District Court of Prizren
P no. 184/11
11 January 2012

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF PRIZREN

The District Court of Prizren, composed of EULEX Judge Witold Jakimko as Juvenile Presiding Judge and Judges Lulzim Paqarizi and Kymete Kicaj as panel members,

assisted by:
Natasa Malesevic, Tarik Mripa, Svetoslava Savova, Joseph Hollerhead, Jacqueline Ryan, Nexhmije Mezini, Vlora Johnston as court recorders, Stephen Parkinson, Valentina Gashi and Tsvetelina Zhekova as court recorders,

in the criminal case against:

1. the defendant I.I.
2. the defendant Sh.G.
3. the defendant R.K.
4. the defendant M.K.
5. the defendant V.M.
6. the defendant S.B.
7. the defendant D.B.
8. the defendant E.K.

charged as
per in the Indictment PP. no. 3/2011, dated 16 May 2011, filed by the District Prosecution office of Prizren on 17 May 2011, as confirmed by Ruling KA no. 109/11 on confirmation of the indictment dated 28 July 2011 and as decided by Ruling KA no. 109/2011 on appeal against the ruling dated 2 September 2011,

as described below:

The defendant I.I

I. On an unknown date in late November/early December 2010, through prior arrangement with F. T and acting in co-perpetration with the latter, transported minor injured party A. K, a minor of the age of 15 years from Shtime to Gjilan, Kosovo. On a subsequent date in late November/early December 2010 the accused and F. T transferred the injured party to the co-accused R.K and M.K, manager and owner respectively of " restaurant in Kamenica for the purposes of exploiting her, in that at restaurant as a child A.K was forced to remain and work as a dancer during the night for at least three days in circumstances where she was vulnerable to being solicited for sex.

Wherewith he committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 and Article 23 of the Criminal Code of Kosovo (CCK).

The defendants R.K and M.K

II. On an unknown date in early to mid-December 2010 as the manager and owner respectively of " restaurant in Kamenica, Kosovo, received the minor injured party A.K from F. T and co-accused I.I, for the purposes of exploiting her, in that at " restaurant as a child A.K was forced to remain and work as a dancer during the night for at least three days in circumstances where she was vulnerable to being solicited for sex.

Wherewith they committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 and Article 23 of the CCK.

The defendant M.K

III. On an unknown date in early to late December 2010, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7) and engaged an individual under eighteen years of age (A. K) in night work (Article 27), thereby denying the rights to which the employee, A.K was entitled.

Wherewith he committed the criminal offence of *Violating the Rights in Labor Relations* under Article 182 of the CCK read in conjunction with Article 23 of the CCK.

The defendant Sh.G

IV. On an unknown date in early to mid-December 2010, as the owner of the restaurant " in village, Prizren, received the minor injured party A.K from F. T, and harboured her for the purposes of exploiting her, in that at as a child A.K was forced to remain and work as a dancer during the night for at least five days in circumstances where she was vulnerable to being solicited for sex and where she was so solicited by F. T.

Wherewith he committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 and Article 23 of the CCK.

V. On an unknown date in early to mid-December 2010, deprived minor injured party A.K of liberty by locking her in a room at the top floor of restaurant for three days and he and/or individuals acting at his behest forcibly returned her to that restaurant after she escaped from the room.

Wherewith he committed the criminal offence of *Unlawful Deprivation of Liberty* under Article 162, paragraphs 1 and 4 of the CCK.

VI. On an unknown date in mid to late December 2010, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), engaged an individual under eighteen years of age (A. K) in night work (Article 27), and employed an individual (A. K) under eighteen for more than 30 hours a week (Article 20), thereby denying the rights to which the employee, A.K was entitled.

Wherewith he committed the criminal offence of *Violating the Rights in Labor Relations* under Article 182 of the CCK.

The defendant V.M

VII. On an unknown date in mid to late December 2010, at the request of co-accused S.B, with the knowledge that minor injured party A.K was younger than her stated age of 19, and with the knowledge that S.B was likely to find employment for her in a casino, transported the minor injured party A.K in his Opel Vectra to motel in Prizren, paid for her room (effectively harbouring her) and gave her S.B's telephone number, thereby facilitating her trafficking by S.B.

Wherewith he committed the criminal offence of *Negligently Facilitating Trafficking in Persons* under Article 139, paragraph 4 of the CCK.

The defendant S.B

VIII. On an unknown date in mid to late December 2010, together with V.M harboured minor injured party A.K in hotel, Prizren and acting in co-perpetration with co-accused D.B and for the purposes of exploiting the injured party, transferred her to D.B's " " where she was in fact exploited in that she worked as a waitress at night in circumstances where she would be vulnerable to being solicited for sex and was so solicited by D.B.

Wherewith he committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 and Article 23 of the CCK.

IX. On two unknown dates in mid to late December 2010 in Prizren subjected minor injured party A.K to a sexual act by having sexual intercourse with her in the house of V.M's uncle's son in law and in his own house located at "

Wherewith he committed the criminal offence of *Sexual Abuse of Persons Under the Age of 16 years* under Article 198, paragraph 1 of the CCK.

The defendant D.B

X. On or around 24th December 2010, as the manager of in Prizren, received the minor injured party A.K from co-accused S.B, for the purposes of exploiting her in that at the as a child, A.K she worked as a waitress, during the night in circumstances in which she was vulnerable to being solicited for sex and was so solicited by the accused himself.

Wherewith he committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 and Article 23 of the CCK.

XI. On unknown dates between 24.04.2010 and 31.12.2010, subjected minor injured party A. K, to a sexual act by having sexual intercourse with her.

Wherewith he committed the criminal offence of *Sexual Abuse of Persons Under the Age of 16 years* under Article 198, paragraph 1 of the CCK.

XII. Between 24.12.2010 and 31.12.2010, knowingly failed to comply with the Labour Law of Kosovo 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), engaged an individual under eighteen years of age (A. K) in night work (Article 27), and employed an individual (A. K) under eighteen for more than 30 hours a week (Article 20), thereby restricting the rights to which the employee, A.K was entitled.

Wherewith he committed the criminal offence of *Violating the Rights in Labor Relations* under Article 182 of the CCK.

The defendant E.K

XIII. On 05.01.2011, as the owner of in Prizren, received the minor injured party A.K from two unknown individuals for the purposes of exploiting her in that the accused hired the injured party to work as a dancer, during the night at , in circumstances in which she was vulnerable to being solicited for sex.

Wherewith he committed the criminal offence of *Trafficking in Persons* under Article 139, paragraph 2 read in conjunction with Article 139, paragraph 1 of the CCK.

XIV. On 05.01.2011, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L- 212 and employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), thereby denying the rights to which the employee, A.K was entitled.

Wherewith he committed the criminal offence of *Violating the Rights in Labor Relations* under Article 182 of the CCK.

having held the main trial sessions that were closed to the public
on 8, 9 and 10 November 2011, on 6, 7, 15 and 21 December 2011 and on 10 January 2012, in the presence of the defendant I.I with his defense counsel Hylki Kurtaj, the defendant Sh.G with his defense counsel Hazer Susuri, the defendant R.K with his defense counsel Bahrije Besimi, the defendant M.K with his defense counsel Arda Mustafe, the defendant V.M with his defense counsel Brahim Sopa, the defendant S.B with his defense counsel Naim Qelaj, the defendant D.B with his defense counsel Ramiz Krasniqi, the defendant E.K with his defense counsel Skender Morina, EULEX Public Prosecutor Cezary Michalczuk and District Public Prosecutor Agron Matjani, the injured party A.K with her social worker Grace Dartey and her defense counsel Hajrip Krasniqi,

issues the following:

JUDGMENT

1. The defendant I.I;

The defendant **I.I is found guilty** because on an unknown date in late November/early December 2010, through prior arrangement with F. T and acting in co-perpetration with the latter, transported minor injured party A. K, a minor of the age of 15 years from Shtime to Gjilan, Kosovo. On a subsequent date in late November/early December 2010 the accused and F. T transferred the injured party to the restaurant in Kamenica for the purposes of exploiting her,

thus he committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the of the CCK, read in conjunction with Article 139 par 1 and Article 23 of the CCK, therefore,

pursuant to Article 139 par 2 of the CCK read in conjunction with Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK, hereby this Court sentences him to a term of imprisonment of 1 (one) year;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by I.I in detention from 7.1.2011 until 3.4.2011 and in house detention from 3.4.2011 until 13.5.2011;

Pursuant to Article 391 par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on I.I the final judgment can be announced in the press or radio or television;

2. The defendants M.K AND R.K ;

The defendants **M.K and R.K are found guilty** because on an unknown date in early to mid-December 2010 as the owner and the employee respectively of restaurant in Kamenica, Kosovo, received the minor injured party A.K from F. T and co-accused I.I, for the purposes of exploiting her, in that at ." restaurant as a child A.K was forced to remain and work as a dancer during the night for at least three days in circumstances where she was vulnerable to being solicited for sex,

thus they committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the CCK read in conjunction with Article 139 par.1 of the CCK and Article 23 of the CCK, therefore, pursuant to Article 139 par.2 of the CCK read in conjunction with Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK, hereby this Court sentences both of them to a term of imprisonment of 1 (one) year;

The defendant **M.K is found guilty** because on an unknown date in early to late December 2010, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7) and engaged an individual under eighteen years of age (A. K) in night work (Article 27), thereby denying the rights to which the employee, A.K was entitled,

thus he committed a criminal offence of Violating the Rights in Labor Relations under Article 182 of the CCK read in conjunction with Article 23 of the CCK, therefore, pursuant to Article 182 of the CCK, hereby this Court sentences him to a term of imprisonment of 6 (six) months;

Pursuant to the Article 71 par. 1 and par. 2 subpara 2 of the CCK, for the concurrent criminal offences described in this judgment, hereby this Court imposes on M.K **an aggregate punishment** of imprisonment of 1 (one) year and 1 (one) month;

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on M.K and R.K the final judgment can be announced in the press or radio or television;

3. The defendant SH.G;

The defendant **Sh.G is found guilty** because on an unknown date in early to mid-December 2010, as the owner of the restaurant village, Prizren, received the minor injured party A.K from F. T, and harboured her for the purposes of exploiting her, in that at ' as a child A.K was forced to remain and work as a dancer during the night for at least five days in circumstances where she was vulnerable to being solicited for sex and where she was so solicited by F. T,

thus he committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the of the Criminal Code of Kosovo (hereinafter CCK), read in conjunction with Article 139 par 1 and Article 23 of the CCK, therefore, pursuant to Article 139 par 2 of the CCK, hereby this Court sentences him to a term of imprisonment of 4 (four) years;

The defendant **Sh.G is found guilty** because on an unknown date in early to mid-December 2010, deprived minor injured party A.K of liberty by locking her in a room at the top floor of restaurant and he and/or individuals acting at his behest forcibly returned her to that restaurant after she escaped from the room,

thus he committed a criminal offence of Unlawful Deprivation of Liberty under Article 162 par. 1 and par.4 of the CCK, therefore, pursuant to Article 162 par.4 read in conjunction with Artcile162 par.1 of the CCK, hereby this Court sentences him to a term of imprisonment of 1 (one) year and 6 (six) months;

The defendant **Sh.G is found guilty** because on an unknown date in mid to late December 2010, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), engaged an individual under eighteen years of age (A. K) in night work (Article 27), and employed an individual (A. K) under eighteen for more than 30 hours a week (Article 20), thereby denying the rights to which the employee, A.K was entitled,

thus he committed a criminal offence of Violating the Rights in Labor Relations under Article 182 of the CCK, therefore, pursuant to Article 182 of the CCK, hereby this Court sentences him to a term of imprisonment of 6 (six) months;

Pursuant to the Article 71 par. 1 and par. 2 subpara 2 of the CCK, for the concurrent criminal offences described in this judgment, hereby this Court imposes on Sh.G **an aggregate punishment** of imprisonment of 4 (four) years and 1 (one) month;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by Sh.G in detention from 6.1.2011 until 11.1.2012;

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on Sh.G the final judgment can be announced in the press or radio or television;

4. The defendant V.M;

The defendant **V.M is found guilty** because on an unknown date in mid to late December 2010, at the request of co-accused S.B, with the knowledge that minor injured party A.K was younger than her stated age of 19, and with the knowledge that S.B was likely to find employment for her in a casino, transported the minor injured party A.K in his Opel Vectra to motel in Prizren, paid for her room (effectively harbouring her) and gave her S.B's telephone number, thereby facilitating her trafficking by S.B,

thus he committed a criminal offence of Negligently Facilitating Trafficking in Persons under Article 139 par 4 of the of the CCK , therefore, pursuant to Article 139 par 4 of the CCK, hereby this Court sentences him to a term of imprisonment of 7 (seven) months;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by V.M in detention from 5.1.2011 until 3.4.2011 and in house detention from 3.4.2011 until 13.5.2011;

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on V.M the final judgment can be announced in the press or radio or television;

5. The defendant S.B;

The defendant **S.B is found guilty** because on an unknown date in mid to late December 2010, acting in co-perpetration with co-accused D.B and for the purposes of exploiting the injured party, transferred A.K from hotel in Prizren to D.B's ,

thus he committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the of the Criminal Code of Kosovo (hereinafter CCK), read in conjunction with Article 139 par 1 and Article 23 of the CCK, therefore, pursuant to Article 139 par 2 of the CCK, read in conjunction with Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK hereby this Court sentences him to a term of imprisonment of 1 (one) year;

The defendant **S.B is found guilty** because on two unknown dates in mid to late December 2010 in Prizren subjected minor injured party A.K to a sexual act by having sexual intercourse with her in the house of V.M's uncle's son in law and in his own house located at ,

thus he committed a criminal offence of Sexual Abuse of Persons Under the Age of 16 under Article 198 par 1 of the CCK, therefore, pursuant to Article 198 par 1 of the CCK, hereby this Court sentences him to a term of imprisonment of 1 (one) year;

Pursuant to the Article 71 par. 1 and par. 2 subpara 2 of the CCK, for the concurrent criminal offences described in this judgment, hereby this Court imposes on S.B **an aggregate punishment** of imprisonment of 1 (one) year and 1 (one) month;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by S.B in detention from 6.1.2011 until 11.11.2011,

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on S.B the final judgment can be announced in the press or radio or television;

6. The defendant D.B;

The defendant **D.B is found guilty** because on or around 24th December 2010, as the manager of in Prizren, received the minor injured party A.K from co-accused S.B, for the purposes of exploiting her in that at the as a child, A.K she worked as a waitress, during the night in circumstances in which she was vulnerable to being solicited for sex and was so solicited by the accused himself,

thus he committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the of the Criminal Code of Kosovo (hereinafter CCK), read in conjunction with Article 139 par 1 and Article 23 of the CCK, therefore, pursuant to Article 139 par 2 of the CCK read in conjunction with Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK, hereby this Court sentences him to a term of imprisonment of 1 (one) year;

The defendant **D.B is found guilty** because on unknown dates between 24.04.2010 and 31.12.2010, subjected minor injured party A. K, to a sexual act by having sexual intercourse with her,

thus he committed a criminal offence of Sexual Abuse of Persons Under the Age of 16 under Article 198 par 1 of the CCK, therefore, pursuant to Article 198 par 1 of the CCK, hereby this Court sentences him to a term of imprisonment of 1 (one) year;

The defendant **D.B is found guilty** because between 24.12.2010 and 31.12.2010, knowingly failed to comply with the Labour Law of Kosovo 2010/03-L-212 by having employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), engaged an individual under eighteen years of age (A. K) in night work (Article 27), and employed an individual (A. K) under eighteen for more than 30 hours a week (Article 20), thereby restricting the rights to which the employee, A.K was entitled,

thus he committed a criminal offence of Violating the Rights in Labor Relations under Article 182 of the CCK read in conjunction with Article 23 of the CCK, therefore, pursuant to Article 182 of the CCK, hereby this Court sentences him to a term of imprisonment of 6 (six) months;

Pursuant to the Article 71 par. 1 and par. 2 subpara 2 of the CCK, for the concurrent criminal offences described in this judgment, hereby this Court imposes on D.B **an aggregate punishment** of imprisonment of 2 (two) years;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by D.B in detention from 7.1.2011 until 11.11.2011;

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on D.B the final judgment can be announced in the press or radio or television;

7. The defendant E.K;

The defendant **E.K is found guilty** because on 05.01.2011, as the owner of in Prizren, received the minor injured party A.K from two unknown individuals for the purposes of exploiting her in that the accused hired the injured party to work as a dancer, during the night at , in circumstances in which she was vulnerable to being solicited for sex,

thus he committed a criminal offence of Trafficking in Persons under Article 139 par 2 of the of the Criminal Code of Kosovo (hereinafter CCK), read in conjunction with Article 139 par 1 and Article 23 of the CCK, therefore, pursuant to Article 139 par 2 of the CCK, read in conjunction with Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK hereby this Court sentences him to a term of imprisonment of 1 (one) year;

The defendant **E.K is found guilty** because on 05.01.2011, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L- 212 and employed a child (A. K) of fifteen years old to engage in labour that was detrimental to her development (Article 7), thereby denying the rights to which the employee, A.K was entitled,

thus he committed a criminal offence of Violating the Rights in Labor Relations under Article 182 of the CCK, therefore, pursuant to Article 182 of the CCK, hereby this Court sentences him to a term of imprisonment of 6 (six) months;

Pursuant to the Article 71 par. 1 and par. 2 subpara 2 of the CCK, for the concurrent criminal offences described in this judgment, hereby this Court imposes on E.K **an aggregate punishment** of imprisonment of 1 (one) year and 3 (three) months;

Pursuant to Article 391 par.1 subparagraph 5 of the CCK this court includes to the punishment the time spent by E.K in detention from 5.1.2011 until 22.3.2011;

Pursuant to Article 391 Par.1 subparagraph 6 of the CCK the court decides that for the purpose of the punishment imposed on E.K the final judgment can be announced in the press or radio or television;

Pursuant to Article 102 par 1 and 3 of the KCCP, **all the defendants** are jointly ordered to reimburse costs of criminal proceedings.

REASONING

I. Procedural background

On 7 January 2011 the District Public Prosecution office in Prizren issued ruling on initiation of investigation against V.M, E.K, I.I, F. T, Sh.G, S.B and D.B.

On 7 January 2011 the Pre-trial Judge of the District Court of Prizren imposed detention on remand for one month against all the suspects. On 11 January 2011 the Three-Judge panel of the District Court of Prizren rejected the appeals against the ruling.

On 2 February the Three-Judge panel of the District Court of Prizren extended detention on remand for two months against all suspects. On 11 February 2011 the Supreme Court of Kosovo rejected the appeals against the ruling.

On 28 February 2011 the Vice-president of EULEX Judges assigned the case to EULEX Judges of the District Court of Prizren.

On 22 March 2011 the EULEX Pre-trial Judge of the District Court of Prizren terminated detention on remand against E.K. The Public Prosecutor requested termination because they found that there was no grounded suspicion against K.

On 1 April 2011 the EULEX Pre-trial Judge of the District Court of Prizren terminated detention on remand against V.M and I.I and altered it with house detention and extended detention on remand against Sh.G, S.B and D.B for one month. On 7 April 2011 the Three-Judge panel of the District Court of Prizren supplemented the enacting clause of the ruling on parts of V.M and I.I emphasizing exact dates of house detention.

On 29 April 2011 the District Public Prosecutor expanded the investigations against R.K and M.K.

On 3 May 2011 the Three-Judge panel of the District Court of Prizren extended detention on remand against Sh.G, S.B and D.B and house detention against V.M and I.I for two months.

On 13 May 2011 the Supreme Court of Kosovo replaced M's and I's house detention with attendance at the central police station in Prizren twice a week.

On 5 May 2011 the Pre-trial Judge of the District Court of Prizren imposed attendance at police station for one month against R.K and M.K.

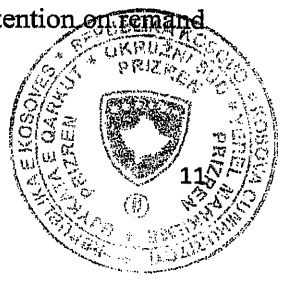
On 17 May 2011 the District Public Prosecutor filed the indictment to the District Court of Prizren.

On 20 May the Three-Judge panel of the District Court of Prizren extended detention on remand against Sh.G, S.B and D.B. On 2 June 2011 the Supreme Court of Kosovo rejected appeals against the ruling.

On 28 July EULEX confirmation Judge partly confirmed the indictment. Sh.G, S.B and D.B were still left in detention on remand. Others were released from detention or attendance at police station.

On 2.9.2011 Three-Judge panel of the District Court of Prizren partly approved the appeal of the Public Prosecutor.

On 2.9.2011 Three-Judge panel of the District Court of Prizren extended detention on remand against Sh.G, S.B and D.B until 5.11.2011.



On 5.9.2011 the panel of District Court of Prizren deciding *ex officio* on detention on remand extended the detention on remand against the defendant Sh.G, S.B and D. B until 05.11.2011.
On 14.9.2011 the Supreme Court of Kosovo rejected the appeal against the ruling of detention on remand of the defense counsel of the defendant Sh.G.
On 03.11.2011 the Presiding Judge of District court of Prizren acting *ex officio* pursuant to article 287 paragraph 2 of the KCCP extended the detention on remand against the defendants Sh.G, S.B and D.B for two months until 5.01.2012.
On 11.11.2011 the Presiding Judge of District court of Prizren decided on replacing the detention on remand for these two defendants by the attendance at the police station until 5th January 2012.
On 11.01.2012 the Panel announcing the 1 instance judgment cancelled the detention on remand to Sh.G and cancelled the attendance at the police station to S.B and D.B.

II. Administered evidence.

During the trial session the following witnesses have been heard:

i. A.K– the injured Party;

The factual state is based mainly on her statement in the part confirmed during court session and in the part of the her testimony she gave at the investigative stage in the range in which she deviated from them during the court session. In the opinion of the Court considered as more reliable the testimony she gave right after the sequence of criminal offenses committed against the Injured Party. Her memory was more fresh that time even bearing in mind her drug addiction. On the other hand during the court sessions she had tendency of exculpating defendants from the charges. However it is worth to emphasize that the Injured Party has been tremendously consequent as to the main elements of the factual state reported to police or prosecution in general.

ii. G.G.;

The witness admitted the Injured Party used drugs. She did not take alcohol when he was a bartender. He had no broad knowledge in the matter related to the charges against Sh.G, except of the fact that he acknowledged that the Injured Party was a dancer in restaurant. He stated that T, the person involved to the trafficking, was looking for A.K and he said to Sh.G that he would set on fire his restaurant. The statement had no decisive character as to the factual state.

iii. S. G;

This witness was a waiter in restaurant. According to the witness A.K was provoking clients. He stated that he recognized V.M as a regular guest of restaurant. He did not bring any critical information for the factual state.

iv. B. H; 10th Nov. 2011.

The witness B. H confirmed the fact of A.K working in restaurant as a dancer, he confirmed her working hours, and that she asked him for drugs, that she was using those drugs. His testimony was trustworthy but had not a decisive character for the factual state. He confirmed that there were 4 persons bringing [redacted] back to the restaurant: Sh.'s nephew, Sh's brother I., G. and L. As of his previous statement it comes out that those four men were holding her by her arms. Sh.G was outside and he saw the whole event.

v. Y.S;

He celebrated the New Year together with A.K. He lived the same building that D.B. He has not provided the Court with many details that could be very relevant to the factual state.

vi. F. B;

The witness was assisting people to cash their gains in . A.K was working there as a waitress during night shifts. She worked there about 7 days. According to him her monthly salary was 300 euros. He was not able to provide the court with more details.

vii. E. K;

The witness worked for D.B in bar. He knew the Injured Party and that she had a salary of 350 euro monthly. He admitted that A.K was brought to bar by S.B.

viii. B. L;

The witness worked in restaurant as a dancer. She claimed the Sh.G was extremely helpful for her especially during flooding in Albania where she comes from. The Court did not consider as trustworthy the statement of the witness that A.K seemed to look older or physically bigger for her age. This stand cannot resist an objective assessment based on the photos which were out into the body of evidence as the Exhibit 1. She stated that the wore regular clothes whilst dancing. She claimed that Sh.G insisted on A. to provide him

with an ID card and she did not do it. She admitted at the same time that A.K had continued her work in B. L noticed scratches on A.'s neck. According to the witness she did it of her own whilst trying to open the door of the room. Being asked by a panel member B. L stated that it happened when A. was trying to open door in the moment once she was locked in the room and all the others were dancing and working in the restaurant.

- *As Exhibit A1 - Copies of the passport of A.K and photos of A.K* inspected by the panel members. By this evidence one can easily and objectively assess the real age of the Injured Party. In the opinion of the Court any reasonable assessment of this feature should lead to the conclusion that she was minor in the of 15 maximum.
- *As Exhibit A2 - Typed report of incoming and outgoing SMSs for phone numbers mentioned in the indictment as transcript,*
- *As Exhibit A3 - Transcripts of records of phone conversations of V.M* with unknown person on 05/01/2011 pursuant to DPP Durguti's order dated 05.01.11, confirmed by District Court of Pristina, Pre-trial Judge Shqipe Qerimi dated 06.01.11. Comments to the exhibits 2 and 3 are provided below in the reasoning. See also page 13, the minutes of 15th Dec. 2011. T. from Tirana fell in contact with A.K in the restaurant in Tirana. That person took A.K and brought her to Kukes by a minivan, and then he sold her to F.(V) T from in Kukes. Then this person subsequently called V.M because he initially contacted B. M, the musician in the restaurant Later on they met in Prizren, V.M met the person called T. in Prizren and S. B. and were there in a restaurant in Ortakoll called C. restaurant, and there they talked about wanting to take her. During the time of conversation V.M did not agree to give A.K to T. However bearing in mind the age of the injured party, as well as the entire circumstances in Kosovo in relation to that sort of procedure, he had knowledge and harboured her. After he took her from the restaurant , he took her in his vehicle and took her to the motel. Other co-perpetrators of Trafficking in Persons F. T and T. that were not defendants in this case found V.M's details. V.M and S. B had previously spoken together they got in touch with one another at restaurant.

All the defendants have been heard during the trial and their testimony was also a subject of a court's assessment.

The Court did not rely on the statement of I.I that he was only dealing with calf business because the other evidence (mainly the Exhibits and the Injured Party's statements) lead the Court to another conclusion. The Court considered the testimony of this defendant as an admissible but at the same free-style line of defense that has no support in the evidence gathered by the Court.

The Court agreed with the defendant R.K that maybe he was not a manager in restaurant but definitely what was possible to determine that he was for sure the employee of M.K. At the same time acted as an intermediate between persons who brought A. and the owner of the restaurant..

M.K confirmed that he hired A.K although he claimed that he insisted for being provided with the ID card of A. containing the data of her age. Nevertheless he decided to hire her and she started working in his restaurant.

Sh.G claimed that he based on what the Injured Party told him about her age that she is 19. He did not check any personal documents of her because she did not have any. He claimed that he knew nothing about her family neither about her financial status. He claimed that he just helped her because she needed work. He claimed that he did not let her out of restaurant because his was responsible and accountable of her from 9 pm until 3 am and she was to allowed to leave the place during the working hours just because they were working hours. He explained that when saw [redacted] approaching A. and that he entered the bathroom he intervened and dismissed [redacted] from work and sent her that night to her room. He denied that he beat A.K up and also that he locked her up. The testimony of this defendant is not in the conformity with other evidence. According to Sh.G A.K wanted to leave and go out after 3 am but for security reasons he did not want to let her go out and therefore he got her in. There was a road nearby, vehicles on the road, night-time. Being asked by the prosecutor the defendant replied that he did not prevent other girls from leaving for security reasons because other girls did not make any attempts to escape. The Court found the Injured Party's testimony as trustworthy in this respect in opposite to the content of defendant's statements which were not reliable. The Court considered the testimony of this defendant as an admissible but at the same free-style line of defense that has no support in the evidence gathered by the Court. Sh.G admitted that it was A.K who finally left his restaurant of her own (his testimony given on 21st Dec. 2011).

V.M admitted that he gave a telephone number of S.B to A. K. He acknowledged also that he paid for her hotel. He denied that he took the Injured Party to . He admitted also that he knew D.B from the childhood. He admitted the content of the intercepted conversation. He was not able to explain why he admitted during the investigative stage of proceedings that he contacted also with E. K as to hiring A.K in . The defendant by his line of defense he tried to play down his responsibility but according to the Court there is no doubt that remaining evidence prevails and leads to irrefutable conclusion that he committed the criminal offense he was charged with.

S.B admitted that he was trying to help A.K by finding a job for her. In his previous statement S.B stated that she told him that in restaurant she got beaten up by the owner. In the Court he denied even that read those statements after the end of interrogation by the police. He admitted that it was V.M who paid for the hotel. He claimed that he thought that she is not underage, she believed her that she is 19. He claimed the police in the investigative stage put a pressure on him. He denied also of having sex with A. K. The new version and reason why it has been changed did not convince the Court to S.B's trustworthiness and it could not resist the strength of consequence of the testimony given by A. K.

D.B admitted that he was helping his maternal uncle in bar acting as a manager. He admitted that he agreed on A.K working in the his restaurant. He asked her to be provided with ID card with her age. Started working without providing D.B those documents. She was supposed to work as a barmaid and waitress. He told A. that he did not believe that she was 19 (the minutes of 21st Dec. 2011, p.41). He admitted her working hours from 8pm until 4 am. He denied his previous statement given to the police where he said she told him that she had been beaten up by the owner of restaurant. He also denied his own statements on having sex with A. what happened several times: first in motel , motel and the at where they had sex 2 or 3 times. . In the opinion of the Court the testimony of the defendant was not consistent itself. He was not able to explain why he admitted during the investigative stage of proceedings that he plead that he had sexual intercourse with A. and he denied. The defendant by his line of defense tried to play down his responsibility but according to the Court there is no doubt that remaining evidence prevails and leads to irrefutable conclusion that he committed the criminal offenses he was charged with.

Meeting the Injured Party E. K asked the girl if she had worked anywhere else, she said yes but she was jobless that time. She told E. K that she was 19, although somehow she seemed younger and that is E. K who asked for her documents and then she said she would bring them the next day. Even though he decided to hire her and she started working in . One hour later the police turned up. Her working hours were from 8 p.m. until 2 a.m. They agreed on a salary of 10 euro per night. Somehow the defendant admitted all details which were satisfactory in determination of his criminal acts. The defendant by his line of defense tried to play down his responsibility but according to the Court there is no doubt that he received the Injured Party form the unknown persons, he hired her and started exploiting her in his business. According to the Court the stand that the defendant was unaware about the position of the Injured Party has no support in the evidence gathered by the Court.

The evidence which influences on Court's findings is explicitly elaborated in subsequent paragraphs. Other evidence had no direct impact on the final content of the enacting clause.

IV. Factual state

The injured party A.K was transported to Kosovo from Albania by F. T. I.I knew F. T from two years before the incriminated situation took place (I.I statement given on 15th Dec., p.16).

First of the defendants she met in Kosovo was I.I. On an unknown date in late November/early December 2010, through prior arrangement with F. T and together with him I.I transported A.K from Shtime to Gjilan in Kosovo. She was a minor of the age of 15 years. On a subsequent date in late November/early December 2010 I.I and F. T transferred A.K to the restaurant in Kamenica owned by M.K. She was supposed to work there as a dancer.

The defendants M.K - as mentioned before - the owner of ' restaurant and R.K, his employee, on an unknown date in early to mid-December 2010 in ' restaurant in Kamenica in Kosovo received A.K from F.T and other co-defendant I.I. A.K remained there and she worked as a dancer during the night for at least three days in circumstances where she was vulnerable to being solicited for sex by clients of the restaurant. Furthermore M.K knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212. He employed A.K despite her age, he engaged her in labour that was detrimental to her

development and engaged in night work. By doing that he denied her rights to which she was entitled as an employee.

The defendant Sh.G was the owner of the restaurant " in village, Prizren. On an unknown date in early to mid-December 2010 he received A.K from F. T and harboured her for the purposes of exploiting her in restaurant ' as a child A.K was forced to remain and work as a dancer during the night for at least five days in circumstances where she was vulnerable to being solicited for sex and where she was so solicited by F.T. Sh.G on an unknown date in early to mid-December 2010 deprived A.K of liberty by locking her in a room at the top floor of restaurant. Then he and/or individuals acting at his behest forcibly returned her to that restaurant after she escaped from the room. At the same time Sh.G on an unknown date in mid to late December 2010, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L-212. He employed A.K despite her age, he engaged her in labour that was detrimental to her development, he engaged her in night work, moreover she was also employed for more than 30 hours a week. By that he denied her rights to which she was entitled as an employee.
Finally she left a restaurant of her own.

The following defendant V.M on an unknown date in mid to late December 2010, at the request of co-defendant S.B, with the knowledge that A.K was younger than her stated age of 19, and with the knowledge that S.B was likely to find employment for her in a casino, transported the minor injured party A.K in his Opel Vectra to motel in Prizren. V.M paid for her room (effectively harbouring her) and gave her S.B's telephone number and by doing that he facilitated her trafficking by S.B.

The defendant S.B acting on an unknown date in mid to late December 2010, acting in co-perpetration with co-defendant D.B and for the purposes of exploiting her, transferred A.K from hotel in Prizren to D.B's . Meanwhile S.B on two unknown dates in mid to late December 2010 in Prizren subjected A.K to a sexual act by having sexual intercourse with her in the house of V.M uncle's son in law and in his own house located at

The defendant D.B was the manager of ' ' in Prizren to whom A.K got transferred on or around 24th December 2010. He received A.K from co-defendant S.B for the purposes of exploiting her in that at the ". A.K worked as a waitress during the night in circumstances in which she was vulnerable to being solicited for sex and was so solicited by the accused himself on unknown dates between 24.04.2010 and

31.12.2010 when subjected her to a sexual act by having sexual intercourse with her. At the same time he knowingly failed to comply with the Labour Law of Kosovo 2010/03-L-212 by having employed A.K, engaging her in labour that was detrimental to her development, in night work and for more than 30 hours a week. By that he restricted the rights to which A.K was entitled.

The defendant E.K, the owner of in Prizren, on 05.01.2011 received A.K from two unknown individuals for the purposes of exploiting her. The defendant hired her to work as a dancer, during the night at ", in circumstances in which she was vulnerable to being solicited for sex. He told her to run away in case the police entered the premises. E.K on 05.01.2011, knowingly failed to comply with the Labour Law of Kosovo, 2010/03-L- 212 and employed A.K despite of her age, he engaged her in labour that was detrimental to her development. By that he denied the rights to which she was entitled as an employee.

The trafficking of A.K was a very traumatic period of time in her life. The effect of it on her side was a loss of concentration, a losing nerves tendency, a wrong anger management. She was getting upset very quickly. She got distressed, a trembling of the hands and the whole body and as other consequence bad dreams and nightmares referring to the past. In England she got psychological support and anger management counseling. (A.K's statements, p.27, minutes of 9th November 2011).

V. Legal findings.

I.I

In the opinion of the Court there was no doubt as the fact that I.I acted with a purpose of ''exploitation" of the injured party. The fact that A.K made a statement that she had considered this defendant as her "brother" who had helped her – does not prejudge a lack of the above mentioned purpose. In the opinion of the Court a claim that the victim was a girlfriend of F. T and that "driving them was only a friendly act/service to F. T" is only an admissible way of defense of I.I and it is not grounded by the factual state. I.I had have been aware that he acted not only in order to get a job for the victim but also that he significantly contributed in her exploitation started by F. T. He transported F. T and A.K from Shtime to Gjilan. Without this contribution it would be much more difficult to transfer A. to restaurant owned by M.K. According to A.KI. I was a good friend of F. T (see her testimony p.13, minutes of 8th Nov. 2011).

It is worth to mention that the term of exploitation is not limited to the situation where the benefit has been achieved by the perpetrator himself. In the court's view the behavior of I.I met all circumstances of the offence of Trafficking in Person consequently with a purpose of exploitation fully corresponding with the administered evidence.

There is no doubt for the Court that I.I acting upon agreement with F. T transported the victim through Kosovo and subsequently transferring her to the co-defendant R.K and M.K. In the Court's view it cannot be also contested that A.K having a very youthful physical appearance was looking like under age of 15 years. I.I must have known that she was a child under age. He himself admitted that she looked very young to him.

Being constantly in touch with F. T and exchanging SMS messages with him that are in the files he must have also known about her dependency on F. T and also her drug addiction. He was also aware that the victim had been brought from abroad and has not known Kosovo or any people there but him and F. T. I.I also kept an eye on the victim in F. T's absence where she was forbidden from freely moving without I.I. The court is of the opinion that this defendant's behavior was not exclusively performed out of courtesy.

All those circumstances must have given to I.I a clear picture that she was in a state of an extreme vulnerability. In such a situation he arranged a job for her in restaurant. He knew the place well as he was a regular customer there. In his own statement he admits knowing well one of the dancers working there and the nationality of other dancers. He also knew personally ' ' employee R.K and must have also known the reality and risks stemming from working there as a young night dancer. The injured party herself stated that I.I told her once: '"Don't stay in this restaurant since you are only 16 years old". As a consequence it has to be admitted that intent of I.I can be reasonably inferred from the aforementioned circumstances. He significantly contributed in arranging a job for the victim and he did it being fully conscious that it could or would lead to her being exploited.

The fact that the victim considered I.I her "brother" who "was helping her" does not mean that the prerequisite of intent of the defendant was not present. The victim did not know anyone in Kosovo and in this foreign environment found someone who did not treat her badly, who talked to her and even assisted in arranging a job for her. Indeed, it is submitted that it is part of the *modus operandi* of perpetrators of trafficking that they try to induce a state of emotional dependency on the part of their victims in order to keep them under their control for as long as possible. The syndrome described above can be qualified as a victim's survival

strategy in prolonged and severe interpersonal abuse that includes among others so called "identification with the offender". Bearing that in mind there is no doubt for the Court that a required mental element of the offence of the Trafficking in Persons has been proven and that I.I has committed this offence.

The fact that he was perceived by the injured party as a person helping her has been taken by the Court as a mitigating circumstance. This argument brought the Court to the conclusion that I. I fulfills the criteria provided by the articles 66 and 67 of the CCK that allows the Court to mitigate his punishment without losing the scope of the penalty and goals of the criminal proceedings out of the vision field. Bearing in mind that the minimum punishment in Trafficking in Persons is 3 years and the maximum is 15 years of imprisonment the punishment of one year has to be considered as lenient sentence and adequate to the detrimental value of the crime committed by the defendant.

R.K

It is not contested that this defendant, acting in co-perpetration with co-defendant M.K received the victim from F. T and co-accused I.I and employed her in restaurant as a night dancer. The role of him in the whole case was that of an intermediary between restaurant's owner – M.K on one side and F. T and I.I on the other. R.K as a M.K's manager contributed in most part to the employment of the victim. It was in fact him who knew I.I, had direct talks with him related to the victim and had direct contact with the victim.

From his own statements it comes out that he also knew that the victim was under age. Having been working in the restaurant for some time he was also well aware that by assisting with employing the victim by M.K he would arrange the job which is of a exploitative nature as all the dancers were customarily taken by the clients outside the restaurant for the purpose which is more than obvious in the context of the job they were performing. In this context there is also the issue of a particular vulnerability of the victim attributed to her fragile mental condition – the matter the defendant was aware of. In the Court's opinion the purpose of R.K's acts was in fact contributing in receiving her at ' restaurant where she was prone to be sexually exploited by the restaurant's clients. It needs to be underlined that the defendant must have reasonably known that A. K was a victim of a criminal offense as she was brought to him by two men not related to her, without any means and ID documents but with obvious drug addiction and being minor of age. Nevertheless knowing all that he as a M.

K's employee co-decided to receive her there for the purposes of her exploitation committing by that a criminal offense of Trafficking in Persons.

The fact that he was just an intermediary without any decisive power and did not obtain any benefit out of it for himself allows the Court to treat those circumstances as mitigating. This argument brought the Court to the conclusion that R.K fulfills the criteria provided by the articles 66 and 67 of the CCK that allows the Court to mitigate his punishment without losing the scope of the penalty and goals of the criminal proceedings out of the vision's field. Bearing in mind that the minimum punishment in Trafficking in Persons is 3 years and the maximum is 15 years of imprisonment the punishment of one year has to be considered as lenient sentence and adequate to the detrimental value of the crime committed by the defendant.

M.K

M.K decided on employing the victim in his restaurant as a night dancer and knowing that a young vulnerable girl working amongst male clients is exposed to being solicited for sex and he was fully aware that the presence of a young dancer in his restaurant would attract more customers. The purpose of M.K's actions was directly related to her exploitation by him and his business. The defendant was aware of victim's young age and that he had employed her to work in nighttime under hazardous conditions. This circumstance is applicable to both charges: the one related to the offence of Violating Rights in Labour Relations and to the other connected to the offence of the Trafficking in Persons. The victim was exposed to the conditions in which she could be solicited for sex by the clients of the restaurant. It makes the intent of M.K clear to the Court.

M.K even as an owner of the restaurant committed his criminal acts without his marking them by the high detrimental value. He employed the person that was brought to his restaurant. A.K mentioned about M.K that he said that she could not work there because she had no passport and if police came to check the place they would close the place because he (the owner) would not be able to prove that she was 19 years old (see her testimony p.15, minutes 8th Nov. 2011). For the Court it was clear that he was fully aware about her minor age. Despite of it he had no objection of hiring her. The only problematic thing for him was how to prove her age in case of police coming to the business' premises. She was released from his restaurant after three days. The above mentioned facts together brought the Court to the conclusion that a mitigation of the penalty has to be applied to M.K particularly because

even the lowest punishment stipulated for the offence of Trafficking in Persons (3 years of imprisonment) would be incommensurate to the level of guilt of the defendant. According to the Court M.K fulfilled the criteria provided by the articles 66 and 67 of the CCK that allows the Court to mitigate his punishment without losing the scope of the penalty and goals of the criminal proceedings out of the vision's field. Bearing in mind that the minimum punishment in Trafficking in Persons is 3 years and the maximum is 15 years of imprisonment the punishment of one year has to be considered as lenient sentence and adequate to the detrimental value of the crime committed by the defendant. As to a criminal offence of Violating the Rights in Labor Relations the Court adjusted the sentence to the gravity of the criminal offense in the individual case of the defendant sentencing him to a term of imprisonment of 6 (six) months. In the opinion of the Court an aggregate punishment of 1 year and 1 month has been the most adequate sentence for M.K. It is worth to mention that the Court applied the absorption of punishments' rule when imposing the aggregate punishment on the defendant.

Sh.G

The case of this defendant Sh.G is particularly flagrant from the perspective of the criminal offence of Trafficking in Persons. He knew that the victim was under age and nevertheless employed her in his restaurant as a night time dancer in the conditions in which she was vulnerable to be solicited for sex. Prior to that he took the victim from F. T - a person he barely knew. Moreover the victim when coming to his place was missing any resources or personal belongings. All those circumstances should have raised his suspicion as to the fact that she could be victim of Trafficking in Persons. Besides he effectively exercised control over the victim – she was locked in her room in order not to let her go after she decided to leave her job. When she managed to escape Sh.G and four other individuals acting at his request, forcibly returned her to the restaurant. By that it is clear for the Court that he considered the victim as his own valuable property as he took all steps to keep her even without her consent. When A. escaped through the window from restaurant Sh. came afterwards with other guys and they told her to come in to the car. She was banging on the window and Sh. took the baseball bat and he wanted to hit her with it but some other guy took the bat away from his hands. (see her testimony p.16, minutes 8th Nov. 2011). A.K also testified that Sh.G approached her telling that she should stay in restaurant and

should not move from that place, emphasizing that if she was there she would do everything what he said because it was his place (see her testimony p.15, minutes 8th Nov. 2011).

Furthermore, being the owner of the restaurant, Sh.G must have known from practice that a young girl working as a nighttime dancer and spending time amongst male clients was exposed to the risk of being sexually exploited. Being aware of that he nevertheless consented to such a risk. In this regard, as an example we may put forward and incident when one of the clients of the restaurant named [redacted] attempted to kiss the victim while she was working. The defendant was aware of that incident as from this moment he started mistreating the victim. Also, according to victim's statement clients of the restaurant were asking her to go out with them and the defendant knew about it.

Sh.G was also aware of victim's mental vulnerability. According to B. H the victim behaved "as if she was drugged, as if she was under the influence of drugs". If this witness (being only a musician) noticed that, the Court has no doubt that also the defendant as an owner and manager of the restaurant should have known about it. All the above mentioned circumstances assessed together must lead to the inevitable conclusion that the specific intent on the part of the defendant ("purpose of exploitation") is made out as he employed the victim being aware that she would be solicited for sex and forcibly kept her on his premises for this purpose.

The above dissertation on the intent for the offence of the Trafficking in Persons and the offence of Unlawful Depravation of Liberty (Art. 162 § 1 and 4 of the CCK) is at the same time applicable and accountable for the offence of the Violating Rights in Labour Relations (Art. 182 of the CCK).

The Court has not discerned any mitigation circumstances when imposing the punishments as to all three counts. The defendant acted deliberately and with full awareness of a specificity of the position of the injured party. He strictly acted in order to get the benefit out of her activities performed in his restaurant. Without mitigation circumstances the Court sentenced him to a term of imprisonment of 4 years for the criminal offense of Trafficking in Persons. The punishment slightly exceeds the minimum of three years of imprisonment provided by the Criminal Code of Kosovo.

For the criminal offence of Unlawful Deprivation of Liberty the Court sentenced him to a term of imprisonment of 1 year and 6 months and subsequently for the criminal offence of Violating the Rights in Labor Relations the Court sentenced the defendant to a term of imprisonment of 6 months making sanctions adequate and adjusted to his contribution to

those criminal offenses and its criminal detrimental value. Consequently the Court imposed on Sh.G an aggregate punishment of imprisonment of 4 years and 1 month applying by that the rule of punishments' absorption which makes an aggregate punishment more favorable to the defendant.

V.M

This defendant has been accused of committing the offence of Negligently Facilitating Trafficking in Persons under Article 139(4) of the CCK. V.M, with the knowledge that the victim was a minor under age and that S.B was likely to find employment for her in a casino (obviously hazardous place where the victim could be solicited for sex and in fact exploited), transported the victim in his vehicle to the motel, and arranged an accommodation for her, paying for the room and by that harbouring her. He also provided the victim with S.B's phone number. All these acts of V.M – performed negligently - contributed to the commission of the offence of trafficking by S.B.

In the opinion of the Court the defendant must have reasonably known about the situation of the victim. It is evident from the available evidence that in December 2010 V.M, S.B and the victim met with a man called T./T. who tried to force the victim to return with him to Albania. V.M learned from the victim that F. T gave money to T. in order to take the victim to Kosovo. He also learned that T. was forcing her to have sex with various people in Kosovo. In the opinion of the Court V.M knew that A. K was a victim of trafficking and by his own acts he facilitated her further trafficking by S.B. This conclusion can be inferred from the statements of the injured party, V.M, S.B and also partly from transcripts of phone calls between V.M and unknown person dated 05/01/2011. In the opinion of the Court it must bring to the conclusion that the existence of a required mental element of the offence of the Trafficking in Persons has been proven and V.M has committed this offence he was charged with.

Bearing in mind V.M was acting negligently and evaluating a detrimental value of the criminal offence committed by him it comes out that the adequate and commensurate punishment would be close to the minimum statutory punishment's limit. Therefore the Court imposed on him the punishment of 7 months' imprisonment.

S.B

In the opinion of the Court there was no doubt as the fact that S.B with a purpose of ''exploitation" of the injured party. The fact that A.K made a statement that S. was [redacted] lover (she was another dancer, a colleague of A.) and by that he was fully aware about specificity of the work of the Injured Party, particularly about a vulnerability to being solicited for sex. S. allegedly said to A. according to her statements that Sh.G was not a good guy but in fact he did not undertake any steps in order to improve the situation of the Injured Party or to help her break free. According to the Injured Party it was S.B who for the most part contributed in arranging her a job in bar. According to the Injured Party after S.B and V.M offered their help to A., S.B told to A. that he would find her a new job as a barmaid in r. On or around 24.12.2010 S. brought A.K to bar and together with D.B they agreed that she would get a salary of 300 euros per month (see her testimony p.17, minutes 8th Nov. 2011). S.B acted not only in order to get a job for the victim but also that significantly contributed in her exploitation started by D. B. S.B has not prevented further exploitation of the victim. There is no doubt in the opinion of the Court that he has committed the criminal offense of Trafficking in Persons.

S.B claims that he did not realize the age of A. K. In this respect the statement of the defendant has not had to be considered as a trustworthy and in the opinion of the Court it constitutes his line of defense. Moreover it is not plausible due to her youthful physical appearance what should be assumed as obvious after the analysis of her pictures included into the body of evidence. The defendant had also a sexual intercourse with A. K. She claimed that it happened when they were both drank with her consent. Even though she admitted the fact of having a sexual intercourse with him. This circumstance is sufficient for the Court to make a conclusion that the defendant has committed a criminal offense of Sexual Abuse of Person under Age of 16 by having an intercourse with the person minor of age. In this type of criminal offense there is no defense to show that the victim consented - nor even that the defendant did not realize the victim's age. In the case there is no defense that S.B reasonably believed that A.K was not minor of age. This belief had reasonable grounds after having analyzed pictures of her which were included into the body of evidence.

S.B was just an intermediary without any decisive power and did not obtain any benefit out of it for himself. The above mentioned circumstance allows the Court to treat it as mitigating one. This argument brought the Court to the conclusion that S.B fulfilled the criteria provided by the articles 66 and 67 of the CCK that allows the Court to mitigate his punishment without losing the scope of the penalty and goals of the criminal proceedings out of the vision's field. Bearing in mind that the minimum punishment in Trafficking in Persons

is 3 years and the maximum is 15 years of imprisonment the punishment of one year has to be considered as lenient sentence and adequate to the detrimental value of the criminal offense committed by the defendant. The above applies also to the criminal offence of Sexual Abuse of Persons Under the Age of 16 under Article 198 par 1 of the CCK that provides the punishment from one year up to ten years which makes the sentence of 1 year of imprisonment relatively lenient. The Court imposed an aggregate punishment slightly exceeding the rule of a complete absorption of punishments.

D.B

The case of the defendant D.B from the perspective of the criminal offence of Trafficking in Person was relatively unambiguous. D. knew that the victim was under age and nevertheless employed her in his restaurant as a waitress in the conditions in which she was vulnerable to be solicited for sex. Prior to that he took the victim from S. B and V.M. Moreover the victim when coming to his place was missing any resources or personal belongings. All those circumstances should have raised his suspicion as to the fact that she could be victim of Trafficking in Persons. Besides he effectively exercised control over the victim in the period of time spent in his place.

By that it is clear for the Court that the defendant considered the victim as his own valuable property as he took all steps to keep her even without her consent. Furthermore, being the manager of the restaurant, D. B must have known from practice that a young girl working as a waitress in night hours and spending time amongst male clients was exposed to the risk of being sexually exploited. Being aware of that he nevertheless consented to such a risk. When celebrating the New Year D.B took A.K to her house and both being drank had a sexual intercourse. (see her testimony p.15, minutes 8th Nov. 2011). The defendant D.B did it on or around 24th December 2010. Then D.B being afraid of the police decided to transfer A.K out of his restaurant. As to the sexual intercourse of D.B with the minor of age Injured Party the Court has to stress that A. K's testimony given during the main trial in which she denied having a sexual intercourse with the defendant were not trustworthy. This testimony deviated from what she said during the investigation and even partly in the main trial. A.K significantly wanted to play down his responsibility when testifying in the trial. In the opinion

of the Court this change of testimony has not been credibly explained in order to treat it as a reliable version .

All the above mentioned circumstances assessed together must lead to the inevitable conclusion that the specific intent on the part of the defendant ("purpose of exploitation") is made out as he employed the victim being aware that she could be solicited for sex and forcibly kept her on his premises for this purpose. He committed a criminal offence of Trafficking in Persons and for that criminal offense the Court sentenced him to a term of imprisonment of 1 year. According to the Court even the lowest punishment stipulated for the offence of Trafficking in Persons (3 years of imprisonment) would be incommensurate to the level of guilt of the defendant D.B and to benefits obtained from hiring the Injured Party. Bearing in mind that the minimum punishment in Trafficking in Persons is 3 years and the maximum is 15 years of imprisonment the punishment of one year imprisonment as a mitigated punishment has to be considered as lenient sentence and adequate to the detrimental value of the crime committed by the defendant. According to the Court the criteria provided by the articles 66 and 67 of the CCK are applicable as well to D.B allow the Court to mitigate his punishment without losing the scope of the penalty and goals of the criminal proceedings out of the vision's field.

The defendant on unknown dates between 24.04.2010 and 31.12.2010, subjected minor injured party A. K, to a sexual act by having sexual intercourse with her, by that he committed a criminal offence of Sexual Abuse of Persons Under the Age of 16 and the Court sentenced him to a term of imprisonment of 1 year.

The defendant between 24.12.2010 and 31.12.2010, knowingly failed to comply with the Labour Law of Kosovo by having employed A.K, he engaged in labour that was detrimental to her development, he engaged her in night work and employed her for more than 30 hours a week (Article 20), thereby restricting the rights to which the employee, A.K was entitled. By that he committed a criminal offence of Violating the Rights in Labor Relations and the Court sentenced him to a term of imprisonment of 6 months.

For the all concurrent criminal offences the Court imposed on D.B an aggregate punishment of imprisonment of 2 years. It is worth to mention that the Court applied the partial absorption of punishments' rule when imposing the aggregate punishment on the defendant.

E.K

In fact A.K worked in the defendant's restaurant only for 2 hours. This circumstance may constitute a mitigating element. However the Court emphasizes that according to art. 139 of the CCK there is no element of time during which this criminal offence shall be committed to be regarded as a completed one. To consider the offence of the Trafficking in Persons committed there are the following elements to be established: an act as such (recruitment, transportation, transfer, harbouring), means (excluding a child) and exploitative purpose. E.K "received" (an act) the minor injured party from two unknown individuals for the purposes of hiring her to work as a dancer, during the night at his restaurant, in circumstances in which she was vulnerable to being solicited for sex by the clients (exploitative purpose). Worth to be emphasized that E. K said to A.K that she would wave her if the police came. He advised to run away if the police entered the premises (see her testimony p.11, minutes 9th Nov. 2011). That shows the existence of a mental element of criminal offense committed by him. From the circumstances of the case the Court is of the opinion that E.K's purpose of employing the victim was in fact her sexual exploitation or led to this exploitation. For this type of criminal offence to be committed there is no need for the perpetrator to exploit the victim himself or to have such intent in relation to her.

There is no doubt that the defendant on 05.01.2011 committed a criminal offence of Trafficking in Persons as qualified in the enacting clause. However the Court decided on application of Art. 66 par 2, Art.67 par 1 subpara 2 of the CCK on mitigation. According to the Court even the lowest punishment stipulated for the offence of Trafficking in Persons (3 years of imprisonment) would be incommensurate to the level of guilt of the defendant E. K bearing in mind that the victim worked in his restaurant only for two hours. Bearing in mind that the minimum punishment in Trafficking in Persons is 3 years and the maximum is 15 years of imprisonment the punishment of one year imprisonment as a mitigated punishment has to be considered as lenient sentence and adequate to the detrimental value of the crime committed by the defendant.

The defendant [redacted] was found guilty because on 05.01.2011 knowingly failed to comply with the Labour Law of Kosovo and employed a child ([redacted]) of fifteen years old to engage in labour that was detrimental to her development thereby denying the rights to which the employee and for this criminal offense Court sentenced him to a term of imprisonment of 6 months. The Court imposing the punishment has taken into consideration short period of employment.

Subsequently the Court imposed on [redacted] an aggregate punishment of imprisonment of 1 (one) year and 3 (three) months which has been based on almost full absorption of individually imposed punishments.

Bearing in mind all arguments above mentioned there court hereby the present judgment.

Witold Jakimko
Juvenile Presiding Judge

Lulzim Paqarizi
Panel member

Kymete Kica
Panel Member

Matti Aalto
Recording clerk

LEGAL REMEDY: Pursuant to Article 398(1) of the KCCP, the authorized persons may file and appeal against this Judgment within fifteen (15) days of the day the copy of it has been served to them.