IN THE BASIC COURT OF PRIZREN

Case Number P.nr.272/13

9 September 2014

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

IN THE NAME OF THE PEOPLE

The Basic Court of Prizren, in the trial panel composed of Judge Arkadiusz Sedek as Presiding Judge and Judges Franciska Fiser and Valon Kurtaj as Panel members and Court Recorder Sonila Macneil, in the criminal case against

1. **N.U.**, XXX;
2. **O.J.**, XXX;
3. **E.A.**, XXX;
4. **F.B.**, XXX;
5. **S.M.**, XXX;
6. **S.S.**, XXX;
7. **R.R.**, XXX;
8. **T.M.**, XXX;
9. **H.B.**, XXX;
10. **G.G.**, XXX;

Charged in the Indictment of the Special Prosecution Office PPS.No: 253/09 dated 19 July 2012 and the Amended Indictment dated 22 January 2014 with the criminal offence of *Issuing of Unlawful Judicial Decision* in violation of Article 346 of the Provisional Criminal Code of Kosovo (hereinafter "the PCCK") in relation to O.J., E.A., F.B., S.M., S.S., T.M. and R.R.; with the criminal offence of *Assistance in Issuing of Unlawful Judicial Decision* in violation of Article 346 of the PCCK read in conjunction with Article 25 of the PCCK in relation to H.B. and G.G.; and with the criminal offence of *Inciting Another Person to Issue Unlawful Judicial Decision* in violation of Article 346 of the PCCK read in conjunction with Article 24 of the PCCK in relation to N.U.,

after holding a public trial on 21 and 23 January 2014, 5, 18, 20, 24, 25, 26 February 2014, 12 March 2014, 7 April 2014, 19 May 2014, 18 and 20 June 2014, 29, 30 and 31 July 2014, 3 and 4 September 2014 at which Andrew Carney appeared for the Prosecution, A.H. appeared for the Injured Party (Kosovo Trust Agency, "KTA"), T.R. appeared for N.U., Z.J. appeared for O.J., V.V. appeared for S.M., Sh.S. appeared for R.R., M.D. appeared for H.B., Q.M. appeared for G.G., S.S. acting *pro se*, E.A. acting *pro se*, F.B. acting *pro se* and at which the Defendants were present throughout, after

deliberation and voting held on 4 September, on 9 September 2014 announced in public the following:

JUDGMENT

I.

Pursuant to Article 365 par. 1 of the Code of Criminal Procedure (hereinafter the "CPC"), the defendant **N.U.** is

GUILTY

Because:

Between 2006 and 2007 in Pristina, N.U., in the capacity of President of the Municipal Court of Prishtina, in co-perpetration with O.J., S.M., S.S. and T.M. issued unlawful judicial decisions in the following land ownership claims listed by Municipal Court number against the Socially Owned Enterprise ("SOE") of KBI Kosovo Export ("SOE KBI"), later Kosovo Trust Agency ("KTA"), without referral from the Special Chamber of the Supreme Court of Kosovo ("SCSC") in violation of UNMIK Regulation 2002/13: namely Municipal Court Cases 1314/07; 1698/05; 53/06; 429/05; 3.06; 1849/06; 1147/06; 3521/04; 1415/05; 1738/07; 1908/03; 342/06; 1918/06; 251/04; 2333/05.

N.U., in the capacity of President of the Court, ensured that the cases were allocated to O.J., S.M., S.S. and T.M., in breach of the established case allocation system, in the knowledge that these judges were adjudicating on land ownership claims against SOE KBI in violation of the applicable law. This contravened the information sent to the Municipal Court by way of a letter dated 4 March 2005 to all Municipal Courts from the UNMIK Chief Judge, which set out the legal position and procedure for claims involving SOEs, and the letter from the KTA to the Municipal Court received 26 January 2007, which further set out the legal position and procedure, and which also stated that Prishtina Municipal Court had not complied with the law. N.U. did not respond to the KTA letter until 2 January 2008, after SOE KBI had been placed under direct administration of the KTA and after an investigation by the Judicial Inspection Unit had been initiated. Further to this, N.U. directly participated in a case by amending the decision in case 2333/2005, which he signed although the signature block remained that of defendant judge S.S.. N.U. also held a meeting with the then Head of the Administrative Unit of the KTA, during which he indirectly enquired about KTA obstruction to authorising the execution of the decisions made by O.J., S.M., S.S. and T.M.. N.U. acted in coperpetration with O.J., S.M., S.S. and T.M. with the intent of obtaining a material benefit for himself or another person.

- By which N.U. committed the criminal offence of *Issuing of Un-lawful Judicial Decision in coperpetration* in violation of Article 346 of the PCCK read in conjunction with Article 23 of the PCCK.

- Thus, re-qualifying the original charge of *Inciting Another Person to Issue Unlawful Judicial Decisions* under Article 346 of the PCCK read in conjunction with Article 24 of the PCCK

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II.

The defendant **O.J.** is found

GUILTY

Because:

Between 2006 and 2007 in Prishtina, O.J., in the capacity of Judge at the Municipal Court of Prishtina, issued decisions in the following nine cases listed by Municipal Court Number, which involved land claims against SOE KBI, later KTA, without a referral from the SCSC as foreseen by UNMIK Regulation 2002/13: namely Municpal Court Cases 1314/07; 53/06; 429/05; 3/06; 1849/06; 1147/06; 3521/04; 1415/05; 1738/07. The decisions made by O.J. awarded replacement lots of land to the claimants in exchange for monetary reimbursement to the SOE KBI, which was in breach of the applicable law, which did not provide for contracts of sale to be declared null and void and which did not provide for the award of replacement land as a legal remedy.

O.J. adjudicated on the above-listed land ownership claims although she knew that doing so was in violation of the applicable law, which held that primary jurisdiction in cases involving ownership claims against SOEs resided with the SCSC, and that no other court could exercise jurisdiction over such a case unless the SCSC had referred the case. O.J. further issued the decisions which disposed of the land belonging to the SOE KBI without establishing the factual state of ownership of the land, as required by law. Specifically, O.J. knowingly failed to obtain evidence and facts in order to establish that the claimant in the land ownership claim was indeed the rightful owner of the land, knowingly failed to confirm the authenticity of the sale contracts which were provided as evidence, and knowingly failed to confirm the authenticity of the death certificates which were submitted as proof of inherited ownership rights. O.J. also grounded the above-listed decisions on a particular law, the Law on Obligations, Official Gazette SFRY 29/78, which was not applicable to the above-listed cases. The cases were also adjudicated as priority cases, in violation of the established procedure for adjudicating cases. O.J. made these judicial decisions with the intent to obtain an unlawful material benefit for herself or another person.

- By which O.J. committed the criminal offence of *Issuing of Unlawful Judicial Decision* under Article 346 of the PCCK.

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III.

The defendants **E.A., F.B. and RR.R.** are found

GUILTY

Because

On 2 October 2007 in Prishtina, E.A., F.B. and RR.R. acting in the capacity of Judges in an Appeals Panel at the District Court of Prishtina, the second instance court, issued a decision in a land ownership case, District Court Number 604/2003. This was an appeal of Municipal Court Verdict case number 2333/05, a land-ownership case decision made by S.S.. The Judges of the Appeals Panel adjudicated on the appeal in violation of the applicable law, UNMIK Regulation 2002/13 which held that primary jurisdiction of cases involving ownership claims against SOEs resided with the SCSC, and that no court could exercise jurisdiction over such a case unless the SCSC had referred the case, and which further stated that any appeal of a decision issued by a court following referral from the SCSC lay with the SCSC. The Appeals Panel failed to declare the District Court incompetent to deal with the appeal of case 2333/05, in violation of this law. Further, the Appeals Panel confirmed the verdict of the Municipal Court, which was made in violation of the applicable law, and in doing so cited a decision by the SCSC (SCA-05-0104) and deliberately misrepresented the reasoning and factual circumstances of this decision in order to try and establish the legality of the first instance court decision (Municpal Court Verdict C.Nr. 2333/05). The Appeals Panel made this decision with the intent to obtain an unlawful material benefit for themselves or another person.

- By which E.A., F.B. and RR.R. committed the criminal offence of *Issuing of Unlawful Judicial Decision* under Article 346 of the PCCK.

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IV.

The defendant **S.M.** is

GUILTY

Because

Between 2006 and 2007 in Prishtina, S.M., in the capacity of Judge at the Municipal Court of Prishtina, issued unlawful decisions in the following two land ownership cases listed by Municipal Court Number involving the SOE KBI, later KTA: namely Municipal Court Cases 1698/05 and 251/04. S.M. adjudicated on the above-listed land ownership claims although she knew that doing so was in violation of the applicable law, which held that primary jurisdiction in cases involving ownership claims against SOEs resided with the SCSC, and that no court could exercise jurisdiction over such a case unless the SCSC had referred the case. S.M. further issued the decisions which disposed of the land belonging to the SOE without establishing the factual state of ownership of the land, as required by law. The decision 1698/05 made by S.M. awarded land to the claimants in exchange for reimbursement to the SOE, which was in violation of the applicable law, which did not provide for contracts of sale to be declared null and void and which did not provide the award of replacement land as a legal remedy. S.M. also grounded the above-listed decisions on a particular law, the Law on Obligations, which was not applicable to the above-listed cases. The cases were also adjudicated upon as priority cases, in violation of the established procedure for adjudicating cases. S.M. made these

judicial decisions with the intent to obtain an unlawful material benefit for herself or another person.

- By which S.M. committed the criminal offence of *Issuing of Unlawful Judicial Decision* under Article 346 of the PCCK.

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V.

The defendant **S.S.** is

GUILTY

Because

Between 2006 and 2007 in Prishtina, S.S., in the capacity of Judge at the Municipal Court of Prishtina, issued a decision in the following land ownership case listed by Municipal Court number which involved the SOE KBI: 2333/05. S.S. adjudicated on the above-listed claim although she knew that doing so was in violation of the applicable law, which held that primary jurisdiction in cases involving ownership claims against SOEs resided with the SCSC, and that no court could exercise jurisdiction over such a case unless the SCSC had referred the case. The decision made by S.S. awarded a large amount of land to the claimants and awarded additional land as compensation. This was in violation of the applicable law which did not provide for contracts of sale to be declared null and void and which did not provide the award of replacement land as a legal remedy. S.S. further issued the decision which disposed of the land belonging to the SOE without establishing the factual state of ownership of the land, as required by law. S.S. also grounded the above-listed decisions on a particular law, the Law on Obligations, which was not applicable to the above-listed case. The case was also adjudicated as a priority case in violation of the established procedure for adjudicating cases. S.S. made the decisions with the intent to obtain an unlawful material benefit for herself or another person.

- By which S.S. committed the criminal offence of *Issuing of Unlawful Judicial Decision* under Article 346 of the PCCK.

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VI.

The defendant **T.M.** is

GUILTY

Because

Between 2006 and 2007 in Prishtina, T.M., in the capacity of Judge at the Municipal Court of Prishtina, issued decisions in the following three land ownership cases listed by Municipal Court number, which involved land claims against SOE KBI, later KTA, without a referral from the SCSC as foreseen by UNMIK Regulation 2002/13: namely Municipal Court Cases 1908/03; 342/06; 1918/06. T.M. adjudicated on the above-listed land

ownership claims in violation of the applicable law, which held that primary jurisdiction in cases involving ownership claims against SOEs resided with the SCSC, and that no court could exercise jurisdiction over such a case unless the SCSC had referred the case. The decisions made by T.M. awarded replacement land to the claimants, in violation of the applicable law, which did not provide for contracts of sale to be declared null and void and which did not provide the award of replacement land as a legal remedy. T.M. further issued the decisions which disposed of the land belonging to the SOE without establishing the factual state of ownership of the land, as required by law. T.M. also grounded the decisions on a particular law, the Law on Obligations, which was not applicable to the above-listed cases. The cases were also adjudicated upon as priority cases in violation of the established procedure for adjudicating cases. T.M. issued all of the unlawful decisions with the intent to obtain a material benefit for himself or another.

- By which T.M. committed the criminal offence of *Issuing of Unlawful Judicial Decision* under Article 346 of the PCCK

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VII.

The defendant **H.B.** is

GUILTY

Because

Between 2006 and 2007, H.B. purported to represent the SOE KBI, the respondent in the following 15 land ownership claim cases listed by Municipal Court Number, during court proceedings although she was not authorised to do so: namely Municipal Court Cases 1314/07; 1698/0553/06; 429/05; 1849/06; 1147/06; 3521/04; 1415/05; 1738/07; 1908/03; 342/06; 1918/06; 251/04; 2333/05. H.B. was made redundant on 23 November 2006 and was not in any formal employment with any SOE from this date. Whilst purporting to represent the SOE KBI, H.B. did not seek to protect its interests: - she did not object to the fact that the Municipal Court did not have jurisdiction to adjudicate the land ownership claim cases in any of the above cases and she failed to inform KTA that the KTA was subject to a lawsuit despite receiving notice from the Chairman of the KTA on 21 March 2005 and 20 September 2005, which advised all SOEs of their obligations with regards to reporting, protecting assets and the applicable law in relation to claims made against an SOE. Further to this, H.B., by purporting to represent the respondent SOE KBI during the court proceedings, assisted the defendants O.J., T.M., S.M. and S.S., by purportedly satisfying the requirement that the respondent be legally represented. These actions collectively assisted O.J., T.M., S.M. and S.S. by enabling the claims to be come before them and for the decisions to be issued. H.B. was aware that judicial decisions were being issued with the intent of obtaining a material benefit, and intentionally provided assistance to O.J., T.M., S.M. and S.S. to do this.

- By which H.B. committed the criminal offence of Assistance in Issuing of Unlawful Judicial Decision under Article 346 of the PCCK read in conjunction with Article 25 of the PCCK

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VIII.

The defendant **G.G.** is

GUILTY

Because:

During 2006 and 2007 in Prishtina, G.G., in the capacity of a Legal Representative, represented the claimants in the following land ownership cases listed by Municipal Court number: 429/05; 1849/06; 53/06; 1918/06; 1415/05 at the Municipal Court of Prishtina. Whilst acting as Legal Representative in claim 1918/06, G.G. attached the referral document from the Special Chamber that related to a different case (1896/07) to the front of claim 1918/06, with the intention that this would be considered a genuine document and to make the claim look like it had been correctly referred to the Municpal Court in accordance with UNMIK Regulation 2002/13.

- By which G.G. committed the criminal offence of Falsifying documents under Article 332 of the PCCK.

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Therefore, pursuant to the provisions of Articles 6, 11, 15, 31, 32, 33, 34, 36,38, 41, 42, 43, 44 and 332 of PCCK and Articles 359, 361, 365 par.1, 366 of the CPC, the court imposes the following sentences:

N.U.

- for the criminal offence under Point I of this judgment, is sentenced to a suspended sentence comprising of a term of imprisonment of 2 (two) years, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

O.J.

- for the criminal offence under Point II of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 18 (eighteen) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

E.A.

- for the criminal offence under Point III of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 9 (nine) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

F.B.

- for the criminal offence under Point III of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 9 (nine) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

S.M.

- for the criminal offence under Point IV of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 6 (six) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

S.S.

- for the criminal offence under Point V of this judgment is sentenced to a suspended sentence imposing a term of imprisonment of 8 (eight) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

T.M.

- for the criminal offence under Point VI of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 1 (one) year, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

RR.R.

- for the criminal offence under Point III of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 9 (nine) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

H.B.

- for the criminal offence under Point VII of this judgment is sentenced to a suspended sentence comprising of a term of imprisonment of 1 (one) year, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

G.G.

- for the criminal offence under Point VII of this judgement is sentenced to a suspended sentence comprising of a term of imprisonment of 6 (six) months, which shall not be executed if the defendant does not commit another criminal offence in the time period of 2 (two) years.

Against the Defendants O.J., E.A., F.B., S.M., S.S., RR.R., T.M., H.B. and G.G., pursuant to Article 54 paragraphs 1 and 2 and sub-paragraph 4 and Article 57 paragraphs 1, 2 and 3

of PCCK, the **accessory punishment** of *Prohibition on Exercising a Profession, Activity or Duty* is imposed for a period of two (2) years.

Against the Defendant N.U., pursuant to Article 54 par. 1 and 2 and sub-paragraph 4 and Article 57 paragraphs 1, 2, and 3 of the PCCK, the **accessory punishment** of *Prohibition on Exercising a Profession, Activity or Duty* is imposed for a period of three (3) years.

The Injured Parties may pursue a claim for compensation through the civil courts.

REASONING

CONTENTS

A. PROCEDURAL HISTORY

1. On 27 July 2012, the Special Prosecutor filed the Indictment PPS 253/09 dated 19 July 2012, which charged defendants as follows: defendants 1 to 8 with Abusing Official Position/Authority contrary to Article 339, paragraphs 1, 2 and 3 of the PCCK; defendants 2 to 8 with Issuing an Unlawful Judicial Decision contrary to Article 346 of the PCCK; defendants 9 and 10 with Assistance in Abusing Official Position or Authority contrary to Article 339 in conjunction with Article 25 of the PCCK; defendants 1, 9 and 10 with Assistance in Issuing Unlawful Judicial Decision contrary to Article 346 in conjunction with Article 25 of the PCCK.

2. Confirmation hearing sessions were held of 30 August 2012, 24 September 2012, 18 October 2012 and 2 November 2012. On 24 October 2012 the defendants F.B. and T.M. were severed from these proceedings. However proceedings in relation to T.M. were re-joined on 18 October 2012.

3. The Indictment was dismissed pursuant to a Ruling issued by the Pre-Trial Judge dated 27 December 2012. The proceedings against all defendants (excluding the severed party F.B.) were thereby terminated.

4. The Ruling dismissing the Indictment was appealed by the Special Prosecutor. In a Ruling dated 17 April 2013, the Court of Appeal partially granted the Special Prosecutor's appeal and ruled that the Indictment remained in force, subject to amendments. The indictment for all defendants was dismissed in so far as it referred to the legal qualification of Abuse of Official Position.

5. On 22 August 2013 the then Presiding Judge, upon request of the Special Prosecutor, re-joined the case of F.B. to the other 9 defendants charged in Indictment PPS 253/09. The indictment was confirmed against him by a Ruling by the Presiding Judge dated 5 December 2013, which was confirmed by the Court of Appeal.

6. An Amended Indictment was filed on 22 January 2014, which charged the defendants as follows: defendants 2 to 8 with Issuing an Unlawful Judicial Decision; defendants 9 and 10 with Assistance in Issuing an Unlawful Judicial Decision; defendant 1 with Inciting Another Person to Issue an Unlawful Judicial Decision.

7. Main trial sessions were held on 21 and 23 January 2014, 5, 18, 20, 24, 25, 26 February 2014, 12 March 2014, 7 April 2014, 19 May 2014, 18 and 20 June 2014, 29, 30 and 31 July 2014, 3 and 4 September 2014.

8. The enacting clause of the Judgment was announced on 9 September 2014.

9. Pursuant to Article 541 of the CPC, which entered into force on 1 January 2013[1], the Trial was conducted according to the provisions of the new Criminal Procedure Code.

[1] Criminal No. 04/L-123

B. JURISDICTION

10. The Law on Courts, Law no. 03/L-199 entered into force on 1 January 2013.

11. This Law regulates the territorial and substantive jurisdiction of the Court.

12. Under Article 11 Paragraph (1) of the Law on Courts, Basic Courts are competent to adjudication in the first instance all cases, except otherwise foreseen by Law.

13. Article 9 of the Law on Courts establishes that the Basic Courts are established for the territory of their respective Municipalities. The offences which are the subject of these proceedings were committed within the territorial jurisdiction of the Basic Court of Pristina. However, given that five of the defendants were former judges at Municipal Court of Pristina, the Basic Court of Prizren had territorial jurisdiction pursuant to Article 13. 2 (b) of the Law on Jurisdiction[2].

14. According to Article 15 Paragraph (1) Subparagraph (1.19) of the Law on Courts, criminal offences against official duty (including but *not limited to*, abuse of official position or authority, misappropriation in office, fraud, accepting bribes, and trading in influence and related conduct) fall within the jurisdiction of the Serious Crimes Department of the Basic Court. The CPC supplements Article 15 of the Law on Courts: Article 22 Subparagraph (1.1.87) of the CPC establishes that the offence of Issuing Unlawful Judicial Decisions shall be considered a Serious Crime in accordance with Article 15 of the Law on Courts. In addition, according to Article 15 Paragraph (1) Subparagraphs (1.20) of the Law on Courts, any crime not specifically listed in Article 15 but which falls within the exclusive or subsidiary competence of the Special Prosecution Office for Kosovo[3] shall fall within the jurisdiction of the Serious Crimes Department. Therefore, the entire case was adjudicated by the Serious Crime Department of the Basic Court of Prizren.

15. In accordance with Paragraph (2) of Article 15 of the Law on Courts, and pursuant to the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law no. 03/L-053), the case was heard by a Trial Panel composed of EULEX Judge Arkadiusz Sedek, acting as Presiding Judge, and EULEX Judge Franciska Fisher and Valon Kurtaj as Panel members[4].

16. Changes were made to EULEX competencies by the Law on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo, (Law no. 04/L-273), which entered into force on 15 May 2014. As EULEX Judges were assigned to this case prior to 15 April 2014, this case is

[2] 2008/03-L-05

[3] The offences contained in indictment PPS 253/09 were deemed to come within the subsidiary competence of the SPRK as per Article 12 of the Law on the Special Prosecution Office of the Republic of Kosovo, No. 03/L-52 (13 March 2008) – decision by Chief EULEX Prosecutor dated 21 January 2014

[4] Article 3.2 of the Law no. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, stipulates that EULEX judges shall have jurisdiction over cases prosecuted by the SPRK. The SPRK has prosecuted this case.

an ‘ongoing case’ as defined by Article 1 A Paragraph (2) of L 04/L-273), and therefore EULEX judges retained competence in this case.

17. None of the parties objected to the competence of the Court or to the composition of the trial panel.

C. EVIDENTIARY PROCEDURE

18. Evidence presented during the course of the Main Trial

19. I. During the Main Trial, the following witnesses gave evidence (in order of appearance at trial):

- V.H., (called as a Witness by the Prosecution), was heard on 23 January 2014
- S.N., (called as a Witness by the Prosecution), was heard on 5 February 2014
- S.B., (a Witness for the Prosecution but tendered to the Defence and called as a Witness by Defence Counsel M.D.) was heard on 5 February 2014
- M.A., (called as Witness by the Prosecution), was heard on 18 February 2014
- F.T., (called as a Witness by the Prosecution), was heard on 20 February 2014
- B.K., (called as a Witness by the Prosecution), was heard on 20 February 2014
- M.S., (called as a Witness by the Prosecution), was heard on 24 February 2014
- M.K., (called as a Witness by the Prosecution), was heard on 24 February 2014
- N.H., (called as a Witness by the Prosecution), was heard on 25 February 2014
- S.H., (called as a Witness by the Prosecution), was heard on 26 February 2014
- B.T., (called as a Witness by the Prosecution), was heard on 26 February 2014
- M.B., (called as a Witness by Defence Counsel M.D.), was heard on 12 March 2014
- Mu.B., (called as a Witness by Defence Counsel M.D.), was heard on 12 March 2014
- I.A., (called as a Witness by Defence Counsel M.D.), was heard on 12 March 2014
- N.L., (called as a Witness by Defence Counsel T.R.), was heard on 12 March 2014
- R.F., (called as a Witness by the Prosecution), was heard on 12 March 2014
- N.M., (called as a Witness by the Trial Panel acting *ex officio*), was heard on 7 April 2014
- B.S., (called as a Witness by the Trial Panel acting *ex officio*), was heard on 19 May 2014

20. During the trial session on 20 June 2014, the following defendant gave evidence:

- H.B.

The remaining defendants did not give evidence during the main trial.

21. II. With the consent of the parties and in accordance with Article 338 (1.3) of the CPC the following witness statements are considered as read into the record as admissible evidence:

Group a): Witnesses heard during the trial

- B.K., statement dated 22 June 2012
- N.H., statement dated 20 June 2012
- F.T., statement dated 18 October 2011
- M.A., statement dated 23 August 2011
- S.B., statement dated 11 August 2011
- M.S., statement dated 4 July 2012
- M.K., statement dated 4 July 2012
- V.H., statement dated 15 June 2012
- S.N., statement dated 5 June 2012
- S.H., statement dated 27 March 2012
- B.T., statement dated 16 August 2011

Group b): Witnesses not heard during the trial

- B.R., statement dated 14 October 2011
- G.B., statement dated 6 April 2012
- S.Sp., statement dated 28 March 2012
- L.D., statement dated [1 September 2011]
- V.M., statement dated [7 June 2012]
- Z.M., statement dated [11 October 2011]
- N.D., statement dated [29 November 2011]

Group c): Defendants' statements (in indictment order)

- N.U., statement dated 26 August 2011
- O.J., statement dated 11 July 2012
- E.A., statement dated 23 August 2011
- F.B., statement dated 24 August 2011
- S.M., statement dated 26 August 2011
- S.S., statement dated 22 August 2011 and 31 August 2011
- RR.R., statement dated 24 August 2011
- T.M., statement dated 11 October 2011

- H.B., statement dated 7 July 2011
- G.G., statement dated 8 March 2012, 13 March 2012, 15 March 2012, 22 March 2012

22. III. During the course of the main trial session on 20 June 2014 the following documents were read into the record:

- Evidence to all 15 Municipal Court civil cases (1314/07, 1698/05, 53/06, 429/05, 3/06, 1849/06, 1147/06, 3521/04, 1415/05, 1738/07, 1908/03, 342/06, 1918/06, 251/04, 2333/05), including geodesy expert reports, subject to the indictment:
- Binder 7 – Cases 1 (P: 1-121); Case 2 (P:122-243); Case 3 (P: 244-344)
- Binder 8 – Case 4 (P:1-112); Case 5 (P: 113-245); Case 6 (P:246-336)
- Binder 9 - Case 7 (P:1-113); Case 8 (114-183); Case 9 (P:184-265)
- Binder 10- Case 10 (P:1-114); Case 11(P: 115-464)
- Binder 11- Case 12 (P: 1-77); Case 13 (P: 78-338)
- Binder 12- Case 14 (P:1-139); Case 15 (P: 140-268)
- Report of the Judicial Inspection Unit, 12 December 2008 – Binder 13, Pages: 1-54
- Letter from C.P., 4 March 2005– Binder 13, Pages: 55-65
- District Court Verdict, Ac.no. 701/2005– Binder 13, Pages: 66-75
- District Court Decision, Ac.no. 127/2006– Binder 13, Pages: 76-85
- District Court Verdict, Ac.no. 400/2005– Binder 13, Pages: 86-91
- Letter from Chairman of KTA addressed to all SOE's dated 21 March 2005 – Binder 13, Pages: 92-97
- Letter from the Chairman of the KTA Board of Directors addressed to the SOE Management and Labor Councils dated 20 September 2002 – Binder 13, Pages: 98-105
- Letter from KTA addressed to H.B. dated 22 November 2006 – Binder 13, Pages: 106-109
- Letter from KTA to addressed to N.U. dated 26 January 2007 – Binder 13, Pages: 110-115
- Letter from KTA addressed to N.U., President of Municipal Court and A.N., President of District Court dated 11 December 2007 – Binder 13, Pages: 116-117
- Letter from N.U. to KTA dated 02 January 2008 – Binder 13, Pages: 118-126
- E-mail communications between KTA to H.B. dated January 2008 – Binder 13, Pages: 127-129
- Investigative Report regarding telephone metering 11.07.2012 – Binder 13, Pages: 130-153

- payment in case 1 (C.no,1317/07) - € 813.25 paid to SOE – Binder 13, Pages: 154-156
- payment in case 3 (C.no. 53/06) - € 976.90 paid to SOE – Binder 13, Pages: 157
- payment in case 4 (C.no. 429/05) - € 4,476.57 paid to SOE – Binder 13, Pages: 158
- FIU Request for information addressed to Special Chamber, Mr. R.W. dated 23 August 2010– Binder 13, Pages: 159
- Response of Mr. R.W., Special Chamber to FIU dated 17 Sep 2010 -– Binder 13, Pages: 160-166
- Letter of Special Chamber to Ferizaj Municipal Court – Binder 13, Pages: 167-174
- Covering letter for President of Prishtina District Court - – Binder 13, Pages: 175-179
- Memorandum regarding legislation governing rescindable contracts – Binder 13, Pages: 180-181
- Law on restitution – Binder 13, Pages: 182-189
- Judgment of Special Chamber on another SOE case - SCC-08-0112 – Binder 13, Pages: 190-195
- FIU Interim Report – 18.08.2010 – Binder 13, Pages: 196-327
- FIU Interim Report – 01.12.2010 – Binder 14, Pages: 1-234
- FIU Interim Report - 01.09.2011– Binder 14, Pages: 235-375
- FIU Interim Report - 01.11.2011– Binder 14, Pages: 376-395
- FIU Summary Report on Interviews with G.G. – 22.05.2012 – Binder 15, Pages: 1-54
- FIU Report on data collected from Municipal Court of Prishtina, 17 July 2012– Binder 15, Pages: 55-57
- RBKO Bank statement of T.M. – Binder 15, Pages: 58-71
- Central Bank inquiry regarding suspicious 1,025.00 Euro transaction dated 24 July 2006 – Binder 15, Pages: 72-81
- Law on Regular Courts no:21/78 – Binder 15, Pages: 82-123
- Law on Obligations Official Gazette of SFRY 29/78 (Articles 99-109) – Binder 15, Pages: 124-127
- UNMIK Regulation 2002/12 – Binder 15, Pages: 128-193
- UNMIK Regulation 2002/13 – Binder 15, Pages: 194-214
- Decision of the Judicial Disciplinary Committee dated 20 June 2011– Binder 15, Pages: 215-222

- Letter from Cadaster Office to B.T. regarding Municipal Court case 1314/07 – Binder 15, Pages: 223-225

- All documents in the KTA report bundle that was filed during the confirmation of Indictment hearing;

- All documents filed with the Notice of Corroboration that verify the telephone numbers of the defendants;

- Supplemented report (list of metered numbers and lists of telephone calls) to the Metering Report listed as evidence Nr. 14 in the indictment and the metering report submitted on the first session of the confirmation of indictment;

- The chart - phone analysis based on the metering report (mentioned on the point 4);

- S.M.'s judgment (not part of 15 cases):

    i. C.no. 1911/06 Judgment issued on 16.05.2007 - criminal case pending in Prizren Basic

- S.S.'s decisions in which she declares herself incompetent

    i. C.no. 82/04 decision issued on 25.01.2005

    ii. C.no. 2742/2004 decision issued on 31.03.2005

    iii. C.no. 2422/2008 decision issued on 27.10.2009

    iv. C.no. 22/2007 decision issued on 29.05.2007

    v. C.no. 332/2009 decision issued on 02.07.2009

    vi. C.no. 622/2006 decision issued on 25.06.2009

    vii. C.no.1822/2003 decision issued on 23.09.2008

- UNMIK Internal Memorandum *Ref: DOJ/JDD/08/bf02335 dated 9 June 2008*

23. IV. During the Main Trial, the following Evidence was collected by the Panel *ex officio*:

- Report from Gracanica Cadastral Office, dated 2 May 2014

- Memorandum from Kosovo Judicial Institute regarding training courses, dated 4 April 2014

- Judgments from the Special Chamber of the Supreme Court, as follows: SCC-09-0167; SCC-09-0096; SCC-08-0255; AC-1-120038; SCC-09-0106.

- Photos exhibited by Geodesy Expert Barjam Selmani during his testimony on 19 May 2014

24. V. During the following Main Trial sessions, Defence Counsel submitted numerous judicial documents issued by various Kosovo institutions with the aim of proving that the actions they undertook were fully legitimate. These documents are the part of body of evidence and were inserted into the case binders (court binder labelled 'Documents

Submitted during Main Trial).

25. VI. During the Main Trial, the following motions were made:

26. *Application by Prosecutor to admit new evidence in the form of an audio recording/transcript obtained as a result of an Order for Covert Measures issued by the pre-trial judge of the Basic Court of Prizren dated 12 June 2013*

27. On 21 January 2014, during the main trial session, the Prosecutor filed an "Application to Admit New Evidence". The proposed evidence consisted of an audio recording/transcript of a conversation between defendant G.G. and K.U. recorded on 20 September 2013, was collected pursuant to a Pre-Trial Judge's order for covered measures (monitoring of private premises) dated 12 June 2013 in a separate criminal proceeding with case number HEP 273/12 (PP 276/12). The Prosecution submitted that the details of this conversation were not known to the Prosecution at the time of the Second Hearing in the present case and that this evidence, which allegedly is admission of the crime charged, does not duplicate other evidence in the case. The Defence, during the main trial session on 21 January 2014, objected to the Prosecutor's application and argued that the evidence should be considered inadmissible because the relevant conversation was obtained after the 12 September 2013, which is the day the Pre-Trial Judge's order expired. In addition, the Defence objected to the Application for the reason that the order by which the evidence was obtained does not refer to defendant G.G..

28. In a Ruling dated 28 January 2014, the Presiding Judge rejected the Prosecutor's Application and determined that the proposed evidence was inadmissible pursuant to Article 97 (1) of the CPC as well as Article 97 (2) of the CPC read in conjunction with Article 88 (3.1) and Article 90 of the CPC, and therefore that allowing the admission of inadmissible evidence would violate the right to a fair trial as guaranteed by Article 5 of the CPC and Article 31 of the Constitution of the Republic of Kosovo. The Ruling dated 28 January 2014 was appealed by the Prosecutor but the respective appellate panel of the Court of Appeal rejected the appeal as premature. The panel re-considered the issue of admissibility, as instructed by the Court of Appeal, and stands by the decision and reasoning as contained in the Ruling dated 28 January 2014.

29. *Admissibility of the statement of witness F.T. to be declared inadmissible*

30. During the Trial sessions on 21 and 23 January, Defence Counsel for G.G. submitted that the statement of witness F.T. should be declared inadmissible because he gave the statement at a time when his status was as a suspect and not a witness. The defence based its objection to evidence on Article 249 of the CPC. This submission was supported by Defence Counsel for N.U. The Defence further objected to F.T. being summoned as a witness for the Prosecution.

31. The Prosecutor stood by his proposal to summon the witness and submitted that the legal provisions do not differentiate between statements given by a witness from statements given by a defendant; F.T. was no longer a defendant and there was no obstacle to questioning him in the trial in the capacity of the witness.

32. The panel fully agreed with the legal reasoning presented by the Prosecutor and

summoned F.T. as the witness in that case on 20 February 2014.

33. *Admissibility of UNMIK Internal Memorandum Ref: DOJ/JDD/08/bf02335 dated 9 June 2008*

34. Defence Council for N.U., O.J. and G.G., together S.S. acting *pro se* and RR.R., E.A. and F.B. acting *pro se*, objected to the admissibility of the evidence adduced by the Prosecutor during the main trial session on 28 May 2014 in written submissions. The evidence in question was and UNMIK Internal Memo dated 9 June 2008. The main objections can be summarised as the Memorandum was irrelevant and intrinsically unreliable, as per Article 259 of the CPC.

35. The panel found that the Prosecutor was entitled to adduce this Internal Memo dated 9 June 2008, as evidence in this case, as this document concerned the referral of the Judicial Inspection Committee of the 15 cases for criminal investigation, and therefore contains general information about the decisions which required further investigation. The document also contained an estimated valuation of the land involved. The panel considered that no weight could be placed on the valuation of the land provided in this document, due to the fact that it appeared to be established in a very arbitrary way without any proper expert justification. The panel noted that the Prosecutor was not obliged to prove the potential value of the land in order to prove the offence of Issuing Unlawful Judicial Decision. The panel reiterates that it did not consider the valuation of the land provided in this document as an established fact.

D. FACTS ESTABLISHED

36. The judgment is based on all admissible evidence following the conclusion of the main trial.

37. After the evidentiary phase of the main trial, the Court established the following facts:

38. During the years 2006 and 2007, O.J., S.M., S.S. and T.M., in their positions as Judges at the Municipal Court in Prishtinë/Pristina, and RR.R., E.A. and F.B., in their position as Judges at the District Court of Prishtinë/Pristina, issued decisions in 15 cases concerning socially owned land.

39. The decisions issued by the defendant judges were made in contravention of the applicable law on jurisdiction, namely UNMIK Regulation 2002/13, and in contravention of the substantive law.

40. H.B. and G.G. were two lawyers who participated in the proceedings as representatives of the parties: H.B. purported to represent the respondent party in all 15 cases; G.G. represented the claimants in 6 cases. N.U. was the President of the Municipal Court in Prishtinë/Pristina during the period when all 15 cases were adjudicated upon.

41. The employment status of the defendants was as follows: O.J. was employed at the Municipal Court in Pristina from 2003 to 2010; E.A. was employed as a civil judge at the District Court in Pristina from 2003 to 2010; F.B. was employed as a civil judge at the District Court in Pristina from 2004 to 2010; RR.R. was a civil judge at the District Court in Pristina from 2000 – 2009; S.M. was employed as a civil judge at the Municipal Court from 2000 to 2010; S.S. was a civil judge employed at the Municipal Court of Pristina from 2000 to 2010; T.M. was employed as a civil judge at the Municipal Court in Pristina from 2003 – 2010; G.G. registered a business in 2006 and then provided legal services to private citizens.

42. a) Historical Background

43. Each of the 15 decisions concerned socially owned land. The panel notes the general historical background regarding land ownership in Kosovo, in that during the 1950s and 1960s, land parcels were acquired by the governing regime at the time – the socialist regime of Yugoslavia - for the purposes of establishing larger, collective agricultural operations known as Socially Owned Enterprises ('SOEs'). The owners of the land were often forced to conclude contracts transferring the land to the government in exchange for a small amount of remuneration.

44. In each of the 15 decisions, the contracts transferring the land from the owners to the government were made during the 1950s and 1960s.

45. During the 1990s, the owners of the land, or their inheritors, were given the opportunity to claim back their land by filing a claim. The possibility to issue a claim under this law was restricted to the time period of 10 years from the date of entry into force of the law on 27 March 1991. [5]

[5] See *Law on Methods and Conditions to recognize rights and land restitution turned into socially owned according to for the purpose of agricultural land fund and land confiscated due to failure*

46. b) Applicable law – procedure and jurisdiction

    i) UNMIK Regulation 2002/12 '*On the Establishment of the Kosovo Trust Agency*'

47. UNMIK Regulation 2002/12 came into force on 13 June 2002 and established the Kosovo Trust Agency (the 'KTA').

48. The KTA was established to liquidate and privatize all SOEs, and to manage the process of the distribution of socially owned land to the original owners or their inheritors. It established the primacy of the KTA over all SOEs: section 2 of Regulation 2002/12 defined the object and purpose of the KTA as administering publically owned and socially owned enterprises and related assets. It provided, *inter alia*, that in order to serve this objective, the KTA shall carry out ancillary activities to preserve or enhance the value, viability and governance of the enterprises; section 6 provided that the KTA shall have administrative authority with respect to the SOEs and that such authority would include any action, in addition to those set out specifically, that the KTA considered appropriate to preserve or enhance the value, viability, or governance of the enterprise concerned. Section 7 defined the exercise of KTA powers over the enterprises: section 7.1 stipulates that "*the Agency shall fulfill its responsibilities under this chapter by exercising general management oversight over the enterprises within the limits of its administrative resources*". Section 7.2 makes clear that the KTA retained overall responsibility for the enterprise, despite the conduct of day-to-day business resting with the enterprise: "In the case of section 7.1, the day-to-day business of the enterprises shall be conducted by the managing and other control bodies of the Enterprise*, without prejudice to the powers of the Agency under section 6.1*" (emphasis added).

49. Section 29 of Regulation 2002/12 stipulated that in order to commence legal proceedings against the SOE, the claimant must provide proof that written notice of the intention to file an action against an SOE was submitted to the KTA. Section 29 also established that the KTA had legal standing on behalf of the SOE. Section 30 of Regulation 2002/12 stipulated that the SCSC had exclusive jurisdiction for all suits against the KTA, and that the SCSC shall not admit any claim against the KTA unless the claimant submitted evidence that the he had notified the KTA of his intention to file a claim at least 60 days prior to the filing of the claim.

    ii) UNMIK Regulation 2002/13 '*On the Establishment of the Special Chamber of the Supreme Court of Kosovo Trust Agency Related Matters*'

50. UNMIK Regulation 2002/13 came into force on 13 June 2002, the same date as Regulation 2002/12. It established the Special Chamber of the Supreme Court of Kosovo (SCSC) to deal with KTA related matters. It stipulated that **primary jurisdiction** regarding any decisions or actions of the KTA resided with the SCSC. Section 4 stipulated that the SCSC had primary jurisdiction for any claims against the KTA.

51. Section 4.2 of Regulation 2002/13 further established that the SCSC could refer specific claims to any court for adjudication, but clearly stated that no court shall exercise

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to complete obligations of mandatory buy-off of the agricultural products ("Official Gazette RS" No. 18/90")

jurisdiction over land claims involving an SOE, *unless such claims have been referred by the SCSC* (emphasis added).[6] It stipulated that appeals arising from cases referred by the SCSC to a specific court fell under the exclusive jurisdiction of the SCSC.

52. c) Letters from the Chief Judge and KTA to Municipal Court

53. A letter dated 4 March 2005 was sent from the UNMIK Chief Judge to all Municipal Courts[7]. Receipt of this letter was confirmed by the Municipal Court in Pristina on 17 March 2005. This letter communicated that cases involving SOEs had to be administered in accordance with UNMIK Regulations 2002/12 and 2002/13.

54. A further letter was sent from the KTA to N.U., as President of the Municipal Court of Pristina dated 22 January 2006. The letter was received by the Municipal Court, as it is stamped and dated 26 January 2007[8]. This letter set out that it had been brought to the attention of the KTA that the Municipal Court of Pristina '*appears to be accepting jurisdiction and competence for matters under the jurisdiction of the SCSC*'. The letter sets of the legal position according to Regulation 2002/12 2002/13, and that cases involving SOEs could only be adjudicated by a Municipal Court if the case had been referred to that Municipal Court by the Special Chamber and that the KTA had been notified of the proceedings.[9] This letter also stated that Prishtinë/Pristina Municipal Court had not so far complied with the law. The letter requests: '*we would be pleased if you would confirm that you have informed your colleagues that the present practice is unacceptable and that they should apply the law*'. N.U. did not respond to this letter until 2 January 2008 (see paragraph x below), when he wrote to the KTA stating that he had established that twelve cases involving the SOE KBI were ruled by the Municipal Court without the referral from the SCSC.

55. d) SOE KBI

56. Each of the 15 cases centered on a claim for land against SOE KBI, an agricultural cooperative.

57. In 1997, the Socially Owned Enterprise Kosovo Export ('KBI') was divided into seven individual SOEs, and ceased to exist in 1997.

58. e) Letters from KTA to SOEs

59. As set out in paragraph b, Regulation 2002/12 established that the KTA was responsible for administering SOEs and their assets.

60. The fact that KTA was the authority responsible for the distribution of assets of the SOEs was communicated explicitly to the SOEs in two letters dated 20 September 2002 and 21 March 2005.

61. A letter for the Chairman of the KTA Board of Directors dated 20 September 2002 was

[6] Section 4.2 UNMIK Regulation 2002/13, Prosecution Binder 15
[7] Prosecution Binder 13, p 55-65
[8] It is assumed therefore that the date 22 January 2006 is a typographical error, and should read 22 January 2007.
[9] Prosecution Binder 13, p 116 – 117

sent to all SOEs[10]. The letter set out that Regulation 2002/12 put all SOEs under the authority of the KTA, and that all assets of the SOE were to be supervised by the KTA.

62. A second letter from the Chairman of the KTA Board of Directors dated 21 March 2005[11] and addressed to all SOEs clearly states that that the only the KTA or SCSC can authorize the divestment of immoveable property of the SOE. The letter states that no SOE should dispose or agree to dispose of any assets in its possession, and that the management of the SOE must take reasonable efforts to safeguard the assets. It further sets out that the KTA was aware that many SOEs had claims issued against them in the court system, and that the SOE was obliged to inform the KTA within three days of gaining knowledge that it (the SOE) was subject to a lawsuit. The letter concluded that the SOEs should not attempt to circumvent the KTA.

63. f) SOE KBI Kosovo Export, SOE Pig Farm and the KTA

64. As stated in paragraph d., the SOE KBI ceased to exist as a legal entity and was divided into seven individual SOEs in 1997.

65. Whilst the division of land was not formalized in the cadastre records, the practical effect of this division was that the land was divided between the newly created SOEs and was not in the sole ownership of SOE KBI.

66. Following the division of SOE KBI Kosovo Export, H.B. and her supervisor, I.H., were employed in one of the newly created SOEs, namely SOE Pig Farm. I.H. was the Director of SOE Pig Farm, and H.B. was an employee.

67. In 2006, SOE Pig Farm was liquidated/privatized under the auspices of the KTA. Following this, all employees were made redundant by the KTA. H.B. received and signed a redundancy letter issued by the KTA on 23 November 2006. After this date, she was not in any formal employment with the SOE Pig Farm, or any other SOE.

68. Following the liquidation/privatization of an SOE, all employees of the SOE became eligible for a 20% share of the sum for which the assets, which included the land belonging to the SOE, was sold. H.B. and I.H. both claimed eligibility for the 20 % share of the liquidation/privatization of SOE Pig Farm.

69. Following on from the sub-division and closure of SOE KBI, H.B. continued to represent herself as an employee of SOE KBI whilst she was employed by SOE Pig Farm. She further continued to represent herself as an employee of SOE KBI after her employment with SOE Pig Farm was terminated. H.B., and the Director of SOE Pig Farm, I.H., occupied the former premises of the SOE KBI in Fushe Kosovo. This continued, despite KTA requests for I.H. to hand over all legal documents, notary books, court case register, court decisions regarding SOE's land, land lease agreements, the SOE stamp and bank account card, and keys to the offices, until the KTA placed the SOE KBI under direct administration on 16 November 2007. After placing the SOE KBI under direct administration as a result of this non-compliance, the KTA seized all of the above requested items and changed the locks of the office doors of the premises of the former SOE KBI.

[10] Prosecution Binder 13, pages 98-105
[11] Prosecution Binder 13, p 92 – 97

70. g) Applicable substantive law regarding claims against SOEs

i) The Law on Obligations

71. Each of the claims was grounded on *The Law on Obligations,* Official Gazette of SFRY 29/78*.*

72. *The Law on Obligations* came into force on 1 October 1978. This law is applicable to land ownership claims in which the contracts/obligations were entered into *after* the date of the entry into force of this law, as evidenced by the jurisprudence of the SCSC: the SCSC has dismissed claims grounded on the *Law of Obligations* because the Law on Obligations was not applicable to contractual obligations which were established prior to its entry into force. In verdict No SCC—8-0112 dated 24 February 2011[12], the SCSC rejected a claim grounded on the *Law on Obligations* and reasoned that Article 103 was not applicable for such a claim as the obligations/contracts were made before the law entered into force. The SCSC applied the same practice in the following decisions: SCC-09-0167 dated 24 October 2012; SCC-09-0096 dated 22 August 2012; SCC-08-0255 dated 31 July 2012; AC-I_12-0038 dated 30 May 2013 and SCC-09-0106 dated April 2013.

ii) UNMIK Regulation 2002/13

73. For cases properly referred to the SCSC, the legal remedy was provided in Section 10 of Regulation 2002/13. This provided for the recognition of a right, title or interest in the asset which was owned by the SOE. Section 10.3 of Regulation 2002/13 provided for the award of monetary compensation in circumstances where the asset claimed (in this case parcel of land) could not be returned to the parties, due to the asset (land) already having been privatized to third parties, and therefore not being in possession of the KTA. It stipulated that the payment of the monetary compensation was to be "equivalent to the value of the asset, which shall be calculated in accordance with the procedural rules of the Special Chamber". This section did not provide for the award of replacement lots of land.

iii) The *Law on Methods and Conditions to recognize rights and land restitution turned into socially owned according to for the purpose of agricultural land fund and land confiscated due to failure to complete obligations of mandatory buy-off of the agricultural products* ("Official Gazette RS" No. 18/90"), came into force on 27 March 1991. This law makes specific references to land claims against SOEs. The law only applies to two specific types of claims and applies only for claims that were filed no later than 10 years after the law came into force. The law foresees, in specific circumstances, the award of compensation in cases where the land could not be returned to the claimant, but only applies to claims filed **not later than 10 years after the entry into force**. This law was therefore not applicable to any of the 15 decisions (which were issued after 2001).

74. h) The Case Allocation System

75. There existed a case allocation system at the Municipal Court. At the relevant period,

[12] Prosecution Binder 15, pp 215 - 222

there were 11 civil law judges at the Court – 9 Albanian and 2 Serbian Judges. The two Serbian judges were O.J. and T.M.. Each judge at the Municipal Court was allocated his/her own number from 1 to 11.[13] O.J. was number 3, T.M. was number 10, S.M. was number 1, and S.S. was number 2.

76. The cases, when received, were given a case number based on the date received and a judge's number. The judge's numbers were allocated in sequential order. The cases were then allocated to each judge based upon the last digit of the case number. For example, the Judge assigned the number 3 would receive all cases which ended with the digit 3.

77. N.U., as President of the Municipal Court, was responsible for the allocating cases.

78. Land cases were allocated to Judges out of order and in breach of the case allocation system.[14] Of the cases which are subject to this indictment, O.J. issued decisions in nine of the 15 cases, whilst seven of these reflect the digit of other judges. S.M. issued decisions in two of the 15 cases whist one case did not reflect her digit. T.M. was assigned three of the 15 cases, whilst all three reflected the digits of other judges. S.S. ruled on one case, whilst the digit reflects that the case should have been assigned to O.J.

79. These breaches in the normal case allocation system were part of a wider pattern of breaching the established procedure when the case involved SOE KBI. Analysis of the Registry Books show that the Municipal Court received a total of 322 claims involving SOE KBI during the period 2002-2007. O.J. was assigned 60 cases, of which 33 reflected the digit of a different judge. T.M. received 32 cases, of which 19 had the digit of a different judge. S.M. received 40 cases, of which 12 had the digit of a different judge. In contrast, judges at the Municipal Court who were correctly applying the law did not receive as many cases that did not correspond to their digit – M.S. received 29 cases, of which only one case did not correspond with her digit; M.K. received 25 cases, of which 4 did not correspond with her digit.

80. In addition to assigning cases involving SOE KBI to judges with the wrong digit, a further breach of the normal case allocation procedure occurred by assigning *consecutive* cases to the same judge; O.J. received *consecutive* cases which involved SOE KBI,[15] which was not normal in the allocation of cases.[16] These were case numbers 1454 followed by 1455 in 2004, 2355 followed by 2356 in 2005, 292 followed by 293 in 2006, and 1292 and 1293, and also 1918 and 1919 in 2007.[17]

81. The cases were not adjudicated upon in chronological order, which was contrary to the standard procedure. Certain types of cases were afforded priority, for example those involving domestic violence, alimony, obstruction of possession and employment. Land cases were not priority cases. There existed a back-log of cases at the Municipal Court, but land cases were also then adjudicated upon quickly, despite the fact that these

[13] Witness Statement of B.K., Prosecution Binder 5 tab 4.
[14] Evidence of Witness B.K. heard on 20 February 2014 and N.H. heard on 25 February 2014.
[15] Prosecution Binder 16.
[16] Evidence of Witness N.H..
[17] Prosecution Binder 16.

cases were not priority cases.

82. I) The Decisions

83. The decisions which are the subject of this indictment consist of 14 decisions issued by judges at the Municipal Court of Pristina and one decision on an appeal issued by the judges at the District Court of Pristina.

84. There were breaches of the procedural law and substantive in each decision.

- All 14 cases were ruled by the Judges at the Municipal Court of Prishtinë/Pristina without any referral by the SCSC, in contravention of UNMIK Regulation 2002/13.

- In all but one of the cases, no notice of the claim was given to the KTA prior to the decision being issued, in breach of Regulation 2002/12.

- The District Court of Prishtinë/Pristina decided an appeal without jurisdiction, in contravention of Regulation 2002/13.

- Each claim was grounded on the *Law on Obligations*, Official Gazette of SFRY 29/78. As set out above in paragraph (e), in all 15 cases the claims concern obligations/contracts created in the 1950s and 1960s, and therefore the *Law on Obligations* was not the applicable law.

- During the proceedings, the judges failed to obtain evidence and facts in order to establish that the claimants were the rightful owners of the claimed properties, and failed to confirm the authenticity of the contracts for sale, on which the claims were based. The judges failed to confirm the authenticity of death certificates which were submitted to the court as proof that the claimants were the historical owners of the land.

- Replacement land was awarded, which was not a remedy provided for by Regulation 2002/13 or any other applicable law.

- Land was awarded as compensation, which was not a remedy provided for by Regulation 2002/13 or any other applicable law.

85. In addition to the procedural and substantive breaches of the law, there was a further irregularity in that in all 15 cases, H.B. purported to be the legal representative for SOE KBI, despite the fact that SOE KBI ceased to exist as a legal entity in 1997 and that she had been made redundant from SOE Pig Farm in November 2006. She provided the court with authorization letters confirming her representation, which were signed by I.H. who purported to be the Director of SOE KBI.

86. The decisions are set out below:

87. **Case 1314/07**[18]

88. The claim was filed on 29 May 2007 and decided on 12 July 2007.

89. The claimant was B.T., who claimed he was the inheritor of his grandfather, D.T.. He

[18] Prosecution Binder 7 – 12

claimed that his grandfather was forced to sell his land to SOE KBI in 1963. The claim sought to annul the contract relating to 1,7016 hectares of land.

90. No notice of the claim was given to the KTA.

91. The claim was decided by O.J.. One of the lay judges was F.T., who gave evidence as a witness in this case. B.T. represented himself. H.B. purported to be the legal representative for SOE KBI.

92. B.T. presented a birth certificate to prove his identity. The birth certificate was obtained on 14 June 2007 and "certified" his birth date as 24 January 1976.

93. During the proceedings, O.J. heard testimony that D.T. was pressured to sell his land to the agricultural cooperative. The testimony was general and vague, and one of the witnesses R.M. had already testified in a similar case (no. 429/05). A decision on inheritance was not entered into evidence to serve as proof that B.T. was the inheritor of D.T.. During the proceedings, there was no inquiry into the issue of jurisdiction.

94. O.J. issued a decision in this case. The decision "annulled" the 1963 contract of sale and awarded B.T. a "replacement lot" of land along the Prishtinë/Pristina Skopje highway. B.T. was ordered to reimburse the SOE KBI in the amount of 813.25 Euros.

95. There was no appeal against the decision. The decision was implemented by the Municipal Cadastral Office in Gracanica on 9 November 2010 and the claimant's right of ownership was registered. Subsequently, B.T. sold a large part of the awarded land for 448.000,00 Euros.

96. **Case 1698/05** [19]

97. This claim was filed on 7 September 2005 by M.Z.V..

98. The claimant was represented by H.G.. H.B. purported to represent SOE KBI.

99. No notification of the claim was given to KTA.

100. S.M., in her capacity as Judge at the Municipal Court of Prishtinë/Pristina, adjudicated on this case and issued a decision on 15 February 2007. She held that the claimant was pressured to sell the land to KBI and awarded 1.1933 hectares of replacement land, the amount of land that the claimant originally owned. The claimant was ordered to pay 870.63 Euros in reimbursement to KBI. On 23 February 2007, S.M. issued a corrected verdict which awarded 1.2934 hectares, an additional 0.1 hectares of land, without explanation.

101. There was no appeal. The Municipal Cadastral Office of Gracanica has not received any request to register the land parcels[20].

102. **Case 53/06**[21]

103. This claim was filed on 19 January 2006 and the decision was issued on 26 June 2007.

[19] Prosecution Binder 7
[20] Evidence of N.M., 7 April 2014
[21] Prosecution Binder 7

104. The claimant, V.M., claimed she was the inheritor of her father. She claimed that her father was coerced to sell the land to the agricultural cooperative SOE KBI in 1962. The claim sought to annul the 1962 contracts in relation to three pieces of land. There was no proof of the identity of V.M. found on the case file. A decision on inheritance was not entered into evidence to serve as proof that V.M. was the inheritor of the claimed land.

105. The claim was decided by O.J.. V.M. was represented by G.G.. H.B. purported to be the legal representative for SOE KBI.

106. O.J. issued the decision on 26 June 2007. The decision "annulled" the 1962 contracts and awarded two replacement lots located on the Prishtinë/Pristina/Skopje highway. The total land awarded, including land awarded as compensation, was 1.4332 hectares. V.M. was ordered to reimburse the SOE KBI the amount of 976.90 Euros.

107. There was no appeal against the verdict. The Municipal Cadastral Office in Gracanica did not implement the decision, and there are three parcels still registered as Kosovo Export and a fourth parcel registered in the name of a third party. [22]

108. **Case 429/05**[23]

109. This claim was issued on 24 March 2005 and the decision was issued on 25 June 2007.

110. The claimants, N.D. and J.D., claimed they were the inheritors of their father and grandfather. The claimants alleged that their father and grandfather had been pressured into selling the land. The claim sought to annul contracts between their father, grandfather and SOE KBI, which were created in 1983, 1980, 1964 and 1963. A decision on inheritance does not appear on the case file.

111. The claim was decided by O.J.. N.D. and J.D. were represented by G.G.. H.B. purported to be the legal representative for SOE KBI.

112. The testimony as to the coercion was generalized and was not specific as to which dates/contracts it referred to.

113. O.J. issued a decision in this case. The decision "annulled" the contracts and awarded a total of 3.4442 hectares of land to the claimants. N.D. and J.D. were ordered to reimburse SOE KBI in the amount of 4,467.57 Euros.

114. An appeal was lodged with the District Court on 19 July 2007, in contravention of Regulation 2002/13, by I.H.. The appeal cited the lack of jurisdiction of the Municipal Court as the grounds for appeal. The appeal was withdrawn by I.H. on 23 July 2007 with no reason cited.

115. The decision was not implemented by the Municipal Cadastral Office of Gracanica.[24]

[22] Evidence of N.M., 7 April 2014
[23] Prosecution Binder 8
[24] Evidence of N.M., 7 April 2014

116. **Case 3/06**[25]

117. This claim was filed on 1 February 2006 and the decision was issued on 29 January 2007. A supplemental verdict was issued on 9 July 2007.

118. The claimant, Mi.D., claimed he was the inheritor of her father. He claimed that his father was pressured to sell the land to SOE KBI. The claim sought to annul four contracts for sale of land entered into between his father and SOE KBI during 1962 and 1965. No inheritance decision to prove that Mi.D. was the inheritor of the claimed land appears in the Court file.

119. No notification of the claim was given to the KTA.

120. The claim was decided by O.J.. Mi.D. was represented by Ma.D.. H.B. purported to be the legal representative for SOE KBI.

121. O.J. issued a decision in this case on 29 January 2007. The decision "annulled" the four contracts and awarded a total of 2,7102 hectares of land, including 0.2826 hectares awarded as compensation. Mi.D. was ordered to reimburse the SOE KBI the amount of 3,983.20 Euros.

122. O.J. issued a supplemental decision on 9 July 2007. This decision referred to a fifth contract made in 1972. The supplemental decision annulled the 1972 contract and awarded additional land. The claimant was not ordered to pay any reimbursement for the 1972 contract.

123. There was no appeal. The decision was not implemented by the Municipal Cadastral Office of Gracanica.[26]

124. **Case 1849/06**[27]

125. This claim was issued on 06 October 2006 and the decision was issued on 10 July 2007.

126. The claimant, Z.M., claimed he was the inheritor of his father, whom he alleged had been pressured into selling the land. The claim sought to annul contracts between his father and SOE KBI. A decision on inheritance does not appear on the case file.

127. No notification was given to KTA of the claim.

128. The claim was decided by O.J.. Z.M. was represented by G.G., however G.G. withdrew his representation shortly before the verdict was issued and his name does not appear on the decision. H.B. purported to be the legal representative for SOE KBI.

129. O.J. issued a decision in this case. The decision awarded 0.7444 hectares of land to the claimant, and an additional 0.16 hectares of land as compensation.

130. There was no appeal. The Municipal Cadastral Office of Gracanica did not receive a request for registration of the decision. Three parcels are registered in the name of third

[25] Prosecution Binder 8
[26] Evidence of N.M., 7 April 2014
[27] Prosecution Binder 8

parties and one parcel is not registered with Municipal Cadastral Office of Gracanica.[28]

131. **Case 1147/06**[29]

132. Two claims were issued on 14 June and 15 June 2006. The decision was issued on 09 May 2007.

133. The claimant, O.S., claimed she was the inheritor of her father and grandfather. The claimant alleged that her father and grandfather had been pressured into selling the land. The claim sought to annul contracts between her father, grandfather and SOE KBI which were entered in 1963 and 1967.

134. Although some birth and death certificates were presented, no decision on inheritance appeals on the court file.

135. The claim was decided by O.J.. The claimant was represented by E.G., who was replaced by G.G. during the proceedings. H.B. purported to be the legal representative for SOE KBI.

136. G.G. notified the KTA of the claim on 01 February 2007.

137. The testimony as to whether the sellers were pressurized to sell is vague and non-specific.

138. O.J. issued a decision in this case. The decision "annulled" the contracts and awarded a total of 1,3557 hectares of replacement land to the claimant. The claimant was ordered to reimburse SOE KBI in the amount of 2,333.67 Euros.

139. An appeal against the decision was lodged at the District Court on 04 June 2007, in contravention of Regulation 2002/13. I.H. withdrew the appeal on 12 July 2007.

140. The decision was not implemented by the Municipal Cadastral Office of Gracanica; two parcels are registered under the name of third parties, one parcel under the Municipality of Gracanica and one parcel under Kosovo Export.

141. **Case 3521/04**[30]

142. This claim was issued on 23 December 2004 and the decision was issued on 15 October 2007.

143. The claimant, D.P., claimed that she was the inheritor of her father, whom she claimed had been pressured into selling the land. The claim sought to annul contracts for the sale of land entered into by her father and SOE KBI in 1961, 1962 and 1964. A decision on inheritance does not appear on the case file.

144. The claim was decided by O.J.. The claimant was represented by Q.Q.. H.B. purported to be the legal representative for SOE KBI.

145. The claim was issued on 23 December 2004, but no action was taken on this case until

[28] Evidence of N.M.
[29] Prosecution Binder 12
[30] Prosecution Binder 9

15 October 2007 where after the case was decided within four months. Four sessions were held on 11 June 2007, 21 September 2007, 28 September 2007 and 15 October 2007. The testimony given to the Court as to whether the seller was coerced into the sales was vague.

146. H.B. was not present during the court session on 11 June 2007. O.J. appointed a geodesy expert and carried out a site inspection without H.B. being present. H.B. was also not present during the court session on 21 September 2007. O.J. appointed a financial expert outside of the Court session. H.B. appeared at court for the first time 28 September 2007. She did not object to the conduct of the previous sessions or the appointment of the geodesy or financial expert.

147. O.J. issued a decision in this case on 15 October 2007. The decision "annulled" the contracts and awarded 1,5858 hectares of land to the claimant, including one replacement lot, and awarded an additional 0,9196 hectares as compensation. The claimant was ordered to reimburse SOE KBI in the amount of 297.43 Euros.

148. There was no appeal of this decision. Notification was provided to the KTA in December 2007, after the decision had been issued.

149. The decision was not implemented by the Municipal Cadastral Office of Gracanica. Four parcels are registered in the names of third parties, and two parcels are registered under Kosovo Export.[31]

150. **Case 1415/2005**[32]

151. This claim was filed on 10 August 2005 and the decision was issued on 28 September 2007.

152. The claimant, M.P., sought to annul a contract for sale of land entered into in 1964. No inheritance decision was found on the court file.

153. The claim was decided by O.J.. The claimant was represented by G.G., who became the authorized representative for the claimant on 18 September 2006.

154. O.J. issued a decision in this case on 28 September 2007. The decision "annulled" the contract and awarded 0.58 hectares of land, and 0.41 hectares of land as compensation.

155. The decision was not appealed. The decision was not implemented by the Municipal Cadastral Office of Gracanica.

156. **Case 1738/07**[33]

157. The claim was filed on 20 September 2007 and the decision was issued on 19 November 2011.

158. The claimants, B.J., M.J., T.J., R.J. and I.J., sought to annul a contract for sale of land entered into in 1961. No decision on inheritance appears on the court file.

[31] Evidence of N.M., 7 April 2014
[32] Prosecution Binder 9
[33] Prosecution Binder 9

159. The claim was decided by O.J.. The claimant was represented by M.G.. H.B. purported to represent SOE KBI.

160. The testimony as to whether the seller was coerced was vague and generalized. During the court hearings, the lawyer for the claimants informed the court that the KTA had been notified.

161. O.J. issued a decision in this case on 19 November 2007. The decision "annulled" the contract and awarded a replacement lot of 0.54 hectares of land along the Prishtina-Skopje road. The claimants were ordered to reimburse SOE KBI in the amount of 241.35 Euros. The decision was not appealed.

162. The decision was implemented by the Cadastral Office at Gracanica and the right of ownership of the land was registered in the name of R.J..[34]

163. **Case 1908/3**[35]

164. The claim was issued on 28 October 2003 and the decision was issued on 19 December 2006.

165. The claimants, L.V., S.D., R.A. and A.F. sought to annul a contract on gift of land entered into in 1959 regarding 1,0343 hectares of land. The claimants claimed that their ancestor was forced to donate the land under policies of the former Yugoslavian government because of his employment in a mine. No decision on inheritance appears on the court file. There is no notice to the KTA on the court file.

166. No notification was given to the KTA of the claim.

167. The claim was decided by T.M.. The claimants were represented by E.G.. H.B. purported to be the legal representative for SOE KBI.

168. T.M. issued a decision in this case on 19 December 2006. The decision "annulled" the contract and awarded replacement lots of land. SOE KBI was ordered to pay court costs in the amount of 608.40 Euros. The claimants were not ordered to pay any restitution.

169. The decision was appealed by SOE KBI to the District Court, although jurisdiction was not raised as a ground for appeal. The appeal was signed by I.H.. The appeal was withdrawn without explanation.

170. The decision was not implemented by the Municipal Cadastral Office of Gracanica.[36]

171. **Case 342/06** [37]

172. The claim was issued on 13 March 2006 and the decision issued on 23 March 2007.

173. The claimants (A.O. and others) issued a claim against a number of private individuals which was expanded on 29 November 2006 to include SOE KBI as a respondent.

[34] Evidence of N.M., 7 April 2014
[35] Prosecution Binder 10
[36] Evidence of N.M., 7 April 2014
[37] Prosecution Binder 10

174. The claim was decided by T.M.. The claimants were represented by E.G.. H.B. purported to be the legal representative for SOE KBI.

175. T.M. issued a decision in this case on 29 November 2006. The decision awarded a replacement lot of 1.01 hectares of land. SOE KBI was ordered to pay court costs in the amount of 608.40 Euros.

176. The appeal was lodged by the KTA itself on 11 March 2008 to the SCSC.

177. The land is not contained within the jurisdiction of the Municipal Cadastral Office of Gracanica.

178. **Case 1918/06**[38]

179. The claim was issued on 17 October 2006. The decision was issued on 6 June 2007.

180. The claimants, J.M. and Sl.M. filed a claim against SOE KBI.

181. The first lawyer for the claimants, S.C., filed the claim with the SCSC, in accordance with the applicable law. By a decision of the SCSC, SCC-06-0223 dated 21 June 2006, the SCSC referred the claim for one parcel of land to the Municipal Court. G.G. took over representation of this case after it had been referred to the Municipal Court. The claim was left dormant for one year, before G.G. filed the same claim again directly with the Municipal Court of Prishtinë/Pristina. The same case was therefore registered a second time and received the new case number (1896/07). In addition, G.G. filed a second claim involving the same claimant but with different land parcels. This case was wrongly filed at the Municipal Court and was given the new case number 1918/06. Notice was not given to the SCSC of this change to the land parcel, and the Municipal Court did not seek permission other SCSC to decide on this different parcel of land.

182. The claim was decided by T.M.. The claimants were first represented by S.C., who replaced by G.G..

183. T.M. issued a decision in this case on 6 June 2007. The decision awarded a replacement lot of land comprising of 1,1034 hectares near the Prishtinë/Pristina -Skopje highway. SOE KBI was ordered to pay court costs in the amount of 608.40 Euros. The claimants were not ordered to pay any restitution.

184. The decision was appealed by SOE KBI on 27 June 2007. The appeal was signed by I.H. and was withdrawn on 24 September 2007 without explanation.

185. The decision was not implemented by the Municipal Cadastral Office of Gracanica.[39]

186. **Case 251/04** [40]

187. The claim was filed on 23 April 2003 and the decision was issued on 19 June 2007.

188. The claimant, R.G., sought to annul a land contract regarding 0.65 hectares. The claim made reference to a verdict issued in 1996, which the claimant said was incomplete as a

[38] Prosecution Binder 12
[39] Evidence N.M., 7 April
[40] Prosecution Binder 11

particular parcel of land had not been considered. The claimant therefore filed a new claim on 23 April 2003, for which the applicable law was UNMIK Regulation 2002/12 and 2002/13.

189. No notification was given to the KTA.

190. The claim was decided by S.M.. The claimant was first represented by H.G., who was then replaced by A.G.. SOE KBI was first represented by Ismajil Osedautaj, which was then replaced by H.B.. H.B. was not present during the court sessions of 3 June 2004 or 7 October 2004. She did not attend a site inspection on 11 June 2004.

191. S.M. issued a decision in this case on 19 June 2007. The claim was decided in favour of the claimant. There was no appeal.

192. The decision was not implemented by the Municipal Cadastral Office of Gracanica.

193. **Case 2333/05**[41]

194. The claim was issued on 30 November 2005. The decision was issued on 15 May 2007.

195. The claimants, B.M., V.D., L.D., St.D. and T.D. sought to annul land contracts from 1963, 1964 and 1970.

196. No notification was given to the KTA.

197. The claim was decided by S.S.. The claimants were represented by Ma.D.. H.B. purported to be the legal representative for SOE KBI.

198. S.S. issued a decision in this case on 15 May 2007. The decision awarded 3.3084 hectares of land, and 0.1911 hectares of land as compensation.

199. The decision was amended by N.U. on 14 September 2007. S.S. did not sign the decision as she was on sick leave at the time. N.U. signed the decision although the signature block remained in S.S.'s name.[42]

200. During the course of the proceedings, H.B. objected to the valuation of the land given by the court appointed financial expert.

201. SOE KBI filed an appeal (signed by I.H.) on 3 July 2007. The grounds cited were lack of competence of the Municipal Court and the absence of notification to the KTA. The appeal was filed to the District Court. The District Court upheld the decision of the Municipal Court in verdict Ac. Nr. 604/03.

202. This decision was not implemented by the Municipal Cadastral Office of Gracanica. [43]

203. **District Court Case 604/2003** [44]

204. On 3 July 2007, an appeal of Municipal Court Verdict 2333/05 was lodged at the District

[41] Prosecution Binder 11
[42] Prosecution Binder 11, p 316 – 317
[43] Evidence N.M., 7 April 2014
[44] Prosecution Binder 11

Court of Prishtinë/Pristina by SOE KBI.

205. The appellant raised as a ground of appeal the issue of jurisdiction. On 2 October 2007, RR.R., E.A. and F.B., in their capacity as judges at the District Court, decided the appeal of Municipal Court Verdict 2333/05. On the issue of jurisdiction, the District Court cited a decision of the SCSC, SCA-05-0104 and claimed that in this decision which involved a similar dispute, the SCSC had declared itself not competent to decide the case. Examination of decision SCA-05-0104 shows that it referred to the process referring a particular case to the Municpal Court, pursuant to its authority to refer land cases to the Municipal Court.

206. The District Court issued its Ruling on 2 October 2007. The Ruling dismissed the appeal as un-grounded.

207. RR.R. was the Presiding Judge and signed the Ruling. F.B. and E.A. participated in deliberation, voted on the decision and signed the Minutes of the deliberation.

208. J) Execution of Transfer by the Cadastral Office

209. In order for the land to be transferred to the successful claimants, the Court's decision had to be recorded in the cadastral record. The Cadastral Office executed transfers of land upon the final verdict of the court. This practice was applied until the SCSC issued an instruction to all cadastral offices, which instructed the Cadastral Office not to make a transfer of SOE land to a private individual unless there was a copy of the judgment from the SCSC.

210. The decisions issued by O.J. in Case 1314/07 and Case 1738/07 were implemented by the Cadastral Office of Gracanica, and as a result the transfer of land to the claimants was registered in the cadastral records.[45] B.T., the successful claimant in case 1314/07, subsequently sold a large part of the awarded land for 448,000.00 Euros. The land in case 1738/07 was transferred to claimant R.J., and the information held by the Cadastral Office is that the land remains registered in his name and there has not been any construction on the land.

211. The transfer of land provided for in the remaining 13 decisions was never actually implemented by the Cadastral Office. The reason for this was that the decisions did not contain the required referral from the SCSC, and were not authorized by the KTA; the SOE KBI was placed under the direct administration of the KTA in November 2007, at which point the Head of the Administrative Unit refused to authorize any land to be transferred to the claimants in cases against SOE KBI.

212. The refusal of the KTA to approve the implementation of the decisions was questioned by N.U.. N.U. contacted the then Head of the Administrative Unit of the KTA and requested a meeting. At the meeting which took place at the Municipal Court of Prishtinë/Pristina, N.U. enquired indirectly as to what was obstructing the KTA from giving approval for the decisions to be executed.[46]

213. k) Judicial Inspection Unit and Notification to the KTA

[45] Evidence of N.M., Cadastral Officer at Gracanica, heard of 7 April 2014.
[46] Statement of S.N. – Prosecution Binder 5

214. In December 2007, the Judicial Inspection Unit of UNMIK ('JIU'), *ex-officio* opened an investigation against N.U., O.J., S.M., T.M., S.S., RR.R., E.A. and F.B.. The investigation centered on the 15 cases which are the subject of this indictment. Sometime at the end of 2007, the JIU obtained the respective case folders of twelve cases from the Municipal Court of Prishtinë/Pristina.

215. N.U. responded to the letter sent by the KTA and received by the Municipal Court on 26 January 2007 (see paragraph c) in a letter dated 2 January 2008. By this time, all decisions made by the Municipal Court Judges which had subject to this indictment had been taken. N.U. wrote to the KTA stating that he had established that twelve cases involving the SOE KBI were ruled by the Municipal Court without the referral from the SCSS and without KTA notification. These were the same 12 cases that the JIU had obtained the case folders for.

E. LEGAL REASONING

I. Applicable Law

216. The above established events occurred sometime between 2006 and 2007, when the applicable law was the Criminal Code of Kosovo, which entered into force on 06 April 2004 and was entitled 'Provisional Criminal Code of Kosovo' (PCCK). The name was changed on 06 November 2008 when the code was renamed 'Criminal Code of Kosovo'. The new Criminal Code of the Republic of Kosovo (CCK) entered into force on 01 January 2013[47].

217. Both the old law (PCCK) and the new law (CCK) express the common principle that "the law in effect at the time a criminal offence was committed shall be applied to the perpetrator."[48] However, both laws express an exception: "In the event of a change in the law applicable to a given case prior to a final decision, the law more/most favourable to the perpetrator shall apply".[49]

218. The Panel interpreted this as incorporating both the substantive elements of the offence and also the level and calculation of associated punishment.

219. Article 6 (2) of the European Convention on Human Rights ("ECHR"), the Constitution of Kosovo and Article 3 (1) of the CPC enshrine the presumption of innocence to which accused are entitled. This presumption places on the Prosecution the burden of establishing the guilt of the Accused, a burden which remains on the Prosecution throughout the trial.

II. Criminal Liability

220. Article 11 (1) of the PCCK and Article 17 (1) of the CCK set out that a person is only criminally liable when mentally competent and commits a criminal offence "intentionally or negligently".

III. The Offences

i) Issuing an Unlawful Judicial Decision

221. Count 1 of the indictment charges the defendants with Issuing an Unlawful Judicial Decision under Article 346 of the PCCK.

222. Article 346 PCCK provides that this offence is committed when:

223. *A judge or a lay judge or a minor offense court judge, with the intent to obtain an unlawful material benefit for himself, herself or another person or cause damage to another person, issues an unlawful decision shall be punished by imprisonment of six months to five years*

224. The offence is replicated in Article 432 of the CCK in the same terms with one minor change; the offence only applies to judges and not to a lay judge or minor offence court

[47] Code No. 04/L-082
[48] Article 2 (1) of the PCCK and Article 3 (1) of the CCK.
[49] Article 2 (2) of the PCCK and Article 3 (2) of the CCK respectively.

judge.

Issuing

225. In relation to the first element, there was no dispute amongst any of the parties that the defendants subject to Count 1 of the indictment were judges at the Municipal Court of Prishtinë/Pristina and the District Court of Prishtinë/Pristina. In relation to S.M., O.J., T.M., and S.S. there was no dispute that they issued the decisions as set out in the factual findings (S.S. issued the decision in case 2333/05 but did not amend it).

226. In relation to the District Court Judges, RR.R., E.A. and F.B., who adjudicated the appeal filed against the judgment of the Municipal Court of Prishtinë/Pristina in case 2333/05, the issue of whether the judges could be held to be responsible for 'issuing' the decision whilst acting as a member of a panel has to be addressed. For example, could a judge be held responsible for issuing the decision if he or she did not vote for the decision but was outvoted by the other panel members? In the instant case, the panel found that the facts were established that the RR.R., E.A. and F.B. actually voted for the decision rendered, and therefore this issue does not need to be elaborated further (see paragraph xxxx). The panel did not consider that it is only the presiding judge who is responsible for the case. According to the applicable civil procedural code, all the panel members have to vote and it is not simply for the presiding trial judge to solely assess and adjudicate the case. In any event, an internal and verbal agreement of the panel members regarding sole responsibility for the respective case has no impact on the individual criminal liability of the judges. The same can be said in regard to the fact that only the presiding judge signed the final version of the judgment, and not the individual panel members.

Unlawful Decision

227. In previous cases involving the offence of issuing unlawful judicial decisions, Eulex Judges have held that the unlawful decision must be "obviously wrong" or "clearly illegal".[50]

228. The commentary on the offence of Issuing Unlawful Judicial Decision states that the "violation of the law may either be a material violation of the law, or a violation of the procedural law. It does not matter which type of procedure was violated…" [51]

229. The panel considered that the test to be applied when considering whether a decision was unlawful, either by way of a procedural violation or a violation of the substantive law, was whether the procedural violation or violation of the substantive law had an impact on the substantive outcome of the judicial proceedings. The question to be posed is: was the violation of the procedural law or substantive law 'neutral', or did it have an impact on the substantive outcome of the judicial proceedings? The panel

[50] Municipal Court Prizren, P 955/19, Judgment, 3 June 2011; similar Municipal Court Prizren, P 917/10, Judgment, 7 October 2013.

[51] "Kodi Penal i Republikës së Kosovës, Komentar, Botimi I", Ismet Salihu, Hilmi Zhitija, Fejzullah Hasani, 2014

therefore considered that the Prosecution had to prove that the violation of the law by the defendant judges substantially affected the outcome of the case. Or, posing the same question from a different perspective: what would have been the outcome of the case if the case had been adjudicated by the SCSC as the competent court? Following on from this, and in light of this hypothetical outcome, can the decision rendered by the defendant judges be considered a reasonable one, or within the scope of acceptable judicial decision from an objective perspective?

230. As set out in the factual findings, it was established that there had been a violation of the procedural law; the cases were adjudicated upon by the Municipal Court Judges without a referral from the SCSC, as required by UNMIK Regulation 2002/13; and the appeal in case 2333/5 was decided by the District Court, which had no jurisdiction according to Regulation 2002/13. In the majority of cases, there was no notification to the KTA of the claim against the SOE KBI, as required by Regulation 2002/12.

231. It was further established that there were violations of the substantial law; the claims and decisions were grounded in the Law on Obligations. As set out in the factual findings, whilst the defendant judges applied the Law on Obligations retrospectively, the SCSC ruled to the contrary, and dismissed such claims because the Law on Obligations was not applicable for contractual obligations which were established prior to the Law on Obligations entry into force. A further violation of the substantive law occurred, when replacement lots of land were awarded.

232. The panel therefore found that the violations of the procedural law were not 'neutral', in that had the cases been adjudicated in the SCSC, the claims would not have been adjudicated in the same way as done by the defendant judges. The violation of the procedural law, by avoiding the jurisdiction of the SCSC, therefore enabled the violation of the substantive law.

233. There are a number of ways in which this is apparent: had the KTA been notified of the claims, proper oversight of the assets of SOE KBI would have been provided. Secondly, the claims would have been dismissed pursuant to the established SCSC jurisprudence on claims grounded on the Law on Obligations. Thirdly, in the event that the claims were successful, then replacement lots of land would not have been awarded as the only legal remedy available was monetary compensation.

With intent to obtain a material benefit/cause damage

234. Article 11 of the PCCK defines criminal liability. It provides that a person commits a criminal offence "*intentionally or negligently*". However, a person is only criminally liable for the *negligent* commission of an offence when this has been explicitly provided for by law (Article 11 paragraph 3)[52]. Neither Article 346 of the PCCK or Article 432 of the CCK provides for the commission of the offence of Issuing Unlawful Judicial Decisions by negligence.

235. Article 15 of the PCCK defines "intent". It provides that:

(1) *A criminal offence may be committed with direct or eventual*

[52] Replicated in Article 17 of the CCK

intent.

(2*)* *A person acts with direct intent when he or she is aware of his or her act and desires its commission.*

*(*3*)* *A person acts with eventual intent when he or she is aware that a prohibited consequence can occur as a result of his or her act or omission, and he or she accedes to its occurrence."* [53]

236. Intent, as per Article 11 and defined in Article 15 of the PCCK, applies to each criminal offence within the PCCK. Article 346 of the PCCK however directly specifies the meaning of intent in relation to the criminal offence of Issuing an Unlawful Judicial Decision (as opposed to the generic intent applicable to all offences), as does Article 432 of the CCK. This offence requires there to be, in addition to the generic intent, a *specific* intent to cause damage or obtain a benefit. In other words, in order to be criminally liable, a person must have intentionally committed the act but also must have committed the act in order to obtain a benefit or cause damage.

237. It must therefore be proven beyond reasonable doubt that the person intended to make an unlawful judicial decision, and that the reason that the person made the unlawful decision was because they intended to obtain a material benefit and/or to cause damage. This requirement of unlawful intent is required in order to differentiate between a decision which is taken by a judge who believes he/she is applying the law correctly, but which is subsequently found to be 'unlawful' by the second instance court, and a decision which must attract criminal sanction. Therefore a judge can intentionally make an 'unlawful' decision (believing at the time that he/she is correctly applying the law) which does not amount to a criminal offence. This distinction is of paramount importance and exists so as to preserve judicial independence and freedom, as provided by the Constitution of the Republic of Kosovo.

238. There is no requirement for it to be proved that the unlawful decisions actually resulted in a material benefit or that it caused damage to another. In this case, only in two of the cases did the decisions lead to a change of title being affected in the cadastral register, which enabled ownership of the land to be transferred to the claimants. The fact that in the other thirteen cases, the transfers did not proceed through the Cadastral Office, and that therefore there was no transfer of land, is immaterial when determining the criminal liability. The offence is committed when the decisions were made *with the intent to obtain a material benefit or cause damage*.

239. In summary then, the Panel considers the elements of the offence of Issuing an Unlawful Judicial Decision to be as follows:

A. The perpetrator is a Judge

B. He/She issues an unlawful decision

C. With intent to commit the fact i.e. with intent to issue an unlawful decision; AND With special intent to obtain benefit for himself or

[53] The definition of intent provided by Article 15 of the PCCK is replicated exactly in Article 21 of the CCK

another person or to cause damage.

240. Although the panel did not find any *direct* evidence that the judges intentionally made an unlawful decision, i.e. there was no evidence presented that the Judges' possessed knowledge of the applicable law and intentionally misapplied it, the panel found that this was inferred from the cumulative weight of the circumstantial evidence. In particular, the panel considered the knowledge of the other Judges staff members of the Municipal Court of Prishtinë/Pristina as to the applicable law or practice regarding jurisdiction, the fact the judges O.J., T.M. and S.S. and S.M. correctly applied the law and declined jurisdiction in other cases, and the fact that the District Court judges deliberately misrepresented the findings of SCSC decision SCA-05-0104 in their ruling.

241. In relation to the special intent (intent to obtain a material benefit for himself or another person, or to cause damage to another person as the reason for making the unlawful decision) again the panel was not presented with any direct evidence of this. Special intent can however be proven in many ways, including through logical inferences that can be drawn from other evidence, including circumstantial evidence. In this case, the panel took into account the intentional violation of the law regarding jurisdiction, the presence of many irregularities in the adjudication of the decisions i.e. the failure to notify the KTA, the absence of proof of inheritance in many of the decision, the breach of substantive law (grounding the decisions in the Law on Obligations and awarding parcels of land), the abnormalities in the case allocation system, the short time frame in which the decisions were adjudicated, and the potential value of the land awarded, as individual pieces of circumstantial evidence which, when considered as a whole, point to the only logical conclusion being that the judges issued the decisions with the intent to obtain a benefit or to cause damage. Although the panel did not find any direct evidence that the Judges made the decisions with the intention to obtain a benefit or to cause damage, the panel found that the cumulative weight of the evidence established the necessary intent beyond reasonable doubt, as detailed in the individual culpability section below.

ii) Assistance in Issuing of Unlawful Judicial Decision

242. Article 25 of the PCCK (Article 33 of the CCK) stipulates that:

> *1. Whoever intentionally assists another person in the commission of a criminal offence shall be punished more leniently*

243. The law therefore requires that the basic criminal offence is committed i.e. completed before criminal liability for assistance arises. As set out above, the panel found that the basic offence of Issuing an Unlawful Judicial Decision was committed, and therefore the panel goes on to consider the issue of accessory liability.

244. The action of 'Assistance' is defined by Article 25 of the PCCK (Article 33 CCK) as follows:

> *Assistance in committing a criminal offence includes giving advice or instruction on how to commit a criminal offence, making available for the perpetrator the means to commit a criminal offence, removing the impediments to the commission of a criminal offence, or promising in advance to conceal evidence of the commission of a criminal offence, the identity of the perpetrator,*

the means used for the commission of a criminal offence, or the profits which result from the commission of a criminal offence.

245. The PCCK and CCK both require that the person 'intentionally' assists the commission of a criminal offence. It is not therefore possible to provide 'assistance' by acting negligently.

246. 'Intent' can be committed with direct or eventual intent, as set out above. A person can be criminally liable for assistance therefore if: 1) he/she is aware that a criminal offence is being committed and that his/her actions are assisting in the commission of the offence, and by his/her actions, he/she intends the criminal offence to be committed or 2) he/she is aware that a criminal offence is being committed and that his/her actions could contribute to the commission of the offence, and he/she agrees to this risk.

247. In summary, the panel considered that criminal liability for assistance arises when the following requirements are proved:

1) The basic offence is committed

2) The *assistor* has provided some concrete act of assistance

3) The assistor has knowledge that a criminal offence is being committed

4) The assistor is aware that his/her actions are contributing to the commission of the offence and he/she intends his actions to contribute OR he is aware that his/her actions could contribute to the commission of the offence, and he/she agrees to this risk.

iii) *Inciting another Person to Issue an Unlawful Judicial Decision* & *Offences in Coperpetration*

248. Criminal liability for 'Incitement' is regulated by Article 24 of the PCCK (Article 32 of the CCK), which states as follows:

Whoever intentionally incites another person to commit a criminal offence shall be punished as if he or she committed the criminal offence if the criminal offence was committed under his or her influence

249. Article 24 does not elaborate on the meaning of 'incites', and therefore the Panel gives this word its natural meaning, namely to encourage or persuade others to act in an unlawful way.

250. 'Incitement' requires some act of encouragement, whether verbal or non-verbal. Therefore the principal offender need not have formed a settled intention to commit the criminal act, and the encouragement or persuasion by the inciter must have strengthened their intention to commit the offence.

251. The inciter therefore does not participate in the actual commission of offence. In contrast, a co-perpetrator is a person, who together with at least one other, jointly commits an offence, or substantially contributes to the commission of the offence.

252. 'Co-perpetration' is defined in Article 23 of the PCCK and Article 31 of the CCK as

follows:

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

253. In order to be criminally liable for committing a criminal offence in co-perpetration, it has to be established therefore that a criminal offence was committed, and that the person participated or substantially contributed to the commission of the offence.

254. Following on from this, in order to be liable for committing the offence of issuing an unlawful judicial decision in coperpetration, the following requirements have to be proved:

    1. an unlawful judicial decision was issued as per the requirements of the basic offence

    2. the co-perpetrator participated in the commission of this offence, or substantially contributed to its commission, with the intent that an unlawful decision be issued AND with special intent to obtain benefit for himself or another person or to cause damage.

255. An offence committed in co-perpetration is therefore a higher form of criminal liability than incitement, as it requires that the person participated or substantially contributed to the issuing of the unlawful decision, and has the intention required by the basic offence, i.e. the intention to obtain a benefit for himself or another person.

iv) *Falsifying Documents*

256. This offence is regulated by Article 332 PCCK and is defined as follows:

> *1. Whoever draws up a false document, alters a genuine document with intent to use such document as genuine, or knowingly uses a false or altered document as genuine, shall be punished by a fine or imprisonment of up to one year.*

257. The offence therefore can be committed in two ways: when a false document is created or a genuine document is created with the intent to use it in the future as a genuine document, or when a false or altered document is actually used and the perpetrator does this knowingly.

F. INDIVIDUAL CULPABILITY OF THE DEFENDANTS

258. O.J. (Count 1)

259. As established in the factual findings, O.J. ruled on nine cases which are subject to this indictment. These decisions were 'unlawful', as set out in the factual findings and legal assessment, due to the fact that they contained violations of the procedural law and substantive law which substantially affected the outcome of the claims, and which from an objective perspective, were not within the scope of acceptable judicial decision. In summary, none of these cases were referred to the Municipal Court by the SCSC, in violation of Regulation 2002/13; in the majority of cases there was no notification given to the KTA, in violation of Regulation 2002/12; the claims and decisions were grounded in the Law of Obligations, which was not the applicable law, and the judicial remedy of awarding replacement lots of land was not provided for by law. In addition, there were numerous deficiencies and irregularities in the process of assessing the claim and arriving at the decisions.

260. The panel found that O.J. knowingly violated the applicable law. In forming this conclusion, the panel took into account that the decisions were all issued in 2007, and so after the notifications regarding the applicable law were given in the letter from the UNMIK Chief Judge on 4 March 2005, and the letter from the KTA received on 26 January 2007. The panel also considered the testimony of other employees at the Municipal Court – **M.S., M.K., B.K.** and **F.T.** – with regard to their knowledge of the applicable law to be highly significant, and indicative of the fact that the provisions of the Regulations were widely known.

261. Witness **M.S.**, a civil judge at the Municipal Court of Prishtinë/Pristina throughout the entire presidency of N.U., gave evidence to the Court on 24 February 2014. She declared herself incompetent in all 29 cases involving KBI Kosovo Export which were assigned to her, in accordance with Regulation 2002/13. She testified in Court that '*I always declared as a not competent judge as far as these cases are concerned, and for the sake of parties, somewhere in the reasoning of those rulings, I mentioned that they hold the right to file a new claim in front of the Special Chamber*'.

262. The witness further testified that she was aware of the Regulations that governed the situation through the Official Gazette and Internet, and that these updates were brought to the Court and distributed. The witness was asked specifically about Regulation 2002/13 and whether the provisions regarding the referral to the Special Chamber were complicated; she responded that the Regulation was '*understandable*'.

263. The testimony of M.S. is supported by the evidence of **M.K.**, who was also a civil judge at the Municipal Court of Prishtinë/Pristina at the relevant time. He gave a witness statement to the Prosecution on 4 July 2012. In it he stated that '*in cases involving claims filed against socially owned enterprises, the law was very clear. We received these cases we had to issue an act decision and declare incompetence. In this act decision we had to advise the claimants that they had to file the claim with the Special Chamber of the Supreme Court. I also recall that there was a provision which obliged the claimants to inform the KTA about their intention to file a claim against the socially*

owned enterprises.' [54]

264. Witness **B.K.** was a court administrator at the Municipal Court of Prishtinë/Pristina. She was a non-legal member of staff yet she was aware of the referral procedure to and from the SCSC. During her testimony to the Court on 20 February 2014, she stated that: '*there were cases when judges issued ruling indicating that the Municipal Court was not competent to deal with such cases*'. In her witness statement dated 20 June 2012 when asked whether she knew that cases involving SOEs had to be referred to the Special Chamber, she stated: '*I am not familiar with the law as this is not my job but I know from my work at the court that there were cases when the party submitted the claim directly to the Municpal Court. In such cases the judges issued an Act Decision and declared the Municipal Court as incompetent. The judges would refer the claimants to the Special Chamber of the Supreme Court. Sometimes the Special Chamber of the Supreme Court would refer the cases back to the Municipal Court*'. Although the witness claimed not to have known the provisions of the Regulation, it is clear that the practical effect of Regulation 2002/13 was well known to her.

265. The panel also took into account the testimony of **F.T.**, who gave evidence to the court on 20 February 2014. F.T. was a lay judge at the Municipal Court of Prishtinë/Pristina between 2000 – 2009. He testified that he was aware of the fact that between 2006 – 2007 the primary jurisdiction for land cases was the Special Chamber.

266. The panel therefore did not accept the explanation of O.J. that whilst she was aware of UNMIK Regulation 2002/12 and 2002/13, that she interpreted section 4, paragraph c and d of Regulation 2002/13 to mean that all claims against an SOE which was not under the direct administration of the KTA, fell under the jurisdiction of the Municipal Court. Her interpretation, she argued, was based on the fact that SOE KBI did not fall under the jurisdiction of the KTA or the SCSC until 12 December 2007, when the SOE KBI was placed under the Direct Administration of the KTA.

267. The panel considered UNMIK Regulation 2002/13, and in particular section 4, and found its provisions to be clear. However the panel has guarded against reading the Regulation with the benefit of hindsight, and has therefore formed its conclusion based on the evidence of the witnesses M.S. and M.K., colleagues of the Municipal Court Judges at the relevant time, and the knowledge of the Court Registrar, B.K., on the practice of referring cases to the SCSC. The panel also considered the fact that O.J. is recorded by the Kosovo Judicial Institute as having attended a seminar on civil law, which included the topic of Basic Court Competencies, on 12 December 2003, and a seminar on Property Rights which included the topic 'competencies of the Basic Court' on 21 May 2004. She is also recorded as having participated in a seminar on property rights on 29 September 2005. [55]

268. The panel therefore concluded that O.J. did have knowledge of the applicable law. The panel went on to consider whether she intended to make the unlawful decision, and whether she intended to issue the unlawful decision with the intent to obtain a material benefit for herself or for another or cause damage (specific intent).

[54] Prosecution Binder 5, tab 11

[55] Record obtained ex officio by trial panel – and filed in response to request for disclosure of information dated 4 April 2014.

269. There was no evidence presented during the trial that O.J. obtained a material benefit as a result of issuing the unlawful decisions. There was also no direct evidence presented that she made the unlawful decisions with the intent to obtain a material benefit for herself or another person. However, as set out in the legal assessment, the intent to obtain a material benefit can be inferred from circumstantial evidence. The panel in coming to the conclusion that O.J. intentionally issued the unlawful decisions with intent to obtain a material benefit, took into account the following pieces of circumstantial evidence:

270. Firstly, the sheer number of irregularities, both of procedural and substantive law, present in the nine decisions, and the way in which she conducted the proceedings, led the panel to conclude that her conduct was so obviously wrong that she had an unlawful intention. The fact that O.J. conducted the proceedings in an irregular manner is supported by **F.T.,** who, in his statement given to the Prosecution on 18 October 2011,[56] confirmed that his name is listed in twelve of the cases that are subject to this indictment, but stated that O. 'would keep all documents in front of her without sharing them with the lay judges. She would screen the papers to be seen. There were many complaints made against O.J., and therefore, these cases should have gone to the President of the Municipal Court and not been assigned to her but to another judge'.

271. Secondly, each of the nine cases was adjudicated upon very quickly in comparison to the other, non-priority case in the Municipal Court. As outlined in paragraph g, claim 1314/07 was filed on 29 May 2007 and the decision was issued on 12 July 2007; claim 53/06 was filed on 19 January 2006, and the decision was issued on 26 June 2007; claim 429/05 was filed on 24 March 2005 and the decision was issued on 25 June 2007; claim 3/06 was filed on 1 February 2006 and the decision issued on 29 January 2007; claim 1849/06 was filed on 6 October 2006 and the decision issued on 10 July 2007; claim 1147/06 was filed on 14/15 June 2006 and the decision issued on 9 May 2007; claim 3521/04 was filed on 23 December 2004 and the decision issued on 15 October 2007; claim 1415/05 was filed on 10 August 2005 and the decision issued on 28 September 2007; claim 1738/07 was issued on 20 September 2007 and issued on 19 November 2007.

272. The longest period of time between the claim being issued and the decision being rendered was 20 months; the shortest period of time was 6 weeks. The panel again looked at the conduct of the Municipal Court Judges who were correctly applying the Regulations. **M.S.** testified to the court that priority cases were exceptions to the usual process of adjudicating on claims chronologically. These were cases involving domestic violence family cases where custody of children was involved. Land claims involving SOEs were not priority cases and she testified that she treated these in the order that they came in. She declared herself incompetent in all 29 cases involving SOEs assigned to her; when cases involving SOEs were correctly referred by the SCSC to the Municipal Court in accordance with the Regulation 2002/13 and assigned to her, she did not get around to adjudicating on these cases before she became President of the Court in 2010 because of the pressure of other work. She testified that "*I did not rule on any of them, not because I did not want to as it was our duty to rule on them, but I am always referring to the practice followed in my office. I had cases that were older cases and I*

[56] Prosecution Binder 5

had to deal with them first".

273. The practice of adjudicating on cases in order, and the existence of a backlog of cases as described by M.S. was also described by **M.K.**. In his witness statement dated 4 July 2012, he stated that all cases were administered '*in strict chronological order'.* He explained *'We had specific cases which were exceptions, such as cases of domestic violence. All judges had the problem that we permanently received these urgent cases. We were obliged by law to attend these cases as a priority. We had so many of these priority cases that we hardly could attend any other cases. A case involving a socially owned enterprise was not one of those exceptions and therefore would have been attended in chronological order as all the other cases which were pending. Only urgent cases, which required some form of immediate interventions due to conflict, had to be attended*.'[57]

274. The panel concluded that the evidence of the two civil judges, who were following the established procedure for deciding cases, highlighted the abnormality of O.J.'s practice of adjudicating land cases as priority cases.

275. Thirdly, O.J. decided cases that should have been assigned to another judge according to the final digit of the case number and in accordance with the case allocation system.

276. O.J. was assigned the digit 3. Of the nine cases that she decided, seven of those cases reflect the digit of another judge. Considering the registry of cases as a whole, in cases where SOE KBI was the respondent, she was assigned 33 cases out of 60 in which the case should have been assigned to a different judge as per the final digit and the established case allocation system.

277. The high frequency of the breach of established procedure informed the panel that O.J. actively sought to adjudicate on these cases. Again, in forming its conclusion, the panel was guided by the behaviour and practices of the judges at the Municpal Court who were contemporaries of O.J. and who were applying the law correctly. In her evidence to the Court on 24 February, witness **M.S.** testified that she did not deal with any cases which did not have her own digit. The panel found the difference in the behavior of M.S. and O.J. to be striking, and as indicative of O.J.'s unlawful intention.

278. The panel noted that O.J. offered no real explanation for dealing the land cases as priority cases. Her explanation that she was assigned other digits during the course of her employment which could explain why she was assigned cases with a different digit, did not stand up to scrutiny given the clear evidence of the administrative staff **B.K.** and **N.H.** that judges were assigned one digit.[58]

279. Finally, the panel considered the subject matter of the decisions – land – and that this is a valuable commodity. Many of the replacement lots of land awarded in the decisions were located on the Prishtinë/Pristina -Skopje highway, one of the main thoroughfares in Kosovo. The panel could not ignore the *potential* high value of the re-sale or development of the land awarded in the decisions. The panel makes it clear that it is not relying on the estimated valuations provided in the UNMIK memorandum dated 9 June

[57] Prosecution Binder 5, tab 11
[58] Evidence of B.K., heard on 20 February 2014 and N.H., heard on 25 February 2014.

2008, and that the market value of these parcels has to be established based on the opinion of expert witness in the future civil proceedings against that defendant if any, but it makes the conclusion that the land is an entity which can be of considerable monetary value based on common knowledge.

280. The panel, in conclusion, found that the cumulative weight of the circumstantial evidence as outlined above, meant that the only logical conclusion to be drawn was that O.J. intentionally issued unlawful decisions, and that she did this with the intention to obtain a material benefit for herself or another.

281. E.A., F.B. and RR.R. (Count 1)

282. These judges issued a ruling, 604/2003, on 2 October 2007, which decided the appeal of Municipal Court verdict 2333/05. This decision was 'unlawful', as set out in the factual findings and legal assessment. There were no legal grounds for the District Court to accept jurisdiction and to decide on the appeal: the case had not been referred by the SCSC to the Municipal Court in the first instance, and the appeal had not been referred by the SCSC to the District Court. The District Court Judges therefore should have declared them-selves incompetent in accordance with the applicable law on jurisdiction. The decision was also unlawful in substance, as the appeal upheld a decision which grounded on the Law of Obligations and which awarded land as compensation.

283. The panel found that the unlawful decision was issued intentionally, in that the District Court Judges had knowledge of the applicable law and deliberately circumvented it. The panel inferred this from the circumstances of the case.

284. The appeal was lodged by SOE KBI and included the lack of jurisdiction of the Municpal Court as a ground of appeal. In the decision, the District Court Judges cited a decision by the SCSC - SCA-05-0104. Reading case SCA-05-0104, it is clear that pursuant to its authority to refer such cases to the Municipal Court, the SCSC was referring that particular case to the Municipal Court for adjudication. Case SCA-05-0104 stipulated that in the event of an appeal, "such an appeal shall lie with the Special Chamber", as per the provisions of Regulation 2002/13. The panel found that the District Court Judges misrepresented case SCA-05-0104 by claiming, in the reasoning, that the SCSC has declared itself not competent. The District Court Judges used decision SCA-05-0104 to demonstrate that the Municipal Court was authorized to rule on case 2333/05, thus addressing and circumventing the appeal point regarding jurisdiction. The panel found that this misrepresentation of decision SCA-05-0104 demonstrated that the District Court Judges *knew* the applicable law, namely that a referral from the SCSC was required by law, and that this misrepresentation of the applicable law was done in order to uphold the unlawful decision of the Municipal Court.

285. The panel found that each of the District Court Judges was responsible for issuing the decision, as set out in the legal assessment.

286. In his pre-trial testimony, defendant E.A. stated that, due to the heavy workload, it was a general accepted practice that the case was prepared by the Presiding Trial Judge and the other panel members usually relied on his proposal.[59] Also defendant F.B., when

[59] Binder 4, p. 103.

asked if he has ever disagreed with a decision of the presiding judge or other judges in cases involving socially owned assets, stated that "*there was nothing to disagree*" and "*as the law was clear, there was no reason for discussion as the cases had to be sent back to the Municipal Court*".[60] However, when directly confronted with a copy of the verdict AC no. 664/2007[61], he stated that he could not recall the case and definitely never saw the verdict. Further, he stated "*I would have objected to this case to be adjudicated and immediately informed the President of the District Court. This decision is an unlawful decision and therefore illegal. I am absolutely certain that the judge who was assigned to the case did not mention in his briefing that a socially owned enterprise was involved in the case and moreover, the same judge disregarded the fact that the judge must have had some kind of interest which made him hide the truth from his panel members and moreover, to fail to refer the case to the right court*".[62] Also defendant R.R., who was the presiding judge in the panel, when asked whether he ever disagreed with the decision of the lay judges in cases involving socially owned assets, stated that "*I do not recall ever having any disagreement with the other lay judges*".[63] When confronted with the case AC no. 664/2007, the defendant claimed "*I do not recall having dealt with this specific case. I believe it was a District Court judge panel colleague of mine that dealt with the case*".[64]

287. Thus, the defendant judges from the District Court Prishtinë/Pristina all confirm that there was generally no disagreement among the judges of the panel when adjudicating cases involving socially owned enterprises. Only when directly confronted with the specific case for which they are charged, did they state that they either cannot recall the case at all or that they would have objected.

288. The panel found their explanations to be uncredible. RR.R. denied having any knowledge that the Special Chamber had exclusive jurisdiction over appeals involving claims against SOEs, and blamed the District Court for not updating the Judges on the law. The panel did not accept this explanation – at the time District Court Decision 604/2003 was issued in October 2007, Regulation 2002/13 had existed for 5 years. The fact that decision SCA-05-0104, which actually spells out the correct law, was cited in 604/2003 meant that the panel found it inconceivable that he was unaware of the law regarding jurisdiction.

289. F.B. stated that all judges were fully aware of the UNMIK Regulations and had all received adequate instruction. He denied knowledge of Ac. No. 664/2007 and stated that RR.R. must have taken the decision alone without consulting him. The panel did not accept this explanation; F.B. accepted that he was part of deliberation and that he signed the Minutes of this deliberation, therefore he is jointly responsible for the issuing of the decision by the Presiding Judge.

290. E.A. stated that he was fully aware of the Regulations. He sought to rely on the fact that there was an investigation by the Judicial Disciplinary Committee, which concluded that the decision was unlawful but acquitted him for misconduct. The panel found that the

[60] Binder 4, p. 125.
[61] Binder 11, p. 331.
[62] Binder 4, pp. 126 and 127.
[63] Binder 4, p. 248.
[64] Binder 4, p. 249.

decision of the Judicial Disciplinary Committee did not impact on criminal liability; the panel has conducted a separate assessment of the allegations from a criminal perspective and has reached a different conclusion based on the assessment of the evidence and the legal qualification of the offence. The panel notes that a disciplinary finding is not a pre-requisite for criminal prosecution.

291. The panel found the fact the fact that Rr.R., E.A. and F.B. are each recorded by the Kosovo Judicial Institute as having participated in seminars on property law, as further evidence of their knowledge of the applicable law.[65]

292. The panel went on to consider whether the District Court Judges intended to issue the unlawful decision with the intent to obtain a material benefit. Again, there was no direct evidence presented during the trial that the District Court Judges issued the unlawful decision with the intent to obtain a material benefit. However, as set out previously, this intent can be inferred from the circumstantial evidence. The panel, in coming to the conclusion that the District Court Judges had specific intent, took into account the following pieces of circumstantial evidence:

293. Firstly, the perverse reasoning contained in the decision was clearly an attempt to uphold the decision of the Municipal Court when the law clearly stipulated that neither the Municipal Court nor the District Court had jurisdiction. The panel took into account that in order to be appointed to the second instance court the District Court Judges must have demonstrated a significant level of professional experience, and that there role is to intervene and correct any errors of law committed by the first instance court. The decision issued by the District Court Judges was so clearly and obviously wrong that the panel inferred unlawful intent as the reason behind it. Secondly, the panel took into account, as evidence of the District Court Judges' intention, the fact that the appeal was decided in less than five months from the date of the Municipal Court decision; decision 604/2003 was issued on 2 October 2007, whereas the appeal to the District Court was lodged on 3 July 2007. This was an exceptionally quick period of time for an appeal to be decided given the backlog of cases. Taking these pieces of circumstantial evidence into account, the panel considered that the only logical conclusion was that the District Court Judges intentionally issued the unlawful decision, and that they did this with the intention to obtain a material benefit for themselves or another.

294. <u>S.M. (Count 1)</u>

295. S.M. ruled on two of the fifteen cases which are subject to this indictment, 251/04 and 1698/05.

296. These decisions were 'unlawful' as set out in the factual findings and legal assessment, due to the fact that they contained violations of the procedural and substantive law which had a substantial effect on the outcome of the proceedings and which from an objective perspective, were not within the scope of acceptable judicial decision.

297. The panel found that S.M. knowingly violated the law. The panel reiterates that notice was sent to the Municipal Court of Prishtinë/Pristina in the form of letters from the Chief UNMIK Judge and the KTA. The panel also took into account the evidence of the

[65] Ex officio information obtained from the Kosovo Judicial Institute in letter dated 4 April 2014.

other employees at the Municpal Court when deciding that she had knowledge of the applicable law. The panel reiterates the consideration of the evidence of **M.S.**, **M.K.** and **B.K.** which is outlined above at paragraphs 267-271. The panel applied that same reasoning to S.M., namely that taking into account the knowledge and practice of other employees of the Municpal Court, the panel inferred knowledge to S.M. of the applicable law.

298. The panel also took into account the fact that S.M. had correctly applied the law in other cases. Before issuing the decision in claim 251/04 on 19 June 2007, S.M. declared herself incompetent on 9 October 2006 in a different case involving the SOE; in addition, she issued a decision in a case *with* a referral of the Special Chamber on 16 May 2007. The panel therefore did not accept her explanation regarding claim 251/04, that as it was issued before the war, and a verdict was issued in 1996, that Regulation 2002/12 and 2002/13 did not apply (the claimant filed a new claim at the Municipal Court in Prishtinë/Pristina on 23 April 2003, clearly therefore the Regulations applied and a referral from the SCSC was needed).

299. Similarly, in case 1698/05, whilst the claim was adjudicated prior to the Regulations coming into force, the claimant filed a new claim with the Municipal Court on 7 September 2005. Clearly therefore the Regulations applied and the claim needed to be referred by the SCSC to the Municpal Court. S.M. issued the decision in this case on 15 February 2007 *after* she had correctly declared herself incompetent in October 2006.

300. The panel went on to consider whether she intended to make the unlawful decisions, and whether she intended to issue the unlawful decision with the intent to obtain a material benefit for herself of for another (specific intent).

301. There was no direct evidence presented during the trial that S.M. obtained a material benefit as a result of issuing the unlawful decisions. There was also no direct evidence presented that she made the unlawful decisions with the intent to obtain a material benefit for herself or another person. However, as set out in the legal assessment, the intent to obtain a material benefit can be inferred from circumstantial evidence. The panel in coming to the conclusion that S.M. intentionally issued the unlawful decisions with intent to obtain a material benefit took into account the following pieces of circumstantial evidence:

302. Firstly, the panel considered that the breaches of the procedural and substantive law contained in the decisions were so obviously wrong that unlawful intent was inferred.

303. Secondly, the fact that S.M. correctly declared her-self incompetent in some cases leads to the conclusion that failing to declare her-self incompetent in these two cases was deliberate and motivated by an unlawful intention.

304. Thirdly, the panel took into account the speed with which S.M. adjudicated case 1698/05; claim 1698/05 was issued on 7 September 2005 and the decision was issued on 15 February 2007, meaning it was adjudicated in less than 18 months. The claim in case 251/04 was issued on 23 April 2003 and the decision was issued on 19 June 2007, which therefore entailed a longer period of time for adjudication, but again the panel again took into account the evidence of M.S. and M.K. in relation to the system of adjudicating cases in chronological order, and of M.S.'s testimony that she did not get

around to adjudicating *any* cases properly referred to her by the SCSC because of a backlog of cases. The panel refers to the reasoning provided above in paragraphs 279 - 281.

305. Fourthly, the panel also took into account that S.M. ruled on one case which according to the case allocation system and the system of assigning cases by digit, should have been assigned to O.J.. The panel notes that O.J. was also issuing unlawful judicial decisions at the time, but the panel found the fact that S.M. adjudicated on a case with a digit reflecting another judge indicative of the fact that she was engaged in abnormal behavior.

306. Lastly, the panel again took into account the potential high value of the subject matter of the decision and refers to the reasoning provided in paragraph 286.

307. The panel, concluded on the basis of the cumulative weight of the circumstantial evidence as outlined above, that S.M. intentionally issued unlawful decisions and that she did this with the intention of obtaining a material benefit for herself or another.

308. <u>S.S. (Count 1)</u>

309. As established in the factual findings, S.S. issued the decision in case 2333/05 on 15 May 2007.

310. The decision was 'unlawful', as set out in the factual findings and legal assessment due to the fact that it contained violations of the procedural and substantive law which substantially affected the outcome of the proceedings and which from an objective perspective, was not within the scope of an acceptable judicial decision.

311. The panel found that S.S. knowingly violated the applicable law. The Panel again refers to the evidence of the notifications sent to the Municipal Court and to the evidence of M.S., M.K. and B.K.. The panel refers to the reasoning outlined above in paragraphs 267 - 271 and applies this to S.S..

312. The panel also took into account that S.S. had correctly applied the Regulations in other cases: S.S. had declared herself incompetent in the following cases: case 82/04 on 25 January 2005; case 2742/04 on 31 March 2005; case 2422/2008 on 27 October 2009; case 22/2007 on 29 May 2007; case 332/2009 on 2 July 2009; case 622/2006 on 25 June 2009; case 1822/2003 on 23 September 2008. Before and after she issued the decision in claim 2333/05, S.S. was therefore correctly applying the Regulation.

313. S.S. admitted in her interview to the Prosecution that she knew that the case had to be referred to the Special Chamber, but that she had been put under pressure by the claimant who worked for the Police Commissioner at UNMIK. She further stated N.U. had threatened her with losing her position unless she agreed to adjudicate the claim.

314. From the admission of S.S., the panel is satisfied that she intentionally issued the unlawful judicial decision. The panel did not find that S.S.'s explanation amounted to a legal Defence as provided by Either Article 8 PCCK ('Necessary Defence'), Article 9 PCCK ('Extreme Necessity') or Article 10 PCCK ('Superior Order').

315. The panel went on to consider whether she intended to issue the unlawful decision with

the intent to obtain a material benefit for herself or for another (specific intent). In her defence, S.S. also raised that she had previously been acquitted in a previous, similar case, on the basis that it had not been proven that there was intent to obtain an unlawful material benefit.

316. The panel was satisfied beyond reasonable doubt that S.S. issued the decision with intent to obtain a material benefit for her or another. The panel assessed that even on the basis of S.S.'s own account – that she issued the decision under pressure – which clearly she intended that *a* benefit would be obtained by the issuing of an unlawful decision, even if it was for someone else. The panel also considered that issuing the decision with the intention of maintaining one's position as a job is also a 'material benefit', and therefore the panel was satisfied that she issued the decision with the intention of obtaining a material benefit for herself and for another. The decision was also made at a time when the other judges at the Municpal Court were issuing unlawful judicial decisions, and the panel considered this to indicate that there was a criminal scheme in place between N.U. and the defendant Municipal Court judges.

317. T.M. (Count 1)

318. As established in the factual findings, T.M. issued decisions in case 1908/03, 342/06, 1918/06.

319. These decisions were 'unlawful', as set out in the factual findings and legal assessment, due to the fact that they contained violations of the procedural and substantive law which substantially affected the outcome of the proceedings, and which from an objective perspective, were not within the scope of an acceptable judicial decision.

320. The panel found that T.M. knowingly violated the applicable law. The panel did not accept T.M.'s explanation that he interpreted Regulation 2002/13 in the same way that O.J. did, i.e. that the Regulation did not apply until the KTA was placed under direct administration. The panel refers to the same reasoning as set out in paragraphs 267-271, regarding the notifications to the Municipal Court and the knowledge of other staff members.

321. After concluding that T.M. did have knowledge of the applicable law, the panel went on to consider whether he intended to make the unlawful decision, and whether he intended to issue the unlawful decision with the intent to obtain a material benefit for himself or another person.

322. The panel in concluding that T.M. intentionally issued the unlawful decisions with intent to obtain a material benefit, took into account the following pieces of circumstantial evidence:

323. Firstly, the panel took considered that the breaches of the procedural and substantive law contained in the decisions were so obviously wrong that unlawful intent was inferred.

324. Secondly, T.M. issued decisions in the cases very quickly in comparison to other, non-priority cases at the Municipal Court. The claim in case 1908/03 was issued on 28 October 2003 and the decision was issued on 19 December 2006; the claim in case 342/06 was issued on 13 March 2006 and the decision issued on 23 March 2007; the

claim in case 1918/06 was issued on 17 October 2006 and the decision was issued on 6 June 2007. The claims in case 342/06 and 1918/06 were therefore processed quickly in under a year. Considering the evidence of M.S., the panel finds that these cases were prioritized in violation of the established procedure of adjudicating cases in chronological order.

325. Thirdly, in each of the three cases decided by T.M. the case number reflected that the case should have been assigned to a different judge in accordance with the case allocation system. The panel again considered the testimony of M.S., that she did not adjudicate on a case which did not include her digit, and found the contrasting behavior between the two judges to be significant.

326. Fourthly, the panel took into consideration the potential high value of the land, which was the subject of the decisions and refers to the reasoning above in paragraph 286.

327. Lastly, and taking into account the above identified factors, the panel found that the payment that T.M. received of 1, 025.00 Euros into his bank account from the lawyer E.G., who was representing the claimants in 342/06 and 1908/03, to be a payment which raised serious doubts about his impartiality as a judge. The payment was received on 24 July 2006, and therefore after claim 1908/03 and 342/06 was issued[66]. The panel found T.M.'s explanation that this payment was in relation to a repayment of a loan to be uncredible given that he failed to provide any documentary evidence to support this, and even if the panel were to accept his explanation, that this *still* created serious doubts regarding impartiality given his official status as the judge in these cases.

328. The panel, concluded on the basis of the cumulative weight of the circumstantial evidence as outlined above, that T.M. intentionally issued unlawful decisions and that he did this with the intention of obtaining a material benefit for himself or another

329. <u>H.B. (Count 2)</u>

330. The basic offence of Issuing an Unlawful Judicial Decision was committed, as per count 1 of the indictment. The panel therefore went on to consider accessory liability.

331. The panel found that H.B. provided concrete acts of assistance to the Municipal Court Judges in the commission of the offences. She did this in a number of ways, as established in the factual findings.

332. She purported to provide legal representation to SOE KBI in each of the cases which are subject to this indictment, thus fulfilling the requirement for legal representation, which enabled the cases to proceed. In each case, she failed to notify the KTA of the claim against the SOE despite that fact that Regulation 2002/12 established the primacy of the KTA over the SOEs assets. Although UNMIK Regulation 2002/12 did not create a duty for the respondent to notify the KTA of a claim against an SOE, it was required by the KTA itself. The panel inferred knowledge of Regulation 2002/12 as a result of the letters that were sent by the KTA to all SOEs informing them of the provisions of Regulation 2002/12 and that the KTA must be notified of any claim against an SOE within 3 days for the claim being issued (see paragraph (e)). H.B., whilst purporting to represent the SOE KBI,

[66] See Prosecution Binder 15 pages 58-71

therefore had a positive obligation to notify the KTA of any claims against the SOE in accordance with the KTA's policy.

333. She did not object to the jurisdiction of the Municpal Court, thus circumventing the KTA and the SCSC. Her explanation given to the Prosecutor in her pre-trial testimony that she did make such representations was dismissed by the panel as scrutiny of the Minutes does not support this claim – there is no record of any submissions made by H.B. on this point. She also did not object to the way that the court proceedings were conducted, the fact that the claims were grounded on the Law of Obligations which was not applicable, the lack of appropriate evaluation of the land parcels, or the award of replacement lots when in fact no legal remedy provided for this. This was also in clear contravention of the instruction from the KTA that only the KTA could divest immoveable property belonging to an SOE.

334. By failing to notify the KTA or make any objection about the jurisdiction, H.B. assisted the Municipal Court Judges by enabling the court proceedings to proceed in the Municipal Court. She therefore removed obstacles to the commission of the offence. Had any of these issues been raised, which an objective observer would expect from a person purporting to represent the SOE, then it is foreseeable that the unlawful judicial decisions would not have been issued.

335. The panel considered that these actions amounted to concrete actions of assistance in the commission of the criminal offence. The panel considered that H.B. provided these acts of assistance intentionally, and with direct intent in that she provided the assisting actions with the intent that the unlawful judicial decisions would be issued with the intent of obtaining a material benefit for herself or another, or causing damage. The panel inferred this intent from the circumstantial evidence.

336. Firstly, H.B. knew that she was not entitled to represent the SOE KBI yet she took active steps to give the appearance that she was entitled to appear in court; she formalized her representation by presenting to the court authorization letters, issued by I.H., purporting to be the Director of SOE KBI. She did this, knowing that she had no legal authority to appear, having been made redundant 23 November 2006. During the trial, the panel heard witnesses called by H.B.: **M.B.**, **Mu.B.** and **I.A.**. All witness gave evidence to the court on 12 March 2014. Witnesses **M.B.** and **Mu.B.** actually demonstrated their knowledge of the authority of the KTA – they accepted that the SOE KBI was under the administrative control of the KTA since 2002. I.A. accepted that she, like H.B., was made redundant on 26 November 2006 and that she continued working under I.H.. In her testimony to the court, she appeared to accept knowingly continuing to work unlawfully: 'maybe it was not right that we continued working but the director would just say'.

337. The panel found that she had knowledge of the applicable law regarding jurisdiction, as in six of the fifteen cases, I.H. filed appeals citing the lack of jurisdiction of the Municipal Court of Prishtinë/Pristina as a ground for appeal. These appeals were submitted to the District Court of Prishtinë/Pristina in contravention of Regulation 2002/13, but nevertheless the panel found the fact that this point about jurisdiction was clearly known to I.H., who H.B. worked with closely, meant that it was inconceivable that she was not aware of the applicable law regarding jurisdiction. This is especially so as

according to H.B.'s own testimony, she drafted all appeals and the withdrawal of the appeals upon the instruction of I.H., whilst the latter only signed the documents. She however continued to attend the court proceedings in the Municipal Court, and did not make any submissions regarding jurisdiction, thus facilitating the unlawful decisions. The panel considered that the breach of the procedural law was so obviously wrong, that H.B.'s concurrence with it infers an unlawful intention.

338. H.B. in her testimony to the Prosecutor stated that she was not allowed to make any decision without the approval or instructor of her supervisor, I.H.. She admitted to knowingly violating the applicable laws, but did so only following pressure from her supervisor I.H.. The panel did not find that this amount to a legal defence of 'necessary defence', 'extreme necessity' or 'superior order'.

339. The panel, on the contrary, concluded that H.B. intentionally provided her assistance to the Municipal Court Judges, and considered as evidence of her intention to assist in the commission of the offence, the fact she personally financially benefited from the issuance of the unlawful judicial decisions. This is evidenced by the income that she has received. Following on from her redundancy with SOE Pig Farm, H.B. was not in any formal employment with any SOE or SOE KBI and was not paid any formal income or salary. Claimants in five of the fifteen cases which are subject to this indictment confirmed that they paid money to the SOE KBI, as per the decisions of the defendant judges (who ruled that the claimant had to return to the SOE KBI the sum which was paid by the SOE KBI to the claimant when the land was sold in the 1950s and 1960s). Three receipts were obtained; all three were signed by I.H. and two were also signed by H.B.. The receipts acknowledged payment of 813.25 Euros in relation to case 1317/07, 976.90 Euros in relation to case 53/06, and 4,476.57 Euros in relation to case 429/05[67]. These payments are not evidenced in the bank statement of SOE KBI. H.B. admitted having received payments from the claimants after the decisions were issued, however she stated that the money was legally distributed and she did not unlawfully benefit from the court proceedings. The panel found this explanation to be uncredible – there is no other reasonable explanation for H.B., in the circumstances that existed at the time, for her to attend and participate in court proceedings with no expectation of material benefit. The fact that she received monetary payment as a result of these unlawful decisions is further evidence that she provided assistance to the defendant judges with the intention that the unlawful decisions would be issued.

340. Taking into account the cumulative weight of the circumstantial evidence, the panel was satisfied beyond reasonable doubt that H.B. committed the offence of assisting in the issuing of unlawful judicial decision.

341. <u>G.G. (Count 2)</u>

342. G.G. represented the claimants in six cases which are subject to this indictment: 53/06, 429/05, 1849/06, 1147/06, 1415/05, 1918/06. These cases were adjudicated by O.J. and T.M.

343. The panel found that although G.G. provided concrete acts of assistance to the Municipal Court Judges, the panel could not be sure to the criminal standard that he had

[67] Prosecution Binder 13 p 154 – 158.

provided these acts of assistance with the intention that the unlawful judicial decisions would be issued with the intention of obtaining a material benefit. The panel therefore found that the offence of assisting in issuing unlawful judicial decisions was not proved beyond reasonable doubt. The panel however found that G.G. had committed the offence of Falsifying Documents.

344. Firstly, considering the criminal liability of assistance, the panel found that G.G. *did* provide concrete acts of assistance, chiefly by circumventing the applicable procedural and substantive law which enabled the claims to come before O.J. and T.M., and which therefore enabled these judges to issue the unlawful decisions.

345. The panel found that he did this in a number of ways. Firstly, G.G. filed the claims at the Municipal Court rather than the SCSC. He did not provide notification to the KTA, as required by Regulation 2002/12, in the following cases: 429/05, 1849/06 and 1918/06. In the remaining cases, the notification was provided after the court proceedings had commenced. G.G. did not raise the issue of the jurisdiction during any of the proceedings. This enabled the proceedings to continue in the Municipal Court, when in fact, without a referral from the SCSC, the Municipal Court did not have jurisdiction.

346. The panel found that G.G. had knowledge of the applicable law, and the requirement for there to be a referral to the Municipal Court. This was demonstrated by the fact that he physically attached the referral document from the SCSC that related to a different case to the front of claim 1918/06 in order to make it look like it had been properly referred to the Municipal Court by the SCSC in accordance with the Regulation. He clearly intended the Municipal Court to consider this document as 'genuine' and that it had been properly referred. This action was admitted by G.G. in his interview with the Prosecution. The panel took notice of the date of this action, and the fact that all other claims that he was involved in occurred after this action, when reaching its conclusion that G.G. had knowledge of the applicable law and deliberately circumvented it.

347. G.G. also assisted the defendant judges in issuing the unlawful decisions by grounding the claims in the Law on Obligations, which established in the factual findings, was not the applicable law for grounding the claims, as it could not be applied retrospectively. This then gave O.J. and T.M. the 'legal grounds' for the unlawful decisions. However the panel underlines that the final responsibility for making the legal assessment and analysis rests with the Court.

348. The panel went on to consider whether it was proven beyond reasonable doubt the G.G. had provided these acts of assistance with the intent that the unlawful judicial decisions would be issued with the aim of obtaining an unlawful material benefit. In this part of the assessment, the distinction has to be made between the role and position of G.G. as compared to H.B.. H.B., whilst purporting to represent the respondent, was obliged to protect the assets and the interests of the SOE KBI. The most obvious way of protecting the interests of the SOE was to argue that the claim should be dismissed by raising the lack of competence of the Municipal Court, which she failed to do. G.G., as representative of the claimants however, was obliged to act in the best interests of the claimant, and therefore did not have the same obligation to address the issue of the court's competence.

349. The panel considered that the fact that four of the claimants said that they had very

little knowledge or involvement in their case and relied on the services of G.G.[68] was insufficient to prove that G.G. had intentionally assisted the judges with the requisite intent. It is not unreasonable for lay clients, unfamiliar with legal proceedings, to rely on the services of their lawyer and to have little direct knowledge or involvement in their legal proceedings, and the panel did not find this fact to be sufficiently abnormal to infer unlawful intent on the part of G.G.. Similarly, the panel took note that in five of the six cases, the court proceedings commenced without the "Power of Attorney" authorization of the claimants being in place, but did not find that this could only have been the result of unlawful intent on the part of G.G., as opposed, for example, to lax office procedures.

350. The fact that G.G. did provide notify the KTA of the action in three of the cases he acted in, albeit after the court proceedings had commenced and therefore not in accordance with the provisions of Regulation 2002/13, casted some doubt as to whether it could be proven in each case that he acted with unlawful intent. He failed to provide any notification to the KTA at all in three cases, however the creation of doubt in the panel's mind as a result of the fact that late notification *was* given in the other three cases meant that the panel did not consider this to be conclusive evidence of his unlawful intent.

351. The panel considered that the metering data obtained during the investigation, which indicated significant telephone traffic between G.G. and N.U. around the time of each court case,[69] was suspicious, but the panel was not satisfied that this data was capable of establishing to the criminal standard, evidence of participation in a criminal scheme, given the familial relationship between the two individuals and without knowing the content of the conversations. Similarly, the panel could not consider the location of G.G.'s office in a property owned by N.U. as evidence of collaboration in a criminal scheme given the familial relationship. The interception evidence was declared to be inadmissible by the panel (see Evidentiary Procedure above).

352. Considering the evidence as a whole, the panel found the behavior of G.G. to be suspicious, especially as he admitted that he deliberately attached a referral notification from a different case to case 1918/06, which the panel found to be a deliberate attempt to misrepresent the legal position. Moreover it was also evident from analysis of the case files of the specific case, that he submitted the referral from the SCSC that was issued in another case so the statement of defendant is not the sole evidence of this action. However, the panel had to consider whether the Prosecution had proved beyond reasonable doubt that G.G. had provided assistance to O.J. and T.M. *with intent* that the unlawful judicial decisions would be issued with the intention of obtaining a material benefit. The panel found that this element had not been proved beyond reasonable doubt. The Prosecutor failed to prove that a criminal scheme existed between N.U., the President of the Municipal Court of Pristina under whom O.J. and T.M. were performing their functions, and G.G.. In addition, the panel found that in contrast to the defendant H.B., there existed other, plausible explanations, for G.G.'s behavior for example acting in his client's best interests, a young, ambitious lawyer wanting to obtain successful outcomes to enhance professional reputation in a competitive market, which did not

[68] Prosecution Binder 6, p. 94 – 129

[69] Indictment and Metering Report, paragraphs 195 – 196 submitted during the trial.

mean that the only logical explanation for his actions was unlawful intent. The panel however was satisfied that the offence of falsifying documents had been committed in relation to case 1918/06, and therefore substituted this offence.

353. N.U. (Count 3)

354. The panel considered that the evidence presented did not support a charge of incitement against N.U.. As outlined in the legal assessment, liability for incitement requires encouragement and does not require actual participation in the offence. The panel found that the established facts demonstrated that N.U. substantially contributed to the commission of the offence by the Municipal Court Judges, and that he intended, when making this contribution, to obtain a benefit for himself or another person.

355. N.U. was President of the Municipal Court of Prishtinë/Pristina from 2000 to 2010. As President, he was responsible for the administration of the court[70] and for determining the distribution of work, and overseeing its execution[71]. As the President of Prishtinë/Pristina Municipal Court, N.U. was therefore the senior judge and administrative supervisor of the judges serving in this court.

356. In this position, he was expected to ensure that the judges working in the Municipal Court were guided as to the applicable law in relation to land cases, as communicated by the Chief UNMIK Judge, the KTA and finally the Cadastral Officials.

357. There existed at the Municipal Court of Prishtinë/Pristina an established system for allocating cases to the Municipal Court Judges. N.U., as President of the Court, had the overall responsibility for the case allocation system. There was however a manipulation of the case allocation system in cases involving SOE KBI; the panel considered the evidence of **B.K., N.H.**, **M.S.** and the documentary evidence provided by examination of the Court Registry to be striking.

358. Witness **B.K.,** the Registrar of the civil cases during the relevant period of 2004 – 2007, gave evidence to the Court on 20 February 2014. She explained that when a new civil matter was received, it was registered in the civil registry book and given a case number. The cases were entered into the registry book in the order that they were received. The case was assigned a case number, which was also given in sequential order. The last digit of the case number indicated to which Judge the case would be assigned to. The case would then be allocated to the Judge assigned that number.

359. There were exceptions to the rule of allocating cases in sequential order. The witness B.K. stated in Court that the policy of determining the re-allocation was the exclusive jurisdiction of N.U.. The witness' testimony at Court as to the reasons justifying re-allocation were that firstly that cases could be re-allocated if the judge was overloaded with work, and secondly that the case could also be re-allocated if the case involved a Serbian party. In her witness statement, given to the Prosecutor in June 2012, the witness clearly stated that the case allocation system *"was always followed, with one exception; the cases which involved Serbian party would not be distributed under this normal procedure, if one party was Serbian it would be allocated to a Serbian Judge*".

[70] As per Article 55 of the Law on Regular Courts, Official Gazette No 21/78.
[71] Article 58, *Ibid*

She confirmed that most cases involving Serbian parties were claims involving property. She stated that when she informed N.U. about a case, she would highlight when a case involved an SOE. The witness stated that "*most cases, which involved Serbian parties, were assigned to Judges J. and M.. I wish to explain that they did not receive all the cases which involved Serbian parties, because there were many and due to that some had to be distributed to Albanian judges*".

360. Witness **N.H.**, the Court Administrator during the relevant period, and the supervisor of B.K., gave evidence to the Court on 25 February 2014. He confirmed the evidence of B.K. regarding the case allocation system; he confirmed that cases were assigned by the last digit of the case number to the Judge with that particular number, and that cases were assigned chronologically. The witness stated that the reason for the sequential case allocation system was so that the work was distributed evenly and that no one judge was over-burned with work.

361. Witness **M.S.**, a civil judge at the Municipal Court of Prishtinë/Pristina throughout the entire presidency of N.U., gave evidence to the Court on 24 February 2014. She confirmed the testimony of witness N.H. regarding the chronological case allocation procedure; she stated that '*cases came to court chronologically, and the Registry for civil matters distributed the cases as they arrived*'.

362. The established facts show that the case allocation system was manipulated in two ways; firstly, cases were assigned sequentially to the same judge, and secondly, cases were assigned to the Judge with the wrong digit.

363. Examination of the registry book shows that cases were <u>not</u> assigned following the ethnicity of the defendants (as claimed by N.U. in his pre-trial testimony and by witness B.K.), that cases were assigned to judges with the wrong digit, and that cases were assigned sequentially to O.J.. In particular, examination of the claims at the Municipal Court involving SOE KBI during the period 2002 – 2007 show that 150 cases were assigned to the four defendant judges[72].

364. O.J. received a total of 60 cases, of which 33 cases contained a digit assigned to another judge. She was assigned 53 cases involving Serbian claimants, and 7 cases involving Albanian claimants. In relation to the decisions which are subject to the indictment, she ruled on 9 cases whilst seven of these reflect the digit of another judge.

365. T.M. received a total of 32 cases, of which 19 reflect a digit assigned to other judges. He was assigned 31 cases involving Serbian claimants and 1 case involving Albanian claimants. In relation to the decisions which are subject to the indictment, he was assigned 3 of the 15 cases, and all three reflect the digit of another judge.

366. S.M. received a total of 40 cases, of which 12 reflect a digit assigned to other judges. She was assigned 13 cases involving Serbian claimants, and 27 cases involving Albanian claimants. In relation to the decisions which are subject to this indictment, she ruled in two of the 15 cases, whilst one case did not reflect her digit.

367. S.S. received a total of 19 cases, of which 2 reflect a digit assigned to another judge. She

[72] Prosecution Binder 16

was assigned 8 cases involving Serbian claimants and 11 cases involving Albanian claimants. Of the decisions which are subject to the indictment, she ruled on one case, the digit reflect it should have been assigned to O.J..

368. Cases were also assigned sequentially to the same judge. O.J. received consecutive cases which involved SOE KBI.[73] These were case numbers 1454 followed by 1455 in 2004, 2355 followed by 2356 in 2005, 292 followed by 293 in 2006, and 1292 and 1293 and also 1918 and 1919 in 2007.[74]

369. Witness **N.H.** stated that the allocation of cases outside the normal case allocation procedure was 'strange'. The witness confirmed that the case immediately following the previous case would not be dealt with by the same judge. The witness was shown the registry book and two entries from 2004, where two cases were listed with case numbers 1454 and 1455, with the initials OJ beside them. The witness stated: "*I can see some notes but I don't know why this happened because I see that the same judge was assigned for these cases*". The witness stated that based on the initials, 'OJ' was O.J., as there were no other judges with those initials. The witness stated that he did not know who made the entry and that it had nothing to do with him.

370. The witness was also shown an entry from the Registry Book in 2005 and entries referring to numbers 2355 and 2356, and confirmed that the initials next to these entries were O.J.. These cases were therefore allocated to the same judge sequentially, and to a Judge with a different digit (O.J.). The witness N.H., although unable to offer an explanation for this, confirmed that this was '*strange*'.

371. As set out above, the examples which were put to N.H. during his evidence to the Court were not the only examples of cases being taken out of order.

372. The panel found the testimony witness **M.S.** in relation to the exceptions to the usual chronological case allocation system to be particularly relevant: she stated that the exceptions when a conflict of interest occurred, or when a case was a priority case, for example domestic violence cases, obstruction of possession, alimony cases and allocation of children to specific parent. She also stated that she did not deal with any cases that did not have her own digit.

373. In relation to the claim by N.U., and also reflected in the evidence of B.K., that cases were allocated to the Serbian judges on the basis of ethnicity, this is clearly not supported by the documentary evidence. Witness N.H., when asked by the Prosecutor whether there was a policy of Serbian Claimants being allocated to Serbian Judges and Albanian Claimants being allocated to Albanian Judges, replied that he was 'not sure'. However the witness when asked to confirm the contents of his witness statement given in June 2012, he confirmed, that as stated in his witness statement compiled on 20 June 2012 and signed by him, that there was <u>not</u> a system of allocating judges based on the ethnicity of the claimants. In his witness statement, N.H. stated that '*all judges ruled on Serbian cases, due that the Municpal Court of Pristina 2 interpreters that assisted the Albanian judges with Serbian cases and also vice versa*' (sic.)

[73] Prosecution Binder 16.
[74] Prosecution Binder 16.

374. Witness **M.S.** was asked specifically about claims against SOEs, and whether there any difference in the way cases were dealt with based on whether the claimants were Albanian or Serbian, she stated that 'regardless of the claimants being Serbian or Albanian, the cases were given to all judges'. In her witness statement dated 4 July 2012, the witness stated that she was not aware of any exceptions to the case allocation system, and that if there were any exceptions to the case allocation system, then these could only have been made through a decision of the President of the Court. The evidence of M.S. was supported by **M.K.**, who stated that all of the judges spoke Albanian and Serbian. The explanation of N.U. that the exception was based on the ethnicity of the claimants does not stand up to scrutiny.

375. The panel considers the evidence of N.H., M.S. and M.K. that they were unaware of exceptions to the case allocation system, which would provide a reasonable explanation as to why cases were allocated to the defendant judges with a different digit to the case allocation system, as evidence that this was not normal practice which occurred openly. The panel found the frequency with which the cases were allocated to a judge with a different digit to be striking – this was not an occurrence which happened once or twice which could be explained as accidental mistakes. The panel did not accept the explanation of N.U. that as a result of high work load of the court, that he did not have any involvement in the assignment of cases, and that this task was performed by the Registry Office; the evidence presented was that he had responsibility for the case allocation system in his position as President of the Court. The pattern of breaches of the case allocation system to the defendant judges was also striking. The Panel concluded that the breaches occurred because of the deliberate allocation by N.U. of cases involving SOE KBI to judges O.J., S.M., S.S. and T.M. as the only reasonable explanation.

376. N.U. also substantially contributed to the commission of the offence by deliberately failing to ensure compliance with the law. The panel took into account the timing of the notices given by UNMIK and the KTA to the Municipal Courts as to the applicable law, and the adjudication of the decisions. The panel found the fact that 14 of the 15 cases were adjudicated upon after January 2007, and so after the notification from UNMIK in March 2005 and KTA in January 2007, as clear evidence that the applicable laws were intentionally violated.

377. The panel did not accept N.U.'s account in his pre-trial testimony that he was fully aware of UNMIK Regulations 2002/12 and 2002/13, as were the judges of the Municipal Court, and that he did not know the law was not applied by them. Further the panel did not accept N.U.'s claim that he organized meetings for Municipal Court judges when he instructed them about legal framework, as evidence of his attempts to ensure the proper administration of justice. The panel considered this to be a meaningless action considering that the unlawful practice was fully accepted by him; if N.U. as President of the Municipal Court really meant to properly and effectively direct the judges he should have done so, but had failed to do it.

378. The panel took into account the time it took N.U. to respond to KTA letter received in January 2007 and the circumstances that existed when he did finally respond - he did not respond until 2 January 2008, after all the cases were adjudicated upon and only after the Judicial Investigation Unit obtained the case files of the cases which are subject

to this indictment. The KTA had also placed SOE KBI under direct administration in November 2007. Only after the SOE KBI was placed under the administration of the KTA, and only after the investigation of Judicial Investigation Unit was launched at the end of 2007, did the judges declare them-selves incompetent and refer the cases to the Special Chamber as provided by law.[75] The timing of N.U.'s response to the letter, and the Judges' change in practice, when combined with the breaches in the case allocation system that had occurred, clearly demonstrated to the panel that the defendant Municipal Court Judges and President of the Court were acting together. The considered the fact that after apparently discovering that 12 cases had been issued unlawfully, that N.U. did not take any disciplinary action against the Municipal Court Judges as further evidence of his complicity.

379. The panel was not presented with any direct evidence that N.U. acted in this way in order to obtain a material benefit for himself or another. But as has been set out in the legal assessment, and as applied in relation to the other defendants, intention to obtain a material benefit can be inferred from circumstantial evidence. In addition to the circumstantial evidence which is set out above, the panel also took into account his direct involvement in case 2333/05 (and the manner in which this occurred) and his communication with the KTA office.

380. As set out in paragraph I), the SCSC instructed the Cadastral Office not to execute the transfer of land unless there was a copy of the judgment by the SCSC. This meant that the land was only awarded to the claimants in cases 1314/07 and 1738/07.

381. Witness **S.N.**, who at the relevant time was the Head of the Administrative Unit of the KTA, gave evidence to the Court on 5 February 2014. Whilst he testified to the Court that his recollection was poor given the length of time and his testimony was somewhat vague, he confirmed the contents of his witness statement given on 5 June 2012 in which he stated that he met with N.U. and that he "*focused his indirect questions on what was obstructing the KTA approval authorization for the sales/verdicts to be executed. I explained to him that…certain cases must be referred from the Special Chamber of the Supreme Court in order for the cadastral office to issue correctly a possession list*".[76] S.N. also stated in his witness statement that he found being contacted by telephone by N.U.'s secretary, who requested the meeting, 'very strange'.

382. The Panel found this to indicate not only that N.U. had knowledge of the individual decisions, but also that he intended for the decisions to be executed and that he had a personal interest in the verdicts being executed. The Panel found his explanation that he was enquiring on behalf of the claimants to be uncredible, as if this was the case then the enquiry would have been communicated through formal channels, the questions would have been open and direct, and the Administrator would not have found the situation 'strange'. The only logical conclusion that could be drawn was that he acted this way as he intended to obtain some kind of material benefit, either for himself or for another.

383. Secondly, the panel took into account that N.U.'s signature appeared on the amended verdict in case 2333/05. The signature appeared under the name of Judge S.S., who had

[75] Binder 13 pp 1 – 54
[76] Prosecution Binder 5.

made the original decision in this case and who was on sick leave at the time of the amendment. Witness **M.A.,** who at the relevant time worked as the administrative assistance of S.S., gave evidence to the Court on 18 February 2014. She testified to the Court that N.U., acting as President, requested that she amend and correct the judgment. She telephoned S.S., who refused to sign the amendment as she was on sick leave. When asked whether it was normal to see one judge signing on behalf of another, she replied 'No, I don't know such cases'. In her witness statement dated 23 August 2011, M.A. stated that N.U. instructed her to contact S.S. and have her sign the amendment, which he had instructed her to type, and that "*I wish to emphasis that I personally would never have contacted S.S., but I was instructed to do so by the President of the Court*". S.S. refused to sign this document, and N.U. admitted that it was possible that it could have been signed by him. Despite this, he stated in his interview that in his 20 years of experience at the Municipal Court in Prishtina, it never occurred that a judge had signed on behalf of another judge. He explained that under no circumstances could one judge sign on behalf of another, and that in a case where a judge was on sick leave, the court was obliged to return to work or the case had to be re-tried again. The Panel also took into account the testimony of witness **M.K.**. This Judge, who at the relevant time was correctly applying the applicable law regarding land claims involving SOEs, testified to the Court on 24 February 2014, that she absolutely would not have her name if the signature block contained the name of another judge, and that she, when she herself was acting President of the Municipal Court, would not have signed on behalf of a judge who was still working as a judge. The panel considered that the only conclusion to be drawn from such an abnormal action taken by a judge was that N.U. had a personal interest in the claim.

384. The panel therefore concluded, that given the cumulative weight of the circumstantial evidence, that N.U. acted in perpetration with the defendant Municipal Court Judges, and that he did so intending to obtain a material benefit for himself or another.

G. SENTENCING

385. While deciding on applicable criminal law, this panel considered the provision of article 3 of the new Criminal Code of the Republic of Kosovo that entered into force as of 01 January 2013. Article 3.1 states the following:

386. *The law in effect at the time a criminal offence was committed shall be applied to the perpetrator.*

387. Further on in Article 3.2 the law provides that:

388. *In the event of a change in the law applicable to a given case prior to final decision, the law most favorable to the perpetrator shall apply.*

389. Since all criminal offences were committed before 1 January 2013 when the Criminal Code of the Republic of Kosovo entered into force, generally the law that was in force at the time of the criminal offences were committed shall be applied. However the panel was obliged to establish which law was more favorable to the defendants.

390. The PCCK in Article 346 provided punishment of imprisonment of six months to five years.

391. The CCK in Article 432 provides the exactly the same punishment of six months to five years.

392. As far as the criminal offence of falsifying documents is concerned, the PCCK set out the punishment of imprisonment of up to one year whereas the CCK provides the punishment of up to three years. Considering the sentencing range, the panel decided to apply the PCCK as the basis for sentencing also in case of this criminal offence.

393. Calculating the punishment the panel considered the general rules as per Article 64, which reads as following:

394. "*the court shall determine the punishment of a criminal offence within the limits provided for by the law for such criminal offence, taking into consideration the purpose of punishment, all the circumstances that are relevant to the mitigation or aggravation of the punishment and, in particular the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator, and his or her behavior after committing of a criminal offence. The punishment shall be proportionate to the gravity of the offence and conduct and circumstances of the offender."*

395. The panel was of the general opinion that the court system in any society plays a major role in protecting property rights. The weakness of the judicial system affects all communities in Kosovo and is a serious threat to its future stability. Mistrust and the lack of credibility of the system not only harms the cause of justice but potentially pushes individuals to solve disputes outside of the framework of the judicial system. Needless to say, the absence of an effective court system is an obstacle to investment and economic development.

396. Considering the situation of all the defendant judges, the panel came to the conclusion

that each and every one of them substantially violated the rule of probity that should be guiding all judges as servants of the justice system. Judges enjoy special status and respect because of the difficult and responsible service they pay to society. As such they should meet certain requirements imposed by legal provisions, amongst which is professional integrity. Judges are obliged to implement legal provisions consciously and following legal provisions. In case of any doubt additional review should be conducted. It is undisputed that while discharging their functions the judges are fully independent. It has to be underlined that this constitutionally recognized rule is not of absolute character in the sense that judges are obliged to observe legal order. The rulings they delivered violated legal provisions of the Republic of Kosovo both procedurally and substantively resulting directly in considerable potential loss to the injured party and indirectly to the budget of Kosovo. The judgments in question were delivered despite warnings given by supervising judicial authorities instructing that property related cases fall under exclusive competence of the SCSC. The panel is of the opinion that in the given circumstances, the defendant judges were obliged to declare they were incompetent and handed over the cases to the SCSC. The panel is of the opinion that the potential danger to the protected value, namely the financial interest of Kosovo budget is of a serious character. The panel reiterates that although the UNMIK Memo was not considered as a decisive evidence as to the value of land, it clearly indicates that the land is a valuable commodity. However even without the Memo this is a matter of common knowledge; the high value of land in Kosovo.

397. Having considered this aspect of sentencing that reflects the intensity of danger to the protected value, the panel took the view that situation that was created by these judgments is not definitive and that immediate legal actions have to be taken by the injured party. This panel took the view that such opportunity was created by Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters that entered in the force on 1 January 2012. Article 5 of the Law reads the following:

398. *"5. No court in Kosovo other than the Special Chamber shall have any jurisdiction or authority over any claim, matter, proceeding or case described in paragraph 1. of this Article except as specifically provide for in paragraph 4. above. If court has exercised or has attempted to exercise jurisdiction or authority over a claim, matter, proceeding or case within the jurisdiction of the Special Chamber and such matter or claim is not within the jurisdiction of such court under paragraph 4.*

399. *5.1. any Judgment or Decision issued by such a court with respect to such a claim, matter, proceeding or case shall, as a matter of law, be invalid and unenforceable; and the Special Chamber shall, upon the application of any person or on its own initiative, issue an order to such effect."*

400. Given the number of cases, and the potential damage to the budget of the Republic of Kosovo by the actions of former judges who got support from H.B., this panel is of the opinion that the injured party should have taken legal steps a long time ago when the new law on Special Chamber came into force, filing the submission to the SCSC to declare these judgments be invalid and unenforceable. Even if the SCSC decided that the new law did not have retroactive effect, the inured party would be obliged to bring this issue to the attention of the Constitutional Court

401. The injured party is advised that another legal remedy exists to challenge the judgments in question. The Law on Contested Procedure No. 03/L-006 in the article 232 .1 d) reads the following:

402. *"Finalized procedure with the absolute decree can be repeated based on the proposal party: if the final decision of the absolute decree is a result of penal act of the judge, legal representative or by proxy of the side, opposing side of the third party"*

403. However, the injured party has to take into consideration the very strict deadline to file such submission provided for in Article 234 .1 point e.

404. The panel underlines that these criminal proceedings are only one aspect of complex situation and further actions of the injured party are urgently needed in order to retrieve the property that was under governance of PAK. In the event that the injured party wins the civil suit, the property will be regained by the injured party. The real possibility of restoring the property significantly reduces the level of injury to the protected value, which together with other personal circumstances, resulted in conclusion that all the defendants deserve to get suspended sentence.

405. The panel decided to differentiate the punishment imposed on the defendants, taking into account the different level of involvement in the commission of the criminal offence, the different level of culpability arising from the number of cases in which the judgments were delivered, and personal circumstances.

406. In the case of **N.U.**, the panel was of the opinion that the sentence of 2 years is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances.

407. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- N.U. was the senior judge at this time in Municipal Court of Pristina holding the important position of president; as such he was obliged to take all possible measures to maintain proper administration of justice system in the court he was responsible for;

- N.U. ignored the official warnings as to legal irregularities in property related cases and created exceptions to the rules of case allocation system.

408. The following circumstances were taken into account as mitigating while imposing the punishment for this defendant:

- This defendant does not have a criminal record

- The defendant has a stable social position as husband and a father of 5 children

- Before this current case emerged he managed to run a professional career as a judge and the president of the court

409. In the case of **O.J.,** the panel came to the conclusion that the sentence of 18 months is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- O.J. delivered decisions in the vast majority of the cases issuing the judgments in 9 cases.

410. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position
- Before this current case emerged she managed to run a professional career as a judge.

411. In the case of **E.A.** the panel was of the opinion that the sentence of 9 months is appropriate to the gravity of the criminal offence, the conduct of the offender and his personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- E.A. was the panel member with long professional experience in the appellate court, he was responsible to prepare himself for the deliberation and not to relay only on the report prepared by the presiding judge.

412. The following circumstances were taken into account as mitigating while imposing the punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position as the husband and father of 4 children;
- Before this current case emerged he had a long career as a judge

413. In the case of **F.B.** the panel was of the opinion that the sentence of 9 months is appropriate to the gravity of the criminal offence, the conduct of the offender and his personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- F.B. was the panel member with long professional experience in the appellate court; he was responsible for prepare himself for the deliberation and not relying only on the report prepared by the presiding judge.

414. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position as the husband and father of 5 children;
- Before this current case emerged he had a long career as a judge.

415. In the case of **S.M.,** panel came to the conclusion that the sentence of 6 months is appropriate to the gravity of the criminal offence, the conduct of the offender and her personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- S.M. delivered decisions in 2 cases, so comparing with O.J. the punishment imposed on that defendant has to reflect this difference.

416. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position
- Before this current case emerged she managed to run a professional career as a judge.

417. In the case of **S.S.,** panel came to the conclusion that the sentence of 8 months is appropriate to the gravity of the criminal offence, the conduct of the offender and her personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- S.S. delivered decisions in one case, so comparing with O.J. the punishment imposed on that defendant has to reflect this difference. Moreover this defendant seems to poses thorough knowledge of the subject matter as she declared herself incompetent in many other cases of the same kind.

418. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have criminal record
- The defendant has a stable social position
- Before this current case emerged she managed to run a professional career as a judge.

419. In the case of **T.M.** the panel was of the opinion that the sentence of 1 year is appropriate to the gravity of the criminal offence, the conduct of the offender and his personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- T.M. decided in the 3 cases in question so comparing with O.J. the punishment imposed on that defendant has to reflect this difference

420. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position
- Before this current case emerged he had a long career as a judge.

421. In the case of **RR.R.** the panel was of the opinion that the sentence of 9 months is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- RR.R. was the presiding judge in the appellate court, he was responsible for preparing the case for deliberation and lead legal discussion during deliberation

422. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have criminal record
- The defendant has a stable social position as the husband and father of 4 children;
- Before this current case emerged he had a long career as a judge.

423. In the case of **H.B.,** the panel came to the conclusion that the sentence of 1 year is appropriate to the gravity of the criminal offence, the conduct of the offender and personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- H.B. has represented the respondent KBI Kosovo in all cases, as the lawyer she was obliged to raise all possible legal arguments against the claims but despite it she failed to properly represent the interests of the respondent for whom she claimed to work for.

424. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have criminal record
- The defendant has a stable social position
- Before this current case emerged she managed to run a professional career as a lawyer.

425. In the case of **G.G.** the panel was of the opinion that the sentence of six months is appropriate to the gravity of the criminal offence, the conduct of the offender and his personal circumstances. The following circumstances were taken into account as aggravating while imposing the punishment for this defendant:

- G.G. as a young ambitious lawyer demonstrated thorough knowledge of substantive and procedural law in respect of property related cases. The panel is aware that the main concern of the lawyer representing legal interests of his client is reaching a positive decision fulfilling the essence of the legal claim. However it has to be noted that when discharging this function the lawyer is limited by legal provisions. In this case the defendant when trying to reach positive decision for his client decided to breach the law. This sort of behaviour has to be strongly rebuked.

426. The following circumstances were taken into account as mitigating while imposing punishment for this defendant:

- This defendant does not have a criminal record
- The defendant has a stable social position as a married and educated working professional.

427. The panel was fully aware that meticulous public attention was directed to this case as one of most serious corruption cases. However the panel has to point out that process

of delivering the justice is strictly directed by legal provisions within the limits provided for by the law, not by public expectations as to the punishment. By imposing these sentences the panel intends to achieve the purpose of punishment which is focus on the defendant. After comprehensive scrutiny of each defendant, the panel came to the conclusion that each and every defendant's personal characteristics, and their earlier lifestyle justify the suspended sentence being imposed on them, and that they will abide legal order, and in particular, not commit any further offence. The panel limited the time of suspension to two years since this period of time is adequate to the circumstances of this case and allows the panel to achieve the purpose of the penalty and in particular to prevent their relapse into the crime.

428. Considering that all defendants got the suspended sentence, the panel came to the conclusion that in order to achieve purpose of punishment, the accessory punishment has to be imposed.

429. Against the Defendants O.J., E.A., F.B., S.M., S.S., RR.R., T.M., H.B. and G.G., pursuant to Article 54 paragraphs. 1 and 2 and sub par. 4 and Article 57 par.1, 2 and 3 of PCCK, the accessory punishment of Prohibition on Exercising a Profession, Activity or Duty is imposed for a period of two (2) years.

430. Against the Defendant N.U., pursuant to Article 54 par. 1 and 2 and sub-paragraph 4. And Article 57 paragraphs 1, 2, and 3 of the PCCK, the accessory punishment of Prohibition on Exercising a Profession, Activity or Duty is imposed for a period of three (3) years from the day the decision of the court becomes final.

431. This accessory punishment additionally assists in achieving the purpose of punishment, namely that the defendants will abide the legal order and not commit any offence. The panel decided that the accessory punishment is necessary because all defendants can still discharge the duties of advocates and the former judges can apply for such position.

432. Property Claim

433. Since the information collected in the criminal proceedings do not provide a reliable basis for either a complete or a partial award, the court pursuant to Article 458 of the Procedure Code decided to instruct the injured party that he may pursue the entire property claim in civil litigation.

434. Conclusion:

435. Having carefully scrutinized all evidence of the case and having heard all the proposed witnesses the trial panel concluded that it was proven beyond reasonable doubt that the defendant committed the criminal offence as charged in the indictment, therefore the court decided as in the enacting clause.

436. We need to say the costs will be decided in a separate ruling.

DISTRICT COURT OF PRIZREN

P.nr.272/13

Dated this 9th day of September 2014

Court Recorder **Presiding Judge**

_____ **_____**

Sonila Macneil **Arkadiusz Sedek**

LEGAL REMEDY:

Authorized persons may file an appeal in written form against this verdict through the Basic Court of Prizren to the Supreme Court of Kosovo within fifteen (15) days from the date the copy of the judgment has been served, pursuant to Article 380 Par. 1 of the CPC.