ammunition was found during the 2013 house search. He slept with his mother in the living room instead. He further stated that the room was used for things only like a storage room.

On 29 January 2015 and to be continued on 3 February 2015 the witness **A.B.**, sales manager at Venetta Travel Agency in Pristina, Kosovo, gave evidence in front of the Trial Panel. Witness confirmed the police searched the Company and he was present during the search as well. That the search was related to some travellers who travelled to Middle East, and the witness mentioned Bahrain.

When asked, witness confirmed to have happened that group of people would travel to Bahrain, and continued saying this would be normal. At this point the prosecutor refreshed his memory because in pre-trial testimony dated 18 November 2013 witness had stated this would be rare. Witness was shown the Invoice no. 22191<sup>50</sup> dated 17 January 2013, and although he did not remember it by heart, he confirmed it was an invoice issued by 'Farhat International WLL' - a company that Venetta Travel cooperates with. The invoice indicates names of Xh. Xh, RR.A, DJ. DJ. and A.G. When asked, the witness was not able to remember names of the defendants that made arrangements in Venetta Travel Agency.

Further, the witness was shown a document and he confirmed it was a payment done by Venetta Travel Agency to Farhat International for the Invoice 22193<sup>51</sup>, and the sum 1576 Euros was the total cost of the invoice.

Then the witness was asked clarifications on the procedure of arranging the trips to Bahrain as well as his opinion was sought in relation to the documents – an Invoice no. 22193<sup>52</sup>, dated 29 August 2013 in the sum of 2.693US\$. Witness explained that this is the total sum of the trip without the plane ticket. Further to this, witness was shown with a document, and he confirmed it was a bank transfer for Invoice

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<sup>50</sup> Page 77 – Police File Vol 4 Venetta Search Documents.

<sup>51</sup> Page 62- Police File Vol 4 Venetta Search Documents.

<sup>52</sup> Page 240- Police File Vol 4 Venetta Search Documents.

22193<sup>53</sup>, requesting visas for Xh.Xh., G.A, A.D, P.F, RR.A. and E.G. Further, witness was shown with documents, and he confirmed they were Vouchers to access the hotel<sup>54</sup>.

Witness was also shown a chain of emails<sup>55</sup> sent by Farhat International requesting clarifications regarding the individuals<sup>56</sup> that travelled to Bahrain on 6 and 22 July and 5 September 2013, as well as asking specific question. In this regard, when asked by the prosecutor, witness stated that this is not common for an overseas partner to address these questions by highlighting that he was surprised.

Witness also answered to the questions of the defence, and confirmed to have never received any promise by a wealthy person or any politician that they will cover the expenses of the trips to Bahrain. That he did not do any favour to this group in order to enable the trips to Bahrain. That Venetta Travel Agency did organize individual as well as groups trips.

## **CONSIDERATIONS REGARDING THE EVALUATION OF EVIDENCE**

### **I. Burden and standard of proof**

During the conduct of a trial, the principle of presumption of innocence has been taken to mean that the burden of proof for any criminal charge is on the prosecution (Telfner v Austria, 2001, ECHR 228, para 15 and Barbera´, Messagué and Jabardo v Spain, 1998, ECHR 25, para 77). It is for the prosecutor to adduce evidence sufficient to convict the defendants. A defendant's guilt cannot therefore be presumed until a charge has been proven beyond reasonable doubt (UN Human Rights Committee, CCPR General Comment 32, 2007, para 30 and Sobhraj v Nepal, HRC Communication 1870/2009, UN Doc CCPR/C/99/D/1870/2009 (2010), para 7.3). At the conclusion of the case the defendant is entitled to the benefit of the doubt as to whether the criminal offence has been proved beyond reasonable doubt. The evidence the defence present should be enough to suggest a reasonable doubt.

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<sup>53</sup> Page 76- Police File Vol 4 Venetta Search Documents.

<sup>54</sup> Page 115, 117, 119 - Police File Vol 4 Venetta Search Documents.

<sup>55</sup> Page 91-93- Police File Vol 4 Venetta Search Documents.

<sup>56</sup> Dj. Dj. (A.S), A.D, P.F, GA, RR.A and E.G.

Article 6 (2) of the European Convention on Human Rights (hereinafter the “ECHR”), the Constitution of Kosovo and Article 3 (1) of the CPCRK 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 CPCRK 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) CPCRK, ‘... *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 ...*’.

### **Assessment of evidence**

The Court has received direct and circumstantial evidence, evidence collected through the searches, documentary evidence, transcripts of interceptions, evidence produced through the procedure of Special Investigative Opportunity and viva voce over a video link in cooperation with the judicial authorities of the Kingdom of Bahrain. The Prosecutor has also presented evidence collected by the police in the Kingdom of Bahrain such as witnesses, the documentation and CCTV footages. This evidence, in accordance with Article 43 of the Law on International Legal Cooperation in Criminal Matters<sup>57</sup> was transferred from the Kingdom of Bahrain to Republic of Kosovo.

The Court has assessed all the evidence adduced at trial in light of the totality of the trial record and in accordance with the CPCRK. The evidence was evaluated in the way that best favours of a fair determination of the case and that is consistent with the jurisprudence of the judicial system of Kosovo and the general principles of law, including the principle of *in dubio pro reo*.

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<sup>57</sup> Law No. 04/L-031.

As mentioned, the defendants shall be presumed innocent until proved guilty. The Prosecution bears fully the burden of establishing each element of the crime and of the mode of liability against any of the defendants, as well as any fact which is indispensable for conviction beyond a reasonable doubt. The Court has determined whether the ultimate weight of the admitted evidence is sufficient to establish beyond reasonable doubt the elements of the crimes charged in the Indictment, and ultimately, the responsible of each of the defendant.

In its evaluation of *viva voce* the Court had regard to the conduct and character of the witness.

Circumstantial evidence may be necessary in order to establish an alleged fact. Individual items of circumstantial evidence may, by themselves, be insufficient to establish a fact but their cumulative effect or together with other evidence, may have a decisive role.

Regarding all the witnesses including the witnesses presented by the defence of H.G., the Court has assessed the probability and the consistency of their evidence and as well as the circumstances of the case and corroboration from other evidence.

In some cases only one witness has given testimony on a particular event. Even if in the view of the Court that the evidence of a single witness on a material fact does not, as a matter of law, require corroboration; however in such situation the Court has carefully scrutinised the evidence before relying upon it to a decisive extent.

Where the authenticity of forensic evidence was challenged the Court considered various factors in assessing it, including the evidence relating to its source, chain of custody and other factors of importance.

The evidence administered during the main trial was assessed by the Court in adherence with the general principle of evaluation of the evidence. The Court did find the presented evidence by the parties to have met the required standard of credibility.

Article 323 of the CPCRK provides that a defendant shall not be compelled to testify. Save for H.G. the defendants did exercise their right to be silent. The Court did not take any adverse inferences to be drawn against the defendants that exercised their right to remain silent.

The Court while assessing the evidence did not declare *ex officio* any piece of evidence as inadmissible.

### **Specific Evidentiary Considerations**

Intercepted Communications:

The Court admitted individual intercepts and those intercepts were contained in Binder I-Police files Vol 1, Binder III-Police files VOL 3, Binder-Police Files Vol 5, Binder VI-Police files VOL 6, and the CCTV footages.

The Court was satisfied that the prosecutor had demonstrated that the intercepts and the CCTV footages fulfilled the relevant requirements to be admitted into evidence. The Defence did not challenge the intercepts and the CCTV as evidence.

### **C. FACTUAL CONCLUSION AND RELEVANT LAW**

As per Count 1 against A.S.; Participation in or organisation of an organised criminal group with intention to commit one or more criminal offences, contrary to Article 283 (1) and (2), Criminal Code of Kosovo (CCRK).

#### ***Legal definition/elements of the organized crime offence***

Article 283 of the CCRK reads:

1. *Whoever, with the intent and with knowledge of either the aim and general activity of the organized criminal group or its intention to commit one or more criminal offenses which are punishable by imprisonment of at least four (4) years, actively takes part in the group's criminal activities knowing that such participation will contribute to the achievement of the group's criminal activities, shall be punished by a fine up to two hundred fifty thousand (250 000) EUR and imprisonment of at least seven (7) years.*
2. *Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up*

*to five hundred thousand (500 000) EUR and by imprisonment of at least ten (10) years.*

Article 120, para 13 of the CCRK defines the term organized criminal group as *a structured association, established over a period of time, of three or more persons for the commission of a certain criminal offense that acts in concert with the aim of committing one or more serious criminal offenses in order to obtain, directly or indirectly, a financial or other material benefit.*

### ***Legal definition/elements of the criminal offence of robbery***

Article 329 of the CCRK reads:

- 1. Whoever, by the use of force or serious threat to attack the life or body of another person, appropriates the movable property of such person with the intent to obtain an unlawful material benefit for himself or herself or another person shall be punished by a fine and imprisonment of three (3) to twelve (12) years.*
- 2. When the offense provided for in paragraph 1 this Article involves a stolen object of a value exceeding five thousand (5,000) EUR, the perpetrator shall be punished by a fine and imprisonment of five (5) to twelve (12) years.*
- 3. When the offense provided for in paragraph 1 of this Article is committed by the perpetrator acting as a member of a group or while in possession of a weapon or dangerous instrument, the perpetrator shall be punished by a fine and imprisonment of seven (7) to twelve (12) years.*
- 4. ...*
- 5. ...*

### **Regarding Count 1 Article 283, par 2 of the CCRK – A.S.**

The Prosecution alleged that it was the defendant AS who was the leader of the organized criminal group and that he organized, established, supervised, managed or directed the activities of the organized criminal group- count 1 Article 283, par 2 of the CCRK. The prosecution submits, to support this allegation, the following reasons;

- i) It was only the defendant A.S. who travelled all trips to Kingdom of Bahrain including a trip in January 2013 which was cancelled; and
- ii) The intercepts show A.S. as the focal point of all conversations between the defendants; and
- iii) According to statement of the witness R.B.in the course of the conversation he held with E.G. A.S. was identified as the one who commissioned EG to go to the Kingdom of Bahrain to pick up the watches.

The defendant's defence was that he was not involved in the commission of the criminal offence he was charged with, however he did not contest that he had made the trips in question to the Kingdom of Bahrain, however, according to the defence, the purpose of the trips was solely for tourism, whereas regarding the travel in September 2013 to Kingdom of Bahrain it was to pay respect to his religious belief and to visit the city in Kingdom of Bahrain during the period of Ramadan.

### **Findings and conclusion of the Court regarding par. 2 of Article 283**

The Court heard evidence related to this allegation as well as was presented with intercepts evidence in relation to this count of the indictment. Witness A.B., sales manager at Venetta Travel Agency in Pristina, confirmed in his testimony (29 January and 3 February 2015) that A.S. did travel three times from Pristina, Kosovo to Kingdom of Bahrain between July 2013 and September 2013, and that A.S. did also obtain Visa for these trips. A.S. was the only one of the defendants that travelled all three times to the Kingdom of Bahrain.

The interceptions<sup>58</sup> received from the Kosovo Police reads as follows:  
3.10.2013:

*Conversation between A.S. and G.A.:*

*G: do you need something.*

*A.S: not really, I just needed you for a little bit, since I am getting a headache brother, from all these rumours. I am getting really sad, brother.*

4.10.2013:

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<sup>58</sup> Ordered by the Pre-Trial Judge based on the Prosecutor's application.

*Conversation between A.S. and G.A.:*

*A.: don't stay empty brother, because I get annoyed.*

7.10.2013:

*Conversation between A.S. and G.A.:*

*G.A: nothing they postponed it, for another week, it was not held at all.*

*A.S: I calculated if something jumps on me, then they make it spectacular, not/then the trial, as these persons connect things brother.*

Police officer R.B. did have a conversation with EG on 2 October 2013 over his phone and did write an Informative Report to the prosecutor in the case about a Summary of the conversation<sup>59</sup>.

The Court has analysed with care all the evidence presented by the prosecutor regarding Count 1, Article 283, par. 1 of the CCRK, and the Court finds that there is evidence that would suggest that A.S. organized or established or supervised or directed the activities of the organized criminal group comprised of the defendants and A.D, P.F. and E.G., however the Court finds that there is insufficient evidence all together to determine beyond reasonable doubt that A.S. did organize or establish or supervise or manage or direct the activities of the above mentioned organized criminal group. The intercepts that are obtained and presented above do not determine that he was the leader of the organized criminal group in terms of organizing, establishing, supervising or directing the whole group or members of the group. In addition, the fact this defendant did travel three times to the Kingdom of Bahrain and the intercepted conversations did not prove his leadership of the organized criminal group.

The Informative Report of police officer, R.B., dated 2 October 2013 and addressed to the prosecutor at the Special Prosecution Office of the Republic of Kosovo is admitted into the evidence of the case. R.B. was heard as a witness on 24 November 2014 (page 14-15). He refers to the report and states that he does not want to add or to remove anything from the report. This report contains summary of conversation that police officer, R.B., had with E.G. over the phone. That E.G. told him to have travelled several times to the Kingdom of Bahrain with A.S. and

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<sup>59</sup> Police Files Binder 1, tab 15.

with two persons from Albania and with G.A. as well. He stated that supposedly it was A.S. that paid for a rented apartment in Kingdom of Bahrain to be used by E.G. That two persons from Albania, P. and A. gave him a phone with Albanian SIM Card and that they did instruct E.G. how to act when he went back to Kingdom of Bahrain. Further, E.G. states on how he got in possession of 63 Rolex watches and how he gave them to another person who was arrested as well by the Police of Kingdom of Bahrain.

This report and its content and the aforementioned conversations were admitted into evidence, however, the Court is not satisfied beyond reasonable doubt that A.S. is the one who organized, established, supervised, managed or directed the activities of the organized criminal group based the aforementioned evidence as well as the act that he travelled three times to the Kingdom of Bahrain.

Therefore, based on the abovementioned evidence and after having evaluated the pieces of evidence one by one and in connection to one another, it was not proved beyond reasonable doubt that A.S. is guilty as charged under Count 1, therefore pursuant to Article 364 para 1.3 of the CPCRK the defendant is acquitted from para 2 of Article 283 of the CCRK.

**Regarding Count 1- Article 283, par. 1 of the CCRK against A.S. and Count 2 against RR.A. G.A. and E.G. Participation in or organisation of an organised criminal group with intention to commit one or more criminal offences, contrary to Article 283 par. 1 of the CCRK.**

The prosecutor alleged there is evidence that the defendants have committed the criminal offence accused with, by highlighting there is an organized criminal group with international links. The prosecutor presented below arguments in support to his case;

- i. The Defendants travelled together for three different times to Bahrain always dwelling in three different hotels with no reasonable explanation for that;
- ii. Defendant RR.A. was identified by witnesses from the car rental Company renting a car (white Mitsubishi Gallant) used by the defendants to return to their hotel after the perpetration of the crime (Bahraini video, Hotel CCTV footage);
- iii. The video produced by the Bahraini authorities: the hours when defendants left their hotels and returned are consistent with the hour of the robbery;

- iv. The defendants checked out and left Bahrain hours after the robbery and one day earlier, according to their initial booking – saying to the Hotel staff they would return “tomorrow”.
- v. In one wooden stick retrieved from the Rolex Shop human cells belonging to G.A. originated a positive DNA match - *“The likelihood of this profile appearing in population is 1 in a 5.9 billion individuals”*;
- vi. The interceptions showing the concerned interest of the defendants in the news about the robbery and the handle of one watch;
- vii. The shorts used by A.S. in the hotel and in the course of the robbery, seized in his house;
- viii. A.S. was seen by the witness, a goldsmith from a jewellery shop in Pristina offering him a watch very similar to one that was stolen;
- ix. A handwritten note seized in A.S.’s house with the words “4 Rolex”;
- x. The 63 watches were left behind to be picked up by a Kosovar-American (E.G.) to be handled to a Turkish citizen (I.E.);
- xi. The international links-a Turkish citizen (I.E.) and an American-Kosovar citizen (E.G.) in charge of the disposal of the watches after the commission of the crime - is the final proof that there is one association that was not randomly formed for the immediate commission of an offense but rather a structured organization established for several months, of at least 7 individuals with the aim to commit one or more criminal offense with the intent to obtain material benefits.

The defendants’ defence was that none of them were involved in the commission of the criminal offence they were charged with, however none of them did contest to have had made the trips in question to the Kingdom of Bahrain. According to the defence, the purpose of the trips were for tourism and business purposes, whereas regarding the travel in September 2013 to Kingdom of Bahrain, defence of AS stressed out that it was to pay respect to his religious belief and to visit the city in Kingdom of Bahrain during the period of Ramadan.

**Findings and Conclusion of the Court - Article 283, par 1 of the CCRK regarding A.S, RR.A, G.A. and E.G.**

The Trial Panel based its factual finding on the following pieces of evidence, which were found to be fully credible: the DNA Report, testimonies of witnesses

as summarized above, evidence obtained from the Kingdom of Bahrain - CCTV footages and other material evidence received from the Kingdom of Bahrain, interception of telecommunications, evidence obtained through the Special Investigative Opportunity Sessions and evidence collected through the searches.

Having considered all the evidence administered during the main trial, the Court found that prosecutor did provide sufficient and reliable evidence proving the defendants A.S, RR.A, G.A. and E.G. have committed the criminal offence of organized crime, in violation of Article 283, par. 1 of the CCRK in conjunction to Article 329, par 3 of the CCRK.

The Court found that the defendants A.S, G.A, RR.A. and E.G. together with P.F. and A.D, E.G. and I.E. agreed to participate in an organized criminal group, in order to commit the criminal offence of robbery in the Kingdom of Bahrain. The fact that the organizer and/or the leader of the organized criminal group could not be discovered had no whatsoever impact over the outcome of this trial; that the defendants did commit the organized crime partly in Prishtine and partly in the Kingdom of Bahrain, whilst the criminal offence of robbery was committed in the Kingdom of Bahrain.

In this regard, the Court found that the origin of the group derives from at least January 2013 where A.S, RR.A. and two other persons<sup>60</sup>, did arrange a trip to the Kingdom of Bahrain but it was cancelled. In addition, this arrangement was confirmed by witness A.B. and there is documentary evidence in the case files<sup>61</sup>. Further, the Court found that defendants A.S, A.D, P.F, G.A, RR.A. and E.G. made trips to the Kingdom of Bahrain. The evidence obtained from Venetta Travel Agency and through Farhat Tours Agency, a Travel Agency in the Kingdom of Bahrain shows that booking of flights and hotels were made to this extend. The defendants obtained Visas through d.p.z Victoria in Pristina, as guarantor when applying for Visas<sup>62</sup>. According to the evidence, first trip to Bahrain took place between 6-12 July 2013 by AS (DJ. DJ. ), A.D. and P.F.<sup>63</sup>. Second trip to Bahrain

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<sup>60</sup> B.B. and A.G. According to the Invoice no. 001338/2013, dated 21/01/2013 RRA was the buyer. Police File Vol 4 Venetta Search Documents that were administered in the court session on 29/01/ and 03/02 2015 when witness A.B. was heard.

<sup>61</sup> Police File, vol. 4, pages 138, 177 and 209.

<sup>62</sup> Police File Vol 4 Venetta Search Documents that were administered in the court session when witness A.B. was heard.

<sup>63</sup> Police File, vol. 4, Invoices, pages 62 and 321.

was between 29 July - 5 August 2013 by A.S. (DJ. DJ. ), A.D, P.F. and G.A. and the invoice in the amount of one thousand seven hundred fifty six (1756) USD was issued in the name of A.D.<sup>64</sup>. Documentary evidence reveals entry and exit dates of these defendants corresponding to this period<sup>65</sup>. The evidence shows that AD and P.F. stayed at Al Safir Hotel and A.S. (DJ. DJ. ) and G.A. stayed at Best Western Plus Hotel in Bahrain. The check-out date for all was 5 August 2013. Third trip to Bahrain was between 5 – 12 September 2013 and defendants A.S, RR.A, G.A. and E.G. stayed in different hotels quite close to the shopping mall<sup>66</sup>. As usually, Visas were obtained accordingly; visa for A.S. (DJ. DJ. ) expired on 29 September 2013; E.G.'s visa expired on 28 September 2013, RR.A.'s, P.F.'s, A.D.'s visas all expired on 28 September 2013. The hotel booking was made on 3 September at different hotels, the check-in date for all defendants was 5 September 2013 and the check-out date was planned for 12 September 2013. A.S. and G.A. stayed at Al Safir Hotel, A.D. and P.F. stayed at Holiday Villa Hotel, and RR.A. and E.G. stayed at Pars International Hotel all in Bahrain. The Hotels the defendants stayed were not more than 20 minutes far from the Shopping Mall. The invoice related to the trip in September 2013, 2,634 USD, was issued for A.S. although he travelled under the name of DJ. DJ.<sup>67</sup>

During the main trial it was established that the defendants' strategy was firstly to observe/monitor the area. This was done by visiting, more than one time, the Kingdom of Bahrain prior committing the robbery. First steps were undertaken when A.S. together with A.D. and P.F. visited the Kingdom of Bahrain on 6 Jul 2013, and then followed by the second time when the aforementioned defendants together with G.A. went to Manama in the Kingdom of Bahrain on 29 Jul 2013. In addition to observing the area, it was established that the defendants were prepared to have proper tools to commit the crime as well as to escape from the crime scene. For this reason, two vehicles were rented in advance; a Toyota Fortuner at "Bahraini Rental Car Company" was rented by P.F.<sup>68</sup> and a Mitsubishi Gallant

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<sup>64</sup> Police File, vol. 4, Invoice, page 322.

<sup>65</sup> Police File Vol 4 Venetta Search Documents that were administered in the court session when witness A.B. was heard.

<sup>66</sup> This is also confirmed by Investigator G. in his statement on 3 July 2013.

<sup>67</sup> Police File Vol 4 Venetta Search Documents that were administered in the court session when witness A.B. was heard.

<sup>68</sup> Binder Bahrani Investigation Material, vol. 3, tab 13, page 109; Binder I, Police Files, vol. 1, tab 8, pages 69-79.

plate number xxx was rented by RR.A. at “Oscar” Car Rental Company<sup>69</sup>. This was confirmed by statements, as summarized above, of witnesses J.V. S. and M.S.

Further, the defendants made sure to obtain female attires-nijab, at least one ax, a spray and a baby trolley. The manner they were dressed was done in order not to draw attention while entering the City Center Mall in Manama and not to show their faces. This fact is confirmed with the statement of injured party M.Z. when he stressed out to have seen five-six people dressed in abaya, however, he thought they are going to the Cinema. Also the baby trolley was taken to leave impression they are just ordinary woman. The spray was taken in case there would be a need to use it and this happened when one member of the group sprayed it in the face of M.Z.<sup>70</sup>. The ax was used to smash the doors and the showcases, which was confirmed through CCTV footages from the Rolex Boutique<sup>71</sup> as well as statements of witnesses M.Z. and Sh. R. B. Finally the Toyota Fortuner first, and after that Mitsubishi Gallant were used to escape from the crime scene. This is confirmed by CCTV footages from the City Center Mall in Manama as well as the CCTV footages of the city<sup>72</sup>. All the aforementioned actions were planned in advance by the members of the group, and this pattern of organizing and dividing the tasks establishes that the defendants committed the criminal offences with premeditation, and that their aim was to rob the Rolex Watch Boutique in the City Center Manama regardless the potential risk if got arrested there. Moreover, the intercepted conversations, as detailed below, show that the defendants were contacting each other after having returned to Kosovo.

Therefore, the Trial Panel concludes that all elements of organized criminal group that are defined in Article 120 of the CCRK are met in the given case. The defendants have acted as a structured group, they all actively participated in achieving the aim of the group, it existed over a period of at least January 2013 till

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<sup>69</sup> Binder Bahrani Investigation Material, vol. 2, tab 9, page 201.

<sup>70</sup> Bahrain Investigation Material Vol 3, tab 3 Medical Report of M. Z., and Tab 11 confirming he was exposed to spray on his eye in the critical day.

<sup>71</sup> Played during SIO hearings on 2 and 3 July 2014.

<sup>72</sup> As explained by Police Officer G. A. A.A,S.

October 2013, the group contained more than three persons,<sup>73</sup> and their aim was of pure financial or other material benefit for them. Taking into consideration the brand of the stolen watches<sup>74</sup>, and its high prices on the market<sup>75</sup>, the element of material benefit (the amount mentioned below), is obvious.

### **Commission of robbery, as an underlying criminal offence, by members of the organized criminal group**

As per a commonly agreed plan, on 10 September 2013, close to 23:00 hours, AS, GA, EG, RRA, PF and AD, disguised in female Islamic attire, with their bodies and faces covered, went to the Rolex Watch Boutique in the City Centre Mall, Manama, City of Bahrain. They drove the white Toyota Fortuna into the parking lot of the Bahrain City Centre Shopping Mall<sup>76</sup>. Then they all entered through the Gate 5, approached the Rolex Boutique and attacked the security guard, MZ, where one member of the group sprayed pepper spray into his eyes, as well as one member of the group hit him with a wooden stick on the back (as detailed above).

Having neutralized the security guard, the group which included these defendants smashed the window and glass door of the Rolex Boutique, which at the time was closed, and entered the Boutique and smashed several showcases where valuable wrist watches were displayed, and immediately thereafter the defendants AS, GA, RRA, EG together with the other members of the group robbed seventy (70) Rolex wrist watches and nine (9) Theodore wrist watches that were displayed inside the showcases of the Boutique and left the place taking with them seventy nine (79) wrist watches worth five hundred and eighty three thousand, nine hundred and thirty (583 930) Bahraini Dinars, which is equivalent to one million, one hundred and sixty two thousand, seven hundred and sixty seven Euros and eight Cents (1,162 767.08). The value of the watches was established by the Accountant Department of the Rolex Watch Boutique. This fact was confirmed with the statement of R. T. P.<sup>77</sup>

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<sup>73</sup> A. S., R. A., G. A., EG, PF, AD, EG and IE.

<sup>74</sup> 70 Rolex and 9 Theodore.

<sup>75</sup> The value of the watches was estimated by the Account Department of the Rolex Boutique.

<sup>76</sup> Binder prosecution Files Bahrain Doc., vol. 8, tab A, CD attached – minutes 4:20 of the footage and subsequent pictures.

<sup>77</sup> List of the Stolen watches together with the pictures, Binder Prosecution Files Bahrain Doc, tab 2, pages 26-32.

Soon after the robbery, the defendants GA, EG, RRA and AS together with other members of the group left the City Centre Mall in possession of the 79 watches, in a Toyota Fortuner previously rented by PF, and on the way back to their hotels switched to another vehicle – a Mitsubishi Gallant, previously rented by RRA, and concealed 63 watches in one apartment, rented by one member of the group<sup>78</sup>, in the area of Manama and returned to the hotels where they were staying, where the following day, they left the Kingdom of Bahrain by different flights for separate destination countries to Balkan region.

The 63 watches that were left in the apartment, were picked up some days later by EG, who upon the instructions of two individuals from Albania, flew at a later date from Kosovo to Bahrain in order to pick up the watches from the apartment where the watches had been hidden. Then EG, went to a hotel in the City of Bahrain, where he met IE in order to deliver the Watches to the latter.

This fact is confirmed by statement of IE, summarized above, when stressed out that EG came to his apartment and brought the watches in question. Both EG and IE were arrested and convicted by Bahraini's authorities, and the 63 watches were retrieved and delivered back to the Rolex Boutique. This fact is already confirmed by statements of witnesses R.TH.P. and J.R. where they both confirmed to have received 63 watches by the Bahraini police.

This factual situation regarding the robbery was fully tested and established by evidence in the course of the criminal proceedings.

Date, time, place of commission of the criminal offence of robbery, were established based on the CCTV footages<sup>79</sup> as well as statements of injured party M.Z. and witness R. B. that were heard in the Special Investigative Opportunity sessions. The CCTV footages reflect the moments when the defendants approached the City Center Mall and parked the Toyota Fortuner in its parking lot

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<sup>78</sup> According to EG it was AS who rented the apartment.

<sup>79</sup> Binder prosecution Files Bahrain Doc., vol. 8, tab A, CD attached & PKR.nr. 314/13 Court SIO Folder II A, tab 11-CCTV.

on 10 September 2013. There were no doubts in relation to the authenticity of the video recording.

The CCTV footages reflect the moments when the defendants left their hotel rooms they were staying in Manama area, the moment they entered the Toyota Fortuner that P.F. had previously rented, the moment of the robbery<sup>80</sup>, the way that was followed by the defendants in the car<sup>81</sup>, after it shows the shopping mall, the moments the defendants arrived back to their hotels and the following morning when the defendants left to the airport.

The following parts indexed with time stamps embedded into the recordings were played back and were explained by witness – police officer G. A. A. E. A. S.: *“at 06:53.41 seconds defendants P.F. and A.D. leaving from the hotel; 06.24.21 seconds seen Mitsubishi care. Further, ‘These are DJ. DJ. and G.A. at no mentioned time in the recording. E.G. and E.G. are leaving, G.A. is coming into the hotel; G.A. and E.G. going down from the hotel at 20.13.15; they will be followed by RR.A.; this at 20.13.35. At 20.52 we can see RR.A. coming down from the hotel and this is the car they used the commit the crime. Now we see them getting away from the crime scene after doing that crime. This is the one we were talking about. The circled one is the vehicle they used. The time is 12.5 seconds. We lost them here, this is when they are coming back after the crime, they went with P.F. and A.D. they went with the vehicle, but they came back with a taxi at 12.27 am. Now in the lift we can see P.F. and A.D. at 12.28. Now we can see DJ. DJ. and G.A. and we see DJ. DJ. has changed his T-shirt, the T-shirt- he wore when he committed the crime is in his hands, the one he is wearing now belong to E.G. Then E.G. and RR.A. are coming back, we can see P.F. and A.D. coming out of the hotel going to the airport 01.11 am. This is the car they left, the white Corolla, driven by an Indian. This is DJ. DJ. and G.A. checking out and going to the airport at 12.20. We can see now E.G. and RR.A. checking out and going out of the hotel at 3.04 am. Now the footage from the airport, first D. and G. Al. left on Turkish airlines. Now we can see P.F. and .AD.: they with the white shirts, and E.G. and RR.A.; they left on Etihad airlines”*.

The court has paid attention to the time the defendants left their hotels and the time they came back, as explained above by witness G. A. A. E. A. S., and concludes that this correspond with the time the robbery was committed.

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<sup>80</sup> Binder prosecution Files Bahrain Doc., vol. 8, tab A, CD.

<sup>81</sup> CCTV footages obtained by the City cameras.

All defendants members of the group left from their hotels two-three hours prior committing the robbery and came back right after one hour or a bit later e.g. P.F. and A.D. at 12.27 pm followed by A.S. and G.A. and finally E.G. and RR.A. Moreover, taking into consideration that according to the arrangements the check-out of all the defendants was 12 September 2013 and the fact that all defendants checked-out early morning on 11 September 2013 (A.S. and G.A. at 12.20am, P.F. and A.D. at 01.11am and E.G. and R.A. at 03.04am) this is a clear indication of their involvement in the criminal offence of robbery.

Though witness-injured party M.Z. was not able to see faces of the perpetrators, he confirmed to have seen five-six people dressed in abaya entering the City Center Mall in Manama at 11.20 or 11.00 pm and, that they behaved like men. His statement corroborates with the CCTV footages taken from the City Center Mall that showed six people entering the Rolex Boutique and the moment when one of them attacked the security guard and thereafter how they smashed the door and the show cases as well as the moment they took the watches<sup>82</sup>.

Further, witness SH.R.B. confirmed to have heard his colleague screaming for help and when he went there he found his colleague (M.Z.) lying down, as well as confirmed to have seen these five-six people dressed in black clothes running away and that they threw a screwdriver at him. This episode is also seen on the CCTV footages obtained from the City Center Mall. Right after this, witness Sh. R. informed the police and Mall management.

Further, statements of witnesses R.TH.P. and J.R. were found reliable and trustfully as well. Their statements corroborate with each other in relation to the bloods stains, that the forensic team collected it, and that the inventory list was done in the Rolex Boutique. In this regard, the Court found a slight discrepancy whether there were one or more blood stains however this is normal due to imperfection of human being as well as the time lapsed. Nevertheless, it is confirmed that the police was in the crime scene securing the place and collected all evidence including the blood stains.

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<sup>82</sup> Binder prosecution Files Bahrain Doc., vol. 8, tab A, CD.

It is also confirmed that right after the robbery that occurred on 10 September 2013, the Bahrain police authorities collected DNA samples from the crime scene – Rolex Boutique in City Center Mall in Manama.

The DNA was found on a broken wooden stick with a maximum length of 74,5 cm collected from inside the show room. The wooden stick was labeled as evidence S6. Following the transfer of jurisdiction from the Kingdom of Bahrain to Kosovo, and based on the Pre-Trial Judge's orders<sup>83</sup>, the DNA samples were taken from AS, GA, RRA and EG.

The Kosovo Agency on Forensics/Legal Science Unit performed the examination of the DNA materials in full methods approved by the law. The Report with ref. no.: AKF/2014-0753/2014-067 was completed on 2 April 2014<sup>84</sup>, and its findings were as follows:

*'DNA profile of GA matches with the DNA profile taken from evidence S6 crime scene, thus GA cannot be excluded as a DNA donator in evidence S6. The likelihood of this profile appearing in population is 1 in a 5.9 billion individuals'.*

Witnesses J.R. and R.TH.P. confirmed to have seen blood stains in the crime scene in one show case in the Rolex Boutique. They both confirmed that the Forensic Unit from Bahraini Police secured and collected this sample. As detailed above, these two witnesses explained how they went to the Rolex Boutique after having being informed about the robbery, what they observed at the crime scene, and how the inventory of the watches was done.

The DNA report proves beyond reasonable doubt that defendant G.A. is perpetrator of the robbery in the Rolex Boutique. This evidence leaves no doubts that also the defendants A.S., RR.A. and E.G. together with A.D. and P.F. were with G.A. and that they also are perpetrators of the robbery.

The Court reached this conclusion after having scrutinized and compared all the evidence and facts such as; the fact that defendants did travel together on 5

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<sup>83</sup> Binder Basic Court Pristina, vol 2, tab 16; Court files vol. 4, tab 18.

<sup>84</sup> This report can be found in Police Files vol. 7, tab 9.

September 2013 to the Kingdom of Bahrain, and that they stayed at different hotels close to Manama. This fact is proven through the invoice 003584/2013<sup>85</sup>, dated 1 September 2013 issued in the name of A.S. though he travelled under the name as Xh. Xh. In addition, as mentioned above, save for E.G. and RR.A., defendants AS and G.A. together with A.D. and P.F. visited the Kingdom of Bahrain also in July 2013.

Moreover, the Court was presented with evidence resulting from the searches of premises of the Defendants. Based on the Pre-Trial Judge's order A.S.'s apartment was searched on 16 November 2013 where among other things, a pair of denim shorts<sup>86</sup> was seized as evidence. As shown in the CCTV footage from the Kingdom of Bahrain, A.S. wore a pair of very particular denim shorts while committing the robbery. This evidence was taken in addition to other evidence.

Further to this, the police also did seize a hand written note with brands of watches, where on the second row is written "4 Rolex"<sup>87</sup>. The defence had no reasonable explanations about this letter; therefore this letter cannot be excluded as evidence that links defendant A.S. with the robbery. Though witness B.H. was reluctant during his statements, after having being confronted with his previous statement, he confirmed the fact when A.S. visited his shop "B." the latter was wearing a Rolex watch. In this part witness insisted to have seen only half of the watch, however, he confirmed to have pointed out to the Rolex watch when the prosecutor showed him some pictures.

This watch that A.S. was allegedly wearing and the other Rolex watches could not be found, however this is additional evidence that links A.S. with the robbery in the Kingdom of Bahrain. This conclusion is also based on the content of the below intercepted telecommunications, because the defendants did speak about a particular watch.

Witness V.S. , sales executive at 'Oscar Rent a Car' in Bahrain, who gave evidence on 3 July 2014, stated that on 5 September 2013, RR.A. rented a car, a Mitsubishi Gallant. The fact that RR.A. rented the car was not disputed by his defence.

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<sup>85</sup> Issued by Venetta Travel - Police File Vol 4 Venetta Search Documents, document page 323.

<sup>86</sup> Binder Police Files vol. 6, tab 24.

<sup>87</sup> Binder II Police Files vol. 2, tab 26, pages 1-97.

Another witness, M.S. , confirmed that one member of the group, who later on appeared to be P.F., rented the Toyota Fortuner.

The witness G. A. A. E. A. S., police officer and the lead investigator of the criminal case in the Kingdom of Bahrain did explain how the investigation was started as well as the steps the Police in Bahrain undertook. His way of explaining the events seen on the CCTV footage was found fully credible.

The Court found this statement as reliable because it was based on documentary evidence that were transferred from the Kingdom of Bahrain to Republic of Kosovo. As detailed in his statement that was summarized above, the Bahraini police found that a Toyota Fortuner was used to escape from the crime scene and that this vehicle was rented under a false name – Greek name A.S. and that later on was discovered that this person never entered Bahrain. That it appeared the person who rented this care was PF. This was confirmed also by statement of witnesses M.S. , as well as the material evidence undoubtedly confirmed this.

The Court heard evidence in relation to allegations that E.G. was in charge to hand over the 69 watches to I.E., and this fact was confirmed by two witnesses. Witness I.E., in his statement given on 11 December 2014, basically confirmed to have been contacted by EG who brought the 69 watches (60 Rolex and 9 Theodore) to his apartment in Bahrain. He further stated that E.G. did not bring the documents in order to ship the watches. According to this witness, he told EG that the shipment cannot be done without the documents. That E.G. promised him to bring the documents later on during the day but he was arrested. He also heard the Police did arrest E.G. as well.

Police Officer G.A.A.I.S. , in his statement given on 3 July 2014, confirmed that the Police in Bahrain following a search at I.E.'s room hotel, found 69 watches. This witness confirmed what I.E. stated in relation to the handover of the watches by E.G. E.G. also confirmed this in a spontaneous telephone conversation with police officer, R.B.

After the commission of the robbery in Kingdom of Bahrain, the intercepts obtained by the Kosovo Police shows communication between the members of the group such as;

01.10.13 conversation between G.A. and U.M.P:

[...]

U.M.P: *“...now to take it back, to take it from wife’s hand, and give it back to H.”*

03.10.2013

G.: *“I read that letter of the newspaper Daily News and they put the things on the picture there, in the bed”.*

E: *“ok buddy, I gave him two days, do you know what I mean...”*

03.10.2013

G.: *“do you need something”.*

A: *“not really, I just needed you for a little bit, since I am getting a headache brother, from all these rumours, I am getting really sad brother”*

04.10.2013

U.M.P says *“the watch, which you used to have, you know the one H. was keeping, keep it G.”.*

G. replies *“yes”.*

U.M.P asks *“where is it now”.*

G. says *“I think Uncle takes it”.*

04.10.2013- a conversation between G.A and U.M.P

G.: *“I found out, he completely gave us in”.*

05.10.2013- G.A. and U.M.P.

U.M.P: *“there were sixty three or four (63-4)*

G. says: *“really?... come tomorrow and we’ll count them”.*

05.10.2013- G.A. and U.M.P.

G: *“send me that thing we entered last night, that web page”*

Sms to G: [www.you tube.comwach/bahrain rolex city centre](http://www.you tube.comwach/bahrain rolex city centre)

07.10.2013

G: *“nothing, they postponed it, for another week, it was not held at all”*.

A: *“I calculated if something jumps on me, then they make it spectacular, not/ then the trial, as these persons connect things brother”*.

01.09.2013

Tringa attempted to send a SMS<sup>88</sup> to E: *”E call this number 00386 48...31 on viber”*

12.09.2013 – T.S. to unknown person

SMS to T. *“Do not dare<sup>89</sup> to leave that wrist one somewhere”*.

22.09.2013 – sms T.S. to unknown person” *Did you do it honey, what are you doing, did you bargain”*

18.10.2013 – T.S. and U.F.P: *”T. talks a lot about “daddy not having to come to the apartment”*

Based on the content of the above transcripts it is established that the defendants, after coming back to Kosovo, were contacting each other, their content of conversation is in relation to watches, they are interested about the news in relation to the robbery in Bahrain as well as expressed the fear that E.G. gave their names to Bahraini authorities. In addition T.S., wife of A.S., attempted to send A.S.’s phone number to E.G. Moreover, there is a text sms sent by T.S. alerting someone not to leave one wrist somewhere.

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<sup>88</sup> It failed. English translation is not correct.

<sup>89</sup> English translation mistakenly indicates word ‘dear’.

## Conclusion

The central issue of the Court to assess is whether the defendants have committed the criminal offence of organized crime as prescribed in Article 283, par. 1 of the CCRK which addresses certain requirements to be fulfilled, namely *actus reus* and *mens rea*.

*Actus reus* is described as the objective elements, and the *mens rea* as the subjective elements or the criminal offence. In this regard, the Trial Panel must ask if at the time of the commission of the criminal offence, in the present case the robbery, there existed an organized criminal group.

Further, the Trial Panel must ask if each member of the group had the intent to commit the criminal offence of robbery or, as it is stated in Article 283, its (the organized criminal group) intention to commit the robbery, meaning if the organized criminal group had intention to commit the robbery in Bahrain. Finally the Trial Panel must ask if each member of the group actively took part in the group's activities and if such participation contributed to the achievements of the group's criminal activity, namely the robbery in Bahrain.

The Trial Panel has, in the decision making process, carefully considered and analyzed the set of evidence that has been admitted, administrated and not rejected *ab initio* or excluded by any ruling. The Trial Panel is reminded of the reading of Article 361, para 1 of the CPCRK, namely, '*the court shall base its judgment solely on the fact and evidence considered at the main trial*' and in par. 2 of the same article the court shall also adhere to the following; *the court shall be bound to assess conscientiously each item of evidence separately and in relation to other items of evidence and on the basis of such assessment to reach a conclusion whether or not a particular fact has been established.*

From the foregoing, the Trial Panel has drawn the following conclusions;

The Trial Panel established that all elements of the criminal offence of participation in or organization of an organized criminal group are present in the case at hand according to Article 283, par 1, Article 120, par 13 of the CCRK, and elements of the criminal offence of robbery, according to Article 329, par 3 of the CCRK.

This conclusion derives from the fact that the defendants A.S., RR.A, G.A. and E.G. together with other members of the group planned and undertook actions together prior committing the robbery e.g. arrangements of the trips, obtaining visas, booking the flights, booking and staying at different hotels close to the City Center Mall in Manama, renting the vehicles to be used to go and escape from the crime scene. Further, the defendants as a group committed the robbery in a very sophisticated manner – by being dressed in *abaya* as well as securing the tools to neutralize and/or eliminate all possible obstacles e.g. by using pepper spray against M.Z., and use of the ax to smash the show cases and the sliding doors and so on.

As previously mentioned one member of the group while committing the robbery did cut himself and left his DNA sample which later on positively matched the samples taken from G.A. The DNA evidence itself and the already proven facts about the arrangements, travels and the robbery proves that G.A. acted together with members of the group as shown on the CCTV footages, and other material evidence as mentioned above.

In addition to this, the defendants were supposed to check out on 12 September 2013, however as it was proved they all left the Kingdom of Bahrain early morning on 11 September 2013 and flew to the Balkans. Further to this, E.G.'s task to handover the proceeds from the robbery - the 63 watches were handed over to IE. Moreover, extensive contacts between some members of the group after having returned to Kosovo undoubtedly establish that all the above-mentioned actions and division of the tasks were planned in advance in order to commit the robbery. In conclusion, the elements of intent, knowledge and active participation although knowing that such participation would contribute to the achievement of the group's criminal activity were present to all defendants<sup>90</sup>, therefore all requirements foreseen by Article 283, par 1, Article 120, par 13 and Article 329, par 3 of the CCRK are met.

Therefore, for the aforementioned reasons the Court proved beyond reasonable doubt that the defendants A.S. RR.A. G.A. and E.G. committed the criminal offence of organized crime in violation of Article 283, par. 1 of the CCRK in conjunction to Article 329, par.3 of the CCRK.

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<sup>90</sup> Excluding HG

## **Acquittal part regarding H.G. for organized crime Article 283, par 1 of the CCRK**

With regard to the defendant H.G, the Court has established that the prosecution office failed to provide sufficient evidence in order to prove beyond reasonable doubt involvement of defendant H.G. in committing the criminal offence of organized crime (count 2 of the Indictment), therefore in the absence of evidence the defendant is acquitted pursuant to Article 364, 1.3 of the CPCRK.

The prosecutor alleged that defendant H.G. remained in Kosovo as a backup of the group, that at least one of the Rolex watches is still to be in Kosovo, and that this was in the possession of H.G. In support to this allegation, the prosecutor refers to one intercepted conversation, dated 1 October 2013, at 21.14.59 hrs<sup>91</sup>, held between an unidentified person<sup>92</sup> and GA, and the content of the conversation is as below;

G.: yes honey, what did you do?

U.M.P: what did you do, you have called me?

[...] <sup>93</sup>

UMP: do you want to go out?

G: Really, it might happen now we go there, that Muqiqi sings there, some sort of party, with Haki and some people.

U.M.P: Which Haki man?

G: With that one, for that, hey

U.M.P: yes sweetie

G.: do you (know<sup>94</sup>) what was his problem?

U.M.P: what?

G.: perhaps we will go there

U.M.P: yes

G.: if we had, you know?

U.M.P: that dirty bastard, it can't be done, sweetie.

G: now I get it.

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<sup>91</sup> Binder I - Police files Vol. 1, tab 17 Calling no. 049-... -95 – called no. 045-... -28

<sup>92</sup> Prosecutor alleges that person was AS.

<sup>93</sup> irrelevant parts of this conversation are not written down.

<sup>94</sup> This word is missing into English translation however the Albanian version contains it therefore was added by the Court in order to reflect full conversation and its meaning.

U.M.P: that is, you know what is sweetie, because if it was for them, if it was for the uncle, I would tell him uncle, either them or the other ones, the item is yours, and now as long as I gave it to my wife, now shall I give him back, to take it from my wife's hand, and give it back to H, give him back, that doesn't make sense, is he normal or what, I just felt sorry, I didn't know what was the problem, but sweetie you should come, just don't get drunk, and don't talk something in front of him, because then he starts to talk a shit.

G: ah

U.M.P: be careful what you talk in front of him

G: yes, right

U.M.P: Ok sweetie, bye.

Another interception highlighted by prosecutor where the name H. was mentioned, is the one dated 4 Oct 2013, at. 13:27:47<sup>95</sup>.

P.P.M: where are you going?

G.<sup>96</sup>: well there up to M.

P.P.M: Ok no, we'll meet after you finish<sup>97</sup>

G: ha

P.P.M: the watch which he<sup>98</sup> used to have, you know the one H. was keeping, keep it

G: yes, yes

P.P.M: and where is it now

G: I think uncle has taken it, I don't know if uncle has taken it yet

U.M.P: yes I think that jerk has taken it from him

G: and do you think he'll give it to uncle

P.P.M: No, just to return it to uncle and not to take it at all

G: yes right

P.P.M: ok, when you finish we'll meet and we'll see what we'll do

Another interception<sup>99</sup> was highlighted by the prosecutor, and it was the conversation, dated 3 October 2013, at. 18:14:57 hrs, between G.A. (his number was intercepted) and H.G.<sup>100</sup>.

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<sup>95</sup> Binder I-Police files Vol.1, tab 19, calling no. 044-...-06- called no. 045-...-28

<sup>96</sup> G.A. was target number (order on interception was issued against him).

<sup>97</sup> Word 'hej' is not translated into English version of the transcript; however this word is indicated in the Albanian version of the transcripts.

<sup>98</sup> English translation mistakenly indicates word 'you' Tab 19, pg 2 (paginated 221). Since the conversation was held in Albanian, it prevails pg. 23 (paginated 244).

<sup>99</sup> Binder I-Police files 1, tab 18, pg 23, calling no. 044-...-06- called no. 045-...-28.

<sup>100</sup> When asked by member of the main trial, HG confirmed to have been in possession of that phone number.

[...] <sup>101</sup>

G: Here in the internet it says two persons are arrested.

H: Yes, yes it is in today's newspaper"

[...] <sup>102</sup>

H: "Everything is all right, but the deal I was earlier on", meaning that "we do not care".

G: Yes it is right

H: You know this is how far we can deal; we don't have anything else to do, because the matter is like that, not him, not the other one, now we can say whichever you want, we do not care, the deal was how it was".

The defendant H.G. was heard in the course of the session of 5 August 2015. He basically denied prosecutor's allegation that the content of this conversation involves him in the organized criminal group. In his statement, the Defendant H.G. said "*I am trading with vehicles and G.A. came to me with another person called D. He came to me and purchased a vehicle type Renault Laguna year 2003. G.A. did not buy it himself but the vehicle was purchased by the other person and he did not give me the money at all, and we made an agreement that in case the other person fails to pay the money, G.A. would pay that money to me. When the deadline to pay the money came, they said they had headed to go somewhere, which is where they go illegally; it seems they have failed somewhere referring to these persons who are passing the border illegally. I told him that I am not interested in that because you know what the agreement was*". Further, defendant H.G. stressed out to have told the prosecutor that: "*You did not receive the interceptions of phone numbers, you did not receive all interceptions of all numbers, because if you had done so, you would have noticed that I have also discussed with A.S. and R.R.A. because when my brother<sup>103</sup> was detained by the Albanian police at the border, they informed E.'s wife at home by phone that E. was detained there under the suspicion in relation of this case and the entire family, myself, one of my sisters and other family members went there. And there we realized why E. was detained, what he is suspected for and there we saw the list of suspects*" <sup>104</sup>.

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<sup>101</sup> Not relevant.

<sup>102</sup> Not relevant.

<sup>103</sup> EG.

<sup>104</sup> Minutes of main trial dated 5 August 2015, p 5.

The Court has analysed with care all the evidence presented by the prosecutor regarding the involvement of H.G. in the commission of criminal offence of organized crime. The Court has also analysed H.G.'s statement. In a scant analysis, prosecutor's evidence may suggest that defendant H.G. may have been involved in committing the organized crime; however the Court finds that there is insufficient evidence to prove beyond reasonable doubt that the person mentioned in the conversations, held between G. and U.M.P.s, was the defendant H.G.

The Trial Panel stresses out that the intercepts that are obtained and presented above do not determine more than mentioning a name H. Perhaps, based on the content of this conversation one could observe that they are a bit careful while speaking on the phone, however, this cannot be attributed as it was related to the defendant H.G. Needless to say there could be too many persons with name H. and this is not sufficient to find a defendant guilty just because a name of H. was mentioned.

As stated above, the Court has admitted into evidence the aforementioned interceptions and its content; however it is not satisfied beyond reasonable doubt that H.G. by this piece of evidence can be regarded as perpetrator of the criminal offence of participation in an organized criminal group. Moreover, prosecutor's allegation that defendant H.G. stayed in Kosovo as a backup of the group was not supported by a single convincing evidence, therefore he is found not guilty and pursuant to Article 364 para 1.3 of the CPCRK is acquitted from the criminal offence of organized crime contrary to Article 283, par. 1 of the CCRK.

As per count 4 of the Indictment, the Trial Panel found as proven beyond reasonable doubt that the defendant H.G. has committed the criminal offence of unauthorised ownership, control or possession of weapons in violation of Article 374, par. 1 and 2 CCRK, Law no. 03/L-246 Article 1.20.

#### **Legal definition of Unauthorised ownership, control or possession of weapons- Article 374**

1. Whoever owns, controls or possesses a weapon in violation of the applicable law relating to such weapon shall be punished by a fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.

2. When the offense provided for in paragraph 1 of this Article involves more than four (4) weapons, or more than four hundred (400) bullets, the perpetrator shall be punished by imprisonment of two (2) to ten (10) years.
3. The weapon owned, controlled or possessed in violation of this Article shall be confiscated.

The Trial Panel notes that this criminal of criminal offence may be committed in three manners; by owning, controlling or possessing a weapon in violation of the applicable law relating to such weapon. Further, it should be stressed out if only one of these conditions is met then a person may be considered as a perpetrator and face legal consequences.

In the course of the main trial the prosecutor provided reliable evidence in support to his allegation that it was defendant H.G. who controlled and/or possessed the ammunition found during the search of the house the defendant was living on 8 October 2013 ('I.K. street, no 377).

The prosecutor alleged that on 8 October 2013, while conducting a lawful search order in the place the defendant H.G. was living, the police found two hundred and seventy seven (277) calibre 7.62 mm live bullets; four hundred and twenty five (425) 9 mm live bullets; three hundred and thirty three (333) 7.65 mm live bullets; fifty (50) 9 mm live bullets and nineteen (19) 12 mm live bullets (in total one thousand one hundred and four ammunitions – 1104)<sup>105</sup>.

It was established the defendant had no licence or authorization to keep this ammunition in his possession and control.

The defence denied that H.G. committed this criminal offence by stating that all the ammunition found at the house of defendant H.G. was a left over in relation to a house search conducted in 2007 at the same address, and that his father, SH.G. was convicted for this offence.

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<sup>105</sup> Minutes of house search of defendant H.G. dated ...

In this regard, the court was provided with material evidence and four witnesses were heard.

Material evidence:

- Minutes of the house search dated 8 October 2013.
- Ballistic report<sup>106</sup> dated 14 August 2014.
- Police report, dated 5 November 2013, in relation to the house search of Sh.G. conducted on 9 July 2007

Statements of witnesses:

-N.G. , SH.G.<sup>107</sup>, R.A and E.A.<sup>108</sup>

-Witness ., police officer, was heard on 24 November 2014. He told the court to have participated in the house search of defendant HG. After finishing the search, he compiled a report on the search that indicates all the steps that were undertaken regarding the search; namely the first floor of the house in Street I.K. , nr. XXX in P. Witness confirmed that it was the defendant HG who led the police to the place he was living therefore the search was conducted there. The witness also stated that the floor the ammunition was found had access to all the rooms. When the witness was asked detailed questions he referred to his report<sup>109</sup> as it indicates the most accurate information.

-Witness SH.G., father of H.G. was heard on 28 January 2015. He stated to live in a big house with his five sons but each of them has their own floors. Further, he stated to share same floor with defendant H.G. Regarding the ammunition found on 8 October 2013, he stated this ammunition is his own for which had been sentenced and already served the sentence in 2013. That the ammunition is a left over from the war, and when the search was conducted in 2007, the police did not take all the ammunition. That neither H.G. nor his other sons were aware of this

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<sup>106</sup> Post Indictment -Prosecution File, Binder 1, tab 13.

<sup>107</sup> Prosecution witnesses.

<sup>108</sup> Defence witnesses.

<sup>109</sup> Minutes of house search of defendant H.G.

ammunition, because the room this ammunition was found belongs to him. In conclusion, this witness excluded any possibility that H.G. was aware of this ammunition. Further, this witness stated he did not buy any ammunition after the 1999 war ended. He said the found ammunition during the house search on 8 October 2013 belonged to him and that all the ammunition was from the war. He also said that he had the ammunition under a bed and moved to the actual wardrobe in which the ammunition was found during the October 2013 search. He also stated that he was in prison when the 9 October 2013 house search was conducted. He further stated that he did not sleep in that bed room where the October 2013 house search did take place; he slept in the living room together with his mother.

Witnesses R.A. was proposed by defence counsel Z.P., and he was heard on 17 June 2015. He said to have been present when the police did search the house of H.G. on 8 October 2013, because as they are neighbors, he appeared to be outside when the police came. That the ammunition was found in the room of H.G.'s father, and at the time of the search H.G.'s mother was asleep in the room. That when asked by the Police, mother of H. stated the ammunition belongs to her husband. That at the time of the search, H.G.'s father was in prison serving the sentence regarding this ammunition.

Witness E.A. was proposed proposed by defence counsel Z.P., and he was heard on 17 June 2015. He stated that the bullets were found in one of the rooms of HG's house by stressing out that in the same room was H.G.'s mother. Further, this witness said that at the moment the police were performing the search they found the clothes of elderly people so meaning HG's parents clothes, and according to him this was the room of H.G.'s parents. That when the search took place, present were H.G. and his family members, police officers, he and his brother R.A. as witnesses. That father of H. was not present on the day the search was conducted and he had no information on his whereabouts, however, he has seen father of H entering or leaving the house in everyday life.

The court has also heard the statement of defendant H.G. during the main trial on 5 August 2015. In his statement the defendant basically denied to have been in control and/or possession of the ammunition found at his place. The defendant stated that this ammunition was a left over from the search in 2007 because the police did not take it all, and requested the court to acquit him from this charge.

The prosecutor confronted the defendant with the Ballistic Report which establishes that the bullets were produced in 2012, however the defendant insisted to have nothing to do with the ammunition.

The Court took into consideration and evaluated with due care the evidence presented by prosecutor as well as the defence evidence and the line of the defence of H.G.

Having heard the witnesses, the defendant's version as well as having analysed the forensic report, the minutes of the house search dated 8 October 2013, police report regarding the house search conducted in 2007, the Court found beyond reasonable doubt that H.G. is the perpetrator of criminal offence of unauthorised ownership, control or possession of weapons in violation of Article 374, par. 1 and 2 CCRK, Law no. 03/L-246 Article 1.20, therefore sentenced him to three years of imprisonment.

In reaching this conclusion, the Trial Panel found of utmost importance the Ballistic Report, dated 14 August 2014, that clearly indicates that the bullets were produced in 2012 thus needless to say it is impossible to have bullets prior they are produced. Further, also the Police report in relation to the house search in 2007 leaves no doubts because it clearly states that the police confiscated all the ammunition found at the house of SH.G..

The Court did not find as reliable the statement of SH.G. (father of H.G) with the mere reason that this witness wanted to mislead the Court by saying the ammunition was a left over from the search in 2007 because this was in contradiction with the Police report as material evidence. Moreover, the Court notes since this witness was father of the defendant it is expected that his testimony shall be in support to his son regardless the warnings and the oath taken by him.

Regarding the statements of R. and E.A., the Court concludes they are not of any particular importance for the conclusion of the Trial Panel's decision regardless the fact they stated that mother of H.G. was in the same room where the bullets were found. Reasons for finding the statements of R. and E.A. as not reliable were that

it was H.G. who told the police officers the floor he was living. Further, father of defendant H.G. stated that this room was used as a storage room thus the Court was presented with controversial versions by persons who were called to testify to the benefit of the defendant.

Therefore, having evaluated the aforementioned evidence one by one and all together, the Court reached conclusion that defendant H.G. committed the criminal offence of unauthorised ownership, control or possession of weapons in violation of Article 374, par. 1 and 2 CCRK, Law no. 03/L-246 Article 1.20, therefore sentenced him to three years of imprisonment.

## **SENTENCING**

The Trial Panel, prior to addressing precisely the penalty to be imposed in relation to Defendants<sup>110</sup> 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 organized crime.

### **Sentencing on the Organised Crime count**

The cases of **S.A. and others** (Supreme Court of Kosovo, decision of 2 October 2012) and **J.P.** (Kosovo Court of Appeals, decision of 22 October 2013) 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.
- e. That, in structuring a sentence for organised crime, the sentence should be imposed on that offence, committed in conjunction with other offences.

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<sup>110</sup> Excluding HG who was acquitted for the criminal offence of Organized crime.

- f. That a single sentence for organized crime should be imposed.

The Trial Panel in this case therefore proceeded to sentence the defendants to a term of imprisonment for the offence of organized crime in violation of Article 283, paragraph 1 of the CCRK, committed in conjunction with the criminal offence of robbery, in violation of Article 329, par 3 of the CCRK. The Court will therefore impose one sentence only, on the organized 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 the defendants A.S. RR.A. G.A. and E.G. were found guilty for serious crime committed outside the territory of Kosovo.
4. The Trial Panel notes that the offence of participating actively in an organized criminal group is a serious offence in the Republic of Kosovo. Under Article 283 paragraph 1 the Court may impose a fine of up to two hundred fifty thousand (250,000) EUR and imprisonment of at least seven (7) years. 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 defendants.

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 beyond reasonable doubt that the

defendants are guilty for the criminal offence of organized crime in conjunction to robbery. This factor is highly significant in determining the defendants' culpability.

2. That the offences were committed in order to obtain a financial benefit is undoubtedly an aggravating factor taking into consideration that it occurred in another state and resulted in using force and causing a significant material damage for the Rolex Boutique in Bahrain. Moreover, the security guard, M.Z. suffered injuries.

The Court similarly notes that an accused is entitled to fully test the evidence against him and run the case in the way that he wishes and that a plea of not guilty is something an accused person will never be punished for. Though there was overwhelming evidence against the defendants none of them did plead guilty nor did they show any remorse for the criminal offences. Therefore, no mitigating factors exist in this case.

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 the defendant AS should accordingly be sentenced is twelve (12) years imprisonment. The reason for this is that during the trial it was established that he played quite active role in the group by making more efforts than other defendants in this case. Whereas the defendants RR.A. G.A. and E.A. should be sentenced to eleven (11) years imprisonment.

The defendants A.S. RR.A. G.A. and E.G. are also fined €12,500 each in light of the gravity of the offence and because of the findings of the Court that the sole aim was for material profit.

With regard to defendant H.G. same reasons were taken into consideration when determining the punishment. It was proven beyond reasonable doubt the he is perpetrator of the criminal offence as per Article 374, par. 1 and 2 CCRK, Law no. 03/L-246 Article 1.20. Though there was evidence against him, he did not plead guilty nor did show any remorse. Moreover, a significant amount of ammunition was found into his possession and/or control, therefore the court considered a sentence of three years imprisonment would be appropriate.

In conclusion, when determining the sentences for the defendants A.S. RR.A. G.A. E.G. and H.G. the Court did particularly paid attention to the criminal liability of all the defendants, and concludes that by those sentences, the aim of the punishment as foreseen in Article 41 of the CCRK shall be achieved, and that those sentences are in proportion with the degree of danger of the criminal offences as well as with the degree of criminal liability of the defendants.

Pursuant to Article 83 (1) of the CCRK the time spent in detention from 8 October 2013 (G.A. RR.A. H.G.), 16 November 2013 (AS), and 17 September 2013 E.G. to the date hereof shall be credited towards the sentence.

Detention on remand against A.S. R.A. G.A. and E.G. is extended until the Judgment becomes final but no longer than the expiry of the term of punishment imposed in the Judgment announced on 7 August 2015.

The ammunition shall be confiscated pursuant to par. 3 of Article 374 of CCK.

### *Claims for compensation*

With regard to the injured parties' claims, the Trial Panel did summon them for the main trial session of 11 December 2014, and duly informed that according to the criminal Procedure Code of Republic of Kosovo they are entitled to file claims for compensation if they wish so. Both of them declared they shall use this right. Further to this, on 28 May 2015 the Court via International Legal Cooperation Unit contacted the Bahraini authorities and requested to inform the injured parties that the Court did not receive any compensation claim as well as requested to inform the Injured parties on their right to submit closing arguments if they wish so. Few days later the court was informed that the injured parties do not wish to submit any closing arguments.

During the session held on 17 June 2015, the prosecutor handed over to the court and the defendants and their defence counsels two compensation claims; one from the owner of modern arts studio in the total amount of 623,406 Euros, and the second compensation claim from Mr. M.Z security guard in the total amount of

10.000 USD. The defence requested the Court to refer the injured parties to pursue their rights through civil litigation.

The Trial Panel has thoroughly evaluated both claims, and concluded they should be referred to civil litigation. Regarding the Rolex claim, the Trial Panel draws attention to the statement of the Manager of the Shop, who was heard on 2 July 2014, where he explicitly stated that all the watches were covered by insurance and that they are awaiting the Insurance Company to bring a decision in relation to this issue. Moreover, this witness stated that the Company shall compensate everything; the lost watches, the damaged ones, the lost profit as well as shall reimburse the sum of the money that his shop paid to recover the damages caused by the defendants.

The Trial Panel stresses out that the claim itself is silent whether the Insurance Company did compensate the Rolex Boutique as well as it did not indicate the stage of this procedure in the Kingdom of Bahrain. Noting that there was an ongoing procedure in the Kingdom of Bahrain, the Trial Panel considered more appropriate to refer the injured parties to pursue their claim in civil litigation. Moreover, while evaluating these claims the Trial Panel considered that the conclusion of this trial would have been prolonged had it decided on these claims as well. Though the claims indicated the sums, the Trial Panel had in mind the issues the defence counsels raised, therefore, has considered those issues require much more time to be dealt with. Moreover, the defendants are in detention on remand and the court had to come with a decision once the evidentiary proceeding was closed. Of course the Court had no whatsoever intention to undermine the injured parties' rights to what they are entitled to, however, the injured parties claims were more likely designed to be decided in civil proceedings because the main topics were not clarified such as; whether the Insurance Company did compensate at all, if yes to what extend and so on.

Same reasoning is also with regard to compensation claim of injured party M.Z. because in his statement given on 11 December 2014, he stressed out to have coverage by insurance company, and his claim is silent in this regard.

Therefore, for the sake of avoiding an overlapping decision, the injured parties were referred to pursue their claims for compensation to civil litigation. By doing

so the Court implemented Article 463, par 2 of the CPCRK that states [...] ‘If the data collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the Court shall instruct the injured party that he or she may pursue the entire property claim in civil litigation’. Therefore, for the said above the Trial Panel reached this conclusion and considers as unnecessary to discuss it further.

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

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**Marie Tuma**  
**Presiding Judge**

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**Muhamet Musliu**  
**recording officer**

**Legal remedy:**

Authorized persons may file an appeal in written form against this judgment through the Basic Court of Prishtinë/Pristina to the Court of Appeals within fifteen (15) days from the date the copy of the judgment has been served, pursuant to Article 380 paragraph 1 of the CPCRK.