COURT OF APPEALS

Case number: **PAKR 907/12**

Date: **30 April 2013**

THE COURT OF APPEALS OF KOSOVO in the Panel composed of EULEX Judge Hajnalka Veronika Karpati as Presiding and Reporting Judge, and Judges Fillim Skoro and Xhevdet Abazi as Panel Members, with the participation of Beti Hohler, EULEX Legal Officer, acting as Recording Officer,

in the criminal proceeding against

1. **SH. M.,** born on … in …, …, …, of Albanian nationality, residing in …, father's name …, mother's name …, mechanic, married with children, completed 8 years of primary schooling, former …,
   and
2. **B. T. (aka …),** born … in village …, of Albanian nationality, father's name …, mother's name …, single, completed high school, farmer, of poor economic status, currently residing in the village …, …;

both charged with the following criminal offence: *Kidnapping* witness FY pursuant to Article 64 of the Criminal Law of the Socialist Republic of Serbia (Official Gazette of SR Serbia no. 26/77 as subsequently amended, hereinafter CL SRS) in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette SFRY no. 44/1976, hereianfetr: CC SFRY) (Count C of amended Indictment);

noting that the Accused were found guilty of criminal offences of *Kidnapping* (**Sh. M., B. T.**) and *Attempted Extortion* (**Sh. M.**), for which the courts had also already determined a final individual sentence (Judgment of the District Court of Gjilan no. P 199/2003 dated 25.06.2004 as affirmed (in this part) by Verdict of the Supreme Court no. AP 470/2004 dated 27.03.2007)

acting upon **the following appeals filed against the Judgment of the District Court of Gjilan no. P 118/11 dated 02.12.2011:**

- **Appeal of Defence Counsel Nike Shala on behalf of the Accused Sh. M., filed on 27.12.2011,**
- **Appeal of Defence Counsel Masar Morina on behalf of the Accused B. T., filed on 20.12.2011;**

having reviewed the Opinion of the Appellate State Prosecutor no. PPA 34/12 dated 22.02.2012 and filed on 23.02.2012;

after having held a public session on 30.04.2013 in the presence of the Accused **Sh. M.** and **B. T.**, their Defence Counsel Masar Morina and Nike Shala and Appellate State Prosecutor Xhevdet Bislimi;

having deliberated and voted on 30.04.2013,

pursuant to Article 376 and Articles 381 *et seq* of the Law on Criminal Proceedings (Official Gazette No. 26/86, SFRY, hereinafter: LCP)

renders the following

JUDGMENT

The Appeal of Defence Counsel Nike Shala on behalf of the Accused Sh. M., filed on 27.12.2011 and the Appeal of Defence Counsel Masar Morina on behalf of the Accused B. T., filed on 20.12.2011, both against the *Judgment of the District Court of Gjilan no. P 118/11 dated 02.12.2011*, are hereby dismissed as impermissible insofar they challenge the conviction and imposition of individual sentences against the Accused pursuant to the Judgment of District Court of Gjilan no. P 199/2003 dated 25.06.2004 and affirmed by the Verdict of the Supreme Court AP 470/2004 dated 27.03.2007.

In the remaining part the Defence Appeals are rejected as unfounded.

The Judgment of the District Court of Gjilan no. P 118/11 dated 02.12.2011 is hereby affirmed.

REASONING

1. The Court of Appeals will first address the issue of applicable procedural law in this case and discuss the procedural history of the case with regard to both Appellants (**Sh. M.**, **B. T.**). In light of complex procedural history which impacts the current proceeding, the Court of Appeals will address this with some detail.

2. Thereafter the Court of Appeals shall address the competence of the Court, the admissibility of the Appeals and the merits of the Appeals.

I. Applicable Procedural Law in the Case

3. The Indictment in the case was filed with the District Court of Gjilan on 09.12.2003 and amended on 21.01.2004, before the entry into force of the Provisional Criminal Procedure Code of Kosovo, later known as Kosovo Code of Criminal Procedure (KCCP), which was in force from 06.04.2004 until 31.12.2012.

4. The KCCP included a transitional provision in Article 550, pursuant to which all criminal proceedings in which the indictment was filed prior to KCCP entering into force and were not completed by 06.04.2004 were to be continued according to the provisions of the previously applicable law (Law on Criminal Proceedings, 1986) until the judgment rendered at main trial became final.

5. Although part of the proceedings in this case against the Accused became final, the Indictment filed on 09.12.2003 and amended on 21.01.2004 remained pending with regard to the criminal offence of *Kidnapping* witness FY and determination of aggregate punishment. Accordingly, the main trial in the case was correctly conducted pursuant to the provisions of the Law on Criminal Proceedings (Official Gazette No. 26/86).

6. On 01.01.2013 a new procedural law entered into force in Kosovo – the Code of Criminal Procedure, criminal law no. 04/L-123. This Code repealed the KCCP. The new Code applies in all on-going criminal proceedings initiated prior to its entry into force except in the cases where

the main trial commenced before 01.01.2013 or where a case was returned for re-trial (See also Legal Opinion of the Supreme Court no. 56/2013 adopted in its General session on 23 January 2013).

7. In the case at hand the applicable procedural law pursuant to the newly applicable CPC would thus be the KCCP, because the trial in this case commenced prior to the entry into force of the CPC. The KCCP via Article 550 KCCP, as noted, however derogates to the Law on Criminal Proceedings, 1986, therefore pursuant to Article 550 KCCP the applicable procedural law in this case remains to be the Law on Criminal Proceedings, 1986 (hereinafter: LCP). The Court of Appeals accordingly conducted the proceedings pursuant to the LCP.

II. Procedural history of the case

8. The Indictment against both Accused and 3 other defendants (Xh. M., F. Q., J. A.) was brought for multiple criminal offences in 2003 (Indictment no. PP 107/03 dated 09.12.2003 and subsequently amended on 21.01.2004).

9. The initial trial in the case was held between 10.02.2004 and 25.06.2004. The first Judgment in the case was rendered on 25.06.2004 – Judgment of the District Court of Gjilan no. P 199/2003.
With this Judgment (in relevant part):

- The Accused **Sh. M.** and **B. T.** were found guilty of *Kidnapping* of witnesses 3 and 4 and witness FY pursuant to Article 64 Paragraphs (1), (2) and (4) of the CL SRS read with Article 22 CC SFRY;
- The Accused **Sh. M.** was found guilty of *Attempted Extortion* pursuant to Article 180 CL SRS read with Articles 19 and 22 CC SFRY;
- The Accused **Sh. M.** was found guilty of *Kidnapping* of witness AK pursuant to Article 64 Paragraphs (1) and (2) CL SRS read with Article 22 CC SFRY;
- The Accused **Sh. M.** was acquitted of *Unauthorized possession of a weapon* (24.04.2002) pursuant to UNMIK Regulation no. 2001/7 Sections 8.2. and 8.3.;

- The Accused **Sh. M.** and **B. T.** were acquitted of the criminal offence *Unauthorized possession of a weapon* (17.08.2001) pursuant to UNMIK Regulation no. 2001/7 Sections 8.2. and 8.3.;
- The Accused **Sh. M.**, **B. T.** were acquitted of the criminal offence *Criminal Association (Syndicated Crime)* pursuant to Article 227 CL SRS.

10. The Trial Panel sentenced **Sh. M.** to a sentence of 8 years of imprisonment for each count of *Kidnapping* and to a sentence of 2 years of imprisonment for the count of *Attempted Extortion*. The Trial Panel determined the aggregate sentence to 12 years of imprisonment.

11. The Trial Panel sentenced **B. T.** to a sentence of 5 years of imprisonment for each count of *Kidnapping*. The aggregate punishment for this Accused was determined to 7 years of imprisonment.

12. The Accused lodged appeals against the Judgment dated 25.06.2004 and on 27.03.2007 the Supreme Court of Kosovo issued its Verdict no. AP 470/2004.[1] The Supreme Court partially annulled the Judgment no. P 199/2003 dated 25.06.2004 in relation to the kidnapping of witness FY and in this part sent the case back for re-trial. In the remaining part the Supreme Court affirmed the Judgment of the District Court of Gjilan dated 25.06.2004. The affirmed parts of the Judgment were specifically:

a) in case of **Sh. M.** the convictions and sentences of 8 years of imprisonment for *Kidnapping* of witnesses 3 and 4 and AK and the conviction and sentence of 2 years of imprisonment for *Attempted Extortion* and

b) in case of **B. T.** the convictions and sentences of 5 years of imprisonment for *Kidnapping* of witnesses 3 and 4.

c.) The Supreme Court also affirmed the Judgment insofar the latter acquitted the Accused of criminal offences.

[1] The Supreme Court on 10.03.2010 issued a correction to the verdict AP 470/2004 issued on 27.03.2007, correcting a material mistake in the enacting clause. Thus the correction verdict of 10.03.2010 and verdict of 27.03.2007 must be read together.

13. The Court of Appeals specifically notes that the above parts of the Judgment no. P 199/2003 dated 25.06.2004 became final on 27.03.2007 (i.e. all convictions except the count relating to kidnapping of witness FY, the imposed individual sentences, and acquittals of the Accused under Counts 5, 6, 7).

14. Because the Supreme Court annulled one count of conviction (related to kidnapping of witness FY), the Supreme Court also annulled the aggregate punishments imposed on the Accused and ordered the first instance court to decide on the returned count (kidnapping of Witness FY) and thereafter to determine and impose a new aggregate punishment.

15. The (first) re-trial pursuant to the decision of the Supreme Court dated was held on 01.09.2010 and 05.10.2010, now under number P 181/07. During the re-trial the Prosecutor on 04.10.2010 withdrew the criminal charge relating to the kidnapping of witness FY. The District Court of Gjilan thereafter announced the Judgment in the case on 05.10.2010, rejecting the remaining criminal charge against both Accused. The Trial Panel continued to calculate the aggregate punishment in accordance with the instruction of the Supreme Court for the remaining offences for which the conviction and the imposed individual sentence had become final on 27.03.2007. The Trial Panel imposed an aggregate punishment of 10 years and 6 months of imprisonment for **Sh. M.** and an aggregate punishment of 6 years and 9 months of imprisonment for **B. T.**

16. Both Accused appealed against the Judgment. The Supreme Court of Kosovo with the Ruling no. AP 351/2010 annulled the Judgment no. P 181/07, because the enacting clause of the Judgment did not include a factual description of the rejected charge and did not contain a reference to individual sentences that were compounded in an aggregate punishment for each Accused and reasoning on how the Trial Panel came to the imposed aggregate punishments. The case was again sent for re-trial to the District Court.

17. The second re-trial, now under number P 118/11 started on 02.09.2011 and resulted in Judgment no. P 118/11 dated 02.12.2011, that is now subject of Appeals before the Court of Appeals (hereinafter: Impugned Judgment).

18. The Trial Panel through the Impugned Judgment rejected the criminal charge related to the kidnapping of witness FY against the Accused **Sh. M.** and the Accused **B. T.** The Prosecutor had

withdrawn the charge already on 04.10.2010 and confirmed the same withdrawal during the trial session on 25.10.2011 and 02.12.2011. The Trial Panel thereafter imposed aggregate sentences for the Accused in accordance with the instruction of the Supreme Court for the remaining offences for which the conviction and the imposed individual sentences had become final on 27.03.2007. The Trial Panel sentenced **Sh. M.** to an aggregate punishment of 9 years of imprisonment pursuant to Article 48 Paragraph (2) Subparagraph 3) of the CC SFRY. The aggregate punishment was calculated upon the individual sentences determined by verdict of the District Court of Gjilan no. P 199/2003 dated 25.06.2004 that became final - in the parts of conviction and sentence of 8 years of imprisonment for the criminal offence of kidnapping witnesses 3 and 4, conviction and sentence of 8 years of imprisonment for the criminal offence of kidnapping of injured party/witness AK on 8 September 2001, conviction and sentence of 2 years of imprisonment for the criminal offence of *Attempted Extortion* of witness 1 on 24 April 2002 - through the Verdict of the Supreme Court of Kosovo AP 470/2004 dated 27.03.2007.

19. The Trial Panel sentenced **B. T.** to an aggregate punishment of 6 years and 9 months of imprisonment pursuant to Article 48 Paragraph (2) Subparagraph 3) of the CC SFRY. The aggregate punishment was calculated upon the individual sentences determined by the verdict of the District Court of Gjilan no. P. 199/2003 dated 25.06.2004 that became final - in the parts of conviction and sentence of 5 years of imprisonment for the criminal offence of kidnapping witnesses 3 and 4 - through the Verdict of the Supreme Court of Kosovo AP 470/2004 dated 27.03.2007.

20. The time spent in detention in connection with the above final parts of the judgment was credited in the aggregate punishment for both Accused.

21. The reasoned Judgment was served upon the Accused on 19.12.2011 and 20.12.2011 respectively.

22. The Defence Counsel of both Accused filed Appeals against the Impugned Judgment.

23. The Court of Appeals held a public session in the case on 30.04.2013 in accordance with Article 374 LCP. All defendants, their Defence Counsel and the Appellate State Prosecutor were duly summoned to the session and all attended the session.

II. Submissions of the Parties

II.1. Appeal of Defence Counsel Nike Shala

24. The Defence Counsel files the Appeal, alleging erroneous and incomplete determination of the factual situation, violation of criminal law, decision on punishment. He proposes to amend the challenged Judgment or return the case for re-trial.

25. The Defence Counsel states that the factual state was based on irrelevant evidence, there is no evidence to support that the Accused **Sh. M.** was the perpetrator of the criminal acts for which he was convicted and sentenced. He elaborates that the Accused had no intention to commit any criminal offence and in lack of intention there is no criminal offence. Furthermore the Accused did not obtain any material benefit. The Judgment is based on allegations and not on proven facts. He argues that the first instance court violated the criminal law because instead of acquitting the Accused, the court delivered a guilty Judgment and sentenced him for an offence the Accused did not commit. He further argues that the aggregate sentence has no legal grounds, the decision on the punishment is not addressed at all by the court and that the punishment is unsustainable.

II.2. Appeal of Defence Counsel Masar Morina

26. Defence Counsel Morina alleges a violation of the provisions of criminal procedure, violation of provisions of applicable criminal law, erroneous and incomplete determination of the factual situation and also challenges the imposed punishment. He proposes to annul the challenged verdict and to release the Accused from criminal liability or send back the case for re-trial or to pronounce a more lenient punishment.

27. The Defence Counsel states that the enacting clause of the Impugned Judgment and the reasoning are in contradiction, there is no description in the enacting clause of the offences of which the Accused are pronounced guilty and sentenced for. He elaborates on count one of the indictment that contains the charge in connection with witness 3 and 4. He also raises the question of application of the most favorable law stating that the application of CCK would have been more favorable than the application of the CL SRS because the latter for the criminal offence of *Kidnapping* foresees 8 years of imprisonment (Article 64 CL SRS) while Article 159

CCK foresees only 5 years of imprisonment. He further states that the factual state is erroneously established when the Accused was pronounced guilty of 2 counts of criminal offences regarding "persons" 3 and 4. He adds that the punishment is inconsistent and not grounded.

II.3 Response of the Prosecutor

28. The Prosecutor in the case did not file a response to the Appeals.

II.4. Opinion of the Appellate State Prosecutor

29. The Appellate State Prosecutor, Jusuf Mejzini in his Opinion dated 22.02.2012 and filed on 23.02.2012 proposes to reject as ungrounded the Defence Appeals and to affirm Judgment no. P 118/11 of DC Gjilan.

30. The Appellate State Prosecutor underlines that the Judgment in the case rendered on 25.06.2004 became final for all criminal offences except the criminal offence of *Kidnapping* of witness FY. Therefore, the appeals challenging these convictions are inadmissible.

31. Concerning the aggregate sentences, the District Court correctly reviewed and evaluated circumstances for imposing the aggregate punishment upon the finally determined individual convictions of Judgment dated 25.06.2004. The Appeals of the Defence do not point to any overlooked mitigating circumstances and also *ex officio* no such circumstances exist. The allegations in the Appeals in this aspect are thus ungrounded.

III. Findings of the Court of Appeals

III.1. Competence of the Court of Appeals

32. The Court of Appeals is the competent court to decide on the Appeal pursuant to Articles 17 and 18 of the Law on Courts (Law no. 03/L-199). The case was pending before the Supreme Court on 31.12.2012 as a second instance case and is therefore in accordance with Article 39 Paragraph (1) of the Law on Courts from 01.01.2013 treated as a case pending before the Court of Appeals.

33. The Panel of the Court of Appeals is constituted in accordance with Article 19 Paragraph (1) of the Law on Courts and Article 3 of the Law on the jurisdiction, case selection and case

allocation of EULEX Judges and Prosecutors in Kosovo (Law no 03/L-053). Pursuant to the decision of the President of the Assembly of EULEX Judges no. 2013.OPEJ.0239-001 dated 22.05.2013, taken in accordance with Article 3.7. of the Law on the jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo, the Panel was composed of one EULEX Judge and two Kosovo Court of Appeals Judges.

III.2. Admissibility of the Appeal

34. The contested Judgment was announced on 02.12.2011. The written Judgment was served on **Sh. M.** on 19.12.2011 and on **B. T.** on 21.12.2011. Both defence Counsel were served with the Judgment on 19.12.2011.

35. Article 359 Paragraph (1) LCP prescribed 15 days for filing an appeal against the Judgment. The Appeals were filed on 20.12.2012 on behalf of Accused **B. T.** and on 27.12.2012 on behalf of Accused **Sh. M.** respectively, thus on time pursuant to the above mentioned provision.

36. The Court of Appeals has further confirmed that the Appeals were filed by authorized persons and in compliance with Article 362 Paragraph (1) LCP.

III.3. Findings on merits

37. The Court of Appeals refers to the complex procedural history in the case, as in detail explained above under Heading I.

38. The Court of Appeals notes that the Trial Panel in the last re-trial had before it a twofold task: (a) to issue a verdict concerning the remaining count not yet finally adjudicated – kidnapping of witness FY and (b) after having issued the verdict on that count (whatever that may have been) determine and impose the aggregate punishments for both Accused taking into account the convictions and individual punishments imposed by Judgment of 25.06.2004 as they became final through the verdict of Supreme Court AP 470/2004 dated 27.03.2007.

39. The Court of Appeals again stresses that the convictions and determined individual sentences have become final on 27.03.2007. The Trial Panel had no legal basis to make any assessment as to the guilt of the defendants or the imposed individual sentences. These findings have been determined by the Supreme Court in 2007 in a final form.

40. The Court of Appeals does remark that the Supreme Court in its Judgment dated 27.03.2007 should have itself determined the aggregate punishment on the basis of individual punishments it had confirmed. It should have done so notwithstanding that it had returned one count for re-trial. The Supreme Court however did not act in this way, thus causing some confusion to the subsequent Trial Panels and in effect requesting them to pronounce on a final aggregate punishment for criminal offences they had not actually tried.

41. The Trial Panel through the Impugned Judgment rejected the charge relating to *Kidnapping of witness FY* that was still pending with regard to both Accused. This part of the Impugned Judgment is un-contested.

42. The Trial Panel then proceeded to impose an aggregate punishment in accordance with the instructions of the Supreme Court.

43. Before doing so, the Trial Panel made a considered decision regarding the applicable substantive criminal law for such calculation (see Impugned Judgment, pp. 8-9).

44. The Accused were namely convicted and sentences imposed pursuant to CL SRS and CC SFRY. The valid criminal code on 02.12.2011 when the Trial Panel rendered the Impugned Judgment was the Criminal Code of Kosovo (CCK 2004). The Trial Panel in accordance with Article 2 CCK assessed whether the new CCK is a law more favorable for the Accused. If answered in the affirmative, the Trial Panel would have to apply the CCK.

45. The Trial Panel correctly analyzed the relevant provisions of both Codes and correctly determined that the CCK was *not* more favorable for the Accused. This conclusion was mainly based on the comparison between the two maximum punishments that could be imposed under the CC SFRY and under the CCK. Upon application of the CC of SFRY the aggregate punishment could not exceed 15 years (Article 48 Paragraph (2) Subparagraph 3) CC SFRY), whilst under the CCK the aggregate punishment could not exceed 20 years (Article 71 Paragraph (2) Subparagraph 2) CCK). The Court of Appeals affirms the finding regarding applicable law in the Impugned Judgment.

46. The Court of Appeals notes that since the Impugned Judgment was rendered, a new criminal code entered into force in the territory of Kosovo – the Criminal Code of the Republic of

Kosovo, Code no. 04/L-082 (CCRK). The Code enshrines the principle of most favorable law to be applied to the Accused in case of change of law before a judgment becomes final (Article 3 CCRK).

47. The Court of Appeals is therefore obliged to assess whether the new Criminal Code of Kosovo is more lenient in terms of calculation of aggregate punishment and should thus be applied to the Accused.

48. The Court of Appeals makes reference to Article 80 CCRK which sets out the rules for calculation of aggregate punishments when the accused has been found guilty of concurrent criminal offences. Pursuant to Article 80 Paragraph (2) Subparagraph 2.2) CCRK that is applicable at the case at hand…" *if the court has imposed a punishment of imprisonment for each criminal offense, the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of twenty five (25) years*".

49. The Court of Appeals thus finds that the maximum punishment prescribed under CCRK is longer (25 years) than both under the CCK and under the CC SFRY – thus also in light of the new Criminal Code as in force since 01.01.2013 the law most favorable for the Accused in this case remains to be the CC SFRY.

Reasoning regarding Inadmissibility of the Appeal

50. The Court of Appeals dismisses the Defence Appeals as impermissible insofar as they attempt to challenge the convictions of the Accused for the criminal offences of *Kidnapping* witnesses 3 and 4, and for **Sh. M.** also for the criminal offence of *Kidnapping* witness AK and the criminal offence of *Attempted Extortion*. The Court of Appeals also rejects the Defence Appeals as impermissible insofar they challenge the determination of individual sentences for the Accused for above mentioned criminal offences – 8 years of imprisonment for each count of *Kidnapping* for Accused **Sh. M.**, 5 years of imprisonment for each count of *Kidnapping* for Accused **B. T.**, 2 years of imprisonment for Accused **Sh. M.** for the criminal offence of *Attempted Extortion*.

51. The Court of Appeals repeats that the convictions and the imposed individual sentences were already affirmed through the Verdict of the Supreme Court no. AP 470/2004 dated 27.03.2007 as corrected through correction verdict dated 10.03.2010. This part of the Initial Judgment dated 25.06.2004 therefore is final and can no longer be challenged through appeal.

52. Insofar the Defence aims to challenge a final Judgment, it can do so by filing a suitable extraordinary legal remedy to the Supreme Court.

Reasoning regarding the rejection of appeal grounds

53. Insofar the Appeals challenge the calculation of the aggregate punishment, as determined and imposed through the Impugned Judgment, this part of the Appeals is rejected as unfounded.

54. The Court of Appeals notes that pursuant to Article 48 Paragraph (2) Subparagraph 3) CC SFRY the aggregate punishment imposed should exceed the most severe punishment assessed but should not exceed the total of all incurred punishments or 15 years of imprisonment.

55. The Trial Panel was further bound by Article 378 applicable through Article 390 Paragraph (4) LCP, so called *prohibition of reformation in peius*. The Initial Judgment dated 25.06.2004 as well as the Judgment rendered on 05.10.2010 were namely only appealed by the Defence, therefore any decision of the Trial Panel could not be rendered to the detriment of the Accused in view of the penal sanctions imposed therein. Considering the aggregate punishment in the Judgment no. P 181/07 dated 05.10.2010 was set to 10 years and 6 months for Accused **Sh. M.** and 6 years and 9 months for Accused **B. T.**, the Trial Panel was limited by these punishments.

56. The Trial Panel, as is evident from the reasoning of the Impugned Judgment, reviewed the criminal records for both Accused and detailed reports from Dubrava Detention Center concerning the behavior of defendants whilst they were held there in detention on remand.

57. The Trial Panel also considered other issues such as the seriousness of criminal offences, the time elapsed since their commission, the fact that the now amended Indictment (withdrawal of charges concerning kidnapping of witness FY) contains one count less and the past and present (good) behavior of the Accused. The Trial Panel in light of these considerations and taking note of the individual sentences already pronounced in a final form, determined the aggregate sentence for **Sh. M.** to 9 years of imprisonment and for B. T. to 6 years and 9 months of

imprisonment. The Trial Panel also accredited the time the Accused had spent in detention on remand towards their sentence.

58. The Court of Appeals finds no factual or legal flaws in this assessment of the Trial Panel. The Trial Panel also appropriately and sufficiently reasoned its decision. The Court of Appeals refers to this reasoning in avoidance of repetition.

59. The Court of Appeals accordingly confirms the aggregate punishment imposed on both Accused.

60. The Court of Appeals pursuant to Article 376 LCP also performed an *ex officio* review of the Impugned Judgment and found no violations pursuant to the mentioned provision.

61. In light of the above, the Court of Appeals partly dismisses as impermissible the Appeals of Accused **Sh. M.** and B. T. insofar the Appeals challenged the conviction and imposition of individual sentences upon the Accused. In the remaining part, the Court of Appeals rejects both Appeals as unfounded and affirms the Impugned Judgment. The Judgment of the Court of Appeals is based on Articles 383 and 384 LCP.

62. It is therefore decided as in the enacting clause.

Done in English, an authorized language.

Presiding Judge

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Hajnalka Veronika Karpati

EULEX Judge

Panel member	Panel member
_____	_____
Fillim Skoro	Xhevdet Abazi
Judge	Judge

Recording Officer

_____

Beti Hohler

EULEX Legal Officer

Reasoned Judgment finalized 8.07.2013

COURT OF APPEALS OF KOSOVO

Pakr 907/12

30 April 2013