

IN THE BASIC COURT OF PEJË/PEĆ

Case Number P.nr.86/13

Date 14/06/ 2013

IN THE NAME OF THE PEOPLE

The Basic Court of Pejë/Peć, in the trial panel composed of Eulex Judge Jonathan Welford-Carroll as Presiding Judge and Eulex Judge Cornelia Peeck and Kosovo Judge Nushe Kuka-Mekaj as panel members and Court Recorder Christine Sengl, in the criminal case against:

AR, born on X in the village of X, Municipality of X, father's name X, mother's name X (nee X), currently residing at X, Nationality X, ID number X,

Charged jointly with his co-accused, **KP** in the Indictment of the Special Prosecution Office of the Republic of Kosovo (hereinafter "SPRK") PPS.nr. 7/2011 dated 23/07/2012, filed in the District of Pejë/Peć on 23/07/2012, and partially confirmed by the ruling of the Eulex confirmation Judge dated 20/09/2012, with the criminal offence of *Abuse of Official Position or Authority committed in co-perpetration* contrary to Articles 23 and 339 paragraphs 1 and 3 of the Criminal Code of Kosovo ("CCK"),

after holding a public trial on 29 and 30/01, 4/02, 10/04 and 10/06 2013 at which **AR** appeared for SPRK, **BT** appeared for the defendant, **AR** and the Injured Parties **ZM, BE, XH, XK, NA** and the Insurance Association of Kosovo – Compulsory Insurance Unit were either present or summoned to **BE** present and at which the defendant, **AR** was present throughout and after severing the proceedings against **KP** by ruling dated 31/01/2013 following his plea of guilty during the main trial session on 29/01/2013, after deliberation and voting held on 10 and 14/06 2013, on 14/06/2013 announces in public the following:

JUDGMENT

The defendant **AR** with the personal details set out above is

GUILTY

Of *Abuse of Official Position or Authority* committed in co-perpetration with **KP** contrary to Articles 3 paragraph 2, 31 and 422 paragraph 1 of the Criminal Code of the Republic of Kosovo ("CCRK") in that the defendant, **AR** participated in an illegal procedure which went against the interests of the Insurance Assurance of Kosovo – Compulsory Insurance Unit in Prishtina whose interests he was paid to represent and resulted in a loss of €71,257.40 to that company.

* * *

THEREFORE, by reason of the aforementioned the court imposes the following sentences:

for the criminal offence of Abuse of Official Position committed in co-perpetration the defendant, **AR** is sentenced to a term of eighteen (18) months imprisonment.

Pursuant to Article 3 paragraph 2 of the CCRK and Articles 82 and 83 of the CCK the defendant, **AR** is ordered to pay an amount of money corresponding to the material benefit of €71,257.40. The defendant, **AR** and his co-accused, **KP** are jointly and severally liable for the repayment of this sum.

The defendant, **AR** shall reimburse the costs of the criminal proceedings, assessed in the sum of 500 Euros together with the Scheduled Amount assessed in the sum of 200 Euros.

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

REASONING

INTRODUCTION & FORMALITIES

1. Geographical competence

- 1.1. According to the Indictment the criminal offences were committed within the jurisdiction of the former District Court of Pejë/Peć. No issue was raised by the parties at the commencement of the trial regarding the jurisdiction of this Court.

2. Jurisdiction and Applicable Law

- 2.1. In accordance with Article 23 (1) of the Kosovo Code of Criminal Procedure ("KCCP"), District Courts have jurisdiction to adjudicate at first-instance criminal offences punishable by imprisonment of at least five years or those offences punishable by Long-Term imprisonment.
- 2.2. In the present case the defendants, **KP** and **AR** were charged with offences that included Abuse of Official Position contrary to Article 339 paragraph 3 of the CCK, an offence punishable by imprisonment of one (1) to eight (8) years.
- 2.3. Article 3 (2) of the CCRK provides that in the event of a change in the law applicable to a given case prior to a final decision, the law most favorable to the perpetrator shall apply.
- 2.4. In its session on 07/01/2013 the Supreme Court of Kosovo issued a Legal Opinion¹ wherein it stated that in all criminal proceedings in which the main trial commenced prior to the entry into force of the new Code of Criminal Procedure, the old Criminal Procedure Code would apply. This position was confirmed in the Amendment to the Opinion² dated 23/01/2013.

3. Panel Competence

- 3.1. This case was prosecuted by the Special Prosecution Office of the Republic of Kosovo ("SPRK"). Pursuant to Article 3.1 of the Law on Jurisdiction, Case Selection and Case Allocation of Eulex Judges and Prosecutors (Law nr. 03/L053), Eulex Judges assigned to criminal proceedings will have jurisdiction and competence over any offence investigated and prosecuted by SPRK. By reason thereof, the Trial Panel of the District Court of Pejë/Peć was correctly composed of a mixed panel of two EULEX Judges and one Kosovo Judge in accordance with Article 4.7 of the Law on Jurisdiction. No issue was raised by the parties at the commencement of the trial regarding the composition of the panel.

4. Evidence was heard on the following days:

¹ 93/2013

² 56/2013

- 4.1. 29/01/2013
 - 4.1.1. Arraignment
 - 4.1.2. Guilty plea of **KP**
 - 4.1.3. Evidence of **BE**
- 4.2. 30/01/2013
 - 4.2.1. Evidence of **ZM**
 - 4.2.2. Evidence of **AB**
- 4.3. 04/02/2013
 - 4.3.1. Agreement of witness statements to be read into the record³
 - 4.3.2. Agreement of documentary/ material evidence to be read into the record
 - 4.3.3. Decision to adjourn to obtain handwriting expertise regarding the purported signatures of **ZM** and **AR**.
- 4.4. 10/04/2013
 - 4.4.1. Evidence of graphology expert Mr. **HK**⁴
 - 4.4.2. Evidence of **AR**
- 5. List of all material evidence
 - 5.1. This refers to all of the Exhibits contained in Evidence binder I together with all other exhibits submitted or generated during the main trial. These are set out at Annexes A, B and C beneath.
- 6. Legal Rulings
 - 6.1. Ruling on the issue of statutory limitation.⁵
 - 6.2. Refusal to permit **KP** to be called as a cooperative witness.⁶
 - 6.3. Right of prosecutor to cross-examine **AR** on his statement given on 14/03/2011 without a defence counsel present.⁷

SUMMARY OF EVIDENCE

7. **BE**

- 7.1. Record of hearing before the Prosecutor on 3 March 2012
 - 7.2. Hearing at Main Trial on 29/01/2013
8. **BE**'s relevant evidence can be summarised as follows:
- 8.1. **BE** was the driver of a motor vehicle in 2003 when he fell asleep at the wheel and thereby caused a traffic accident in which he and his four passengers suffered varying degrees of bodily

³ **BE**(03/03/11), **ZM** (04/02/2011), **SA** (01/03/2011), **KP** (04 & 24/08/11), **AR**(14/03/2011), **XH**(22/02/2011), **NA** (22/01/2011), **XK**(23/01/2012).

⁴ Appended to Minutes of Main Trial session of 10/04/2013, Case File Volume II at divider A

⁵ See detailed reasoning set out on pages 5 and 6 of the Minutes of the main trial session on 29/01/2013.

⁶ See detailed reasoning set out on pages 4 and 5 of the Minutes of the main trial session on 10/04/2013.

⁷ See detailed reasoning set out on pages 19 and 20 of the Minutes of the main trial session on 10/04/2013.

injury. **BE's** injuries were substantial. He was hospitalized, in a coma for a week and had substantial surgical interventions to his head.⁸

8.2. **BE** states that **N(A)** suffered injury to his head and spine. He stated that neither **XK** nor **XH** suffered any significant injury. **BE** states nothing either way about **BA**.⁹

8.3. Whilst in hospital **BE** received an invitation from the Municipal Court of Klinë/Klina from **KP**. All five of the **AR** occupants attended. **KP** told them that they had a claim for compensation. **BE** signed to make a claim. He believes the others signed to state that they did not want to claim. **KP** told **BE** that he would deal with the case. **KP** told **BE** to provide medical documentation. **KP** told **BE** to sign a blank piece of paper. **KP** also told **BE** that his fees for obtaining the compensation would be 15% of the total amount. Several months later, **BE** contacted **KP** who told him that he had obtained compensation of either Euros 14,200 or 14,300 (**BE** could not exactly remember). **KP** gave **BE** Euros 10,000 in total and again asked him to sign a blank piece of paper. **KP** then told **BE** that he could get another Euros 13,000 for the period of time that he was unable to work. In all, **BE** received two sums of money from **KP**, in or about 2004 and 2005.¹⁰ The witness then later said that he was told by **KP** that the insurers had paid out Euros 14,300 of which **KP** paid him approximately Euros 10,000 in 2004 and that **KP** told the witness that the insurers had paid an additional Euros 13,300 of which **KP** paid the witness approximately Euros 11,000 in 2005. In relation to all payments, **BE** states that he never saw any paperwork from IIC Assistance.¹¹

8.4. By inference therefore, the witness was unaware of the following documents:

8.4.1. ICC Form of Discharge reference B-281-03-GD dated 03/02/2004 for **BE** in the sum of Euros 15,400¹²

8.4.2. Minutes of KLINË/KLINA MUNICIPAL COURT C nr 916/2004 dated 14/06/2005 awarding **NA** the sum of Euros 13,421.30¹³

8.4.3. Ruling of KLINË/KLINA MUNICIPAL COURT C nr 916/2004 dated 14/06/2005 awarding **BE** the sum of Euros 13,421.30¹⁴

8.5. **BE** remembers only dealing with **KP**. He denies that he ever authorised a lawyer to represent him at the Municipal Court of Klinë/Klina. When shown an authorisation form¹⁵, **BE** stated that the signature looked like his but he re-stated that he had been asked to sign blank papers.¹⁶

⁸ Main Trial Minutes 29 January 2013, pp14-15

⁹ Examination with Prosecutor 03/03/2011; Main Trial Minutes 29 January 2013, p15

¹⁰ Main Trial Minutes 29/01/2013, p15

¹¹ Main Trial Minutes 29/01/2013, p18

¹² Evidence Binder I, divider 23

¹³ Evidence Binder I, divider 11

¹⁴ Evidence Binder I, divider 12

¹⁵ Evidence Binder I, Divider 3 and submitted to the Forensic Laboratory of Kosovo as Sample E with Order of 16/04/2013

¹⁶ Examination with Prosecutor 03/03/2011; Main Trial Minutes 29/01/2013, pp15-16

- 8.6. Shown the exhibit Lawsuit dated 28/09/2004¹⁷ **BE** stated that he had never seen it before. He also denied having ever met **ZM** before.¹⁸
- 8.7. **BE** confirmed that he was at the relevant time working in a kebab restaurant. He stated that **KP** wanted him to have a diploma to assist/ exaggerate his compensation claim. **BE** stated that he obtained a diploma by paying Euros 100 for it.¹⁹
- 8.8. After being approached by the Police in relation to this claim, **BE** confronted **KP** and asked why **ZM** had been appointed as the witness's lawyer without his knowledge. **KP** attempted to dissuade the witness from confronting **ZM**. **BE** denied having seen or signed any of the documents presented to him by the police investigators. **BE** also confronted the Insurers about this claim and was told that Euros 72,000 had been paid for the claim in total (i.e. between all claimants). When shown the document IIC Form of Discharge dated 03/02/2004 in the name of **BE**²⁰ the witness confirmed that this was the document shown to him by the Insurers showing a payment in the sum of Euros 15,400 in favour of **BE**.²¹
- 8.9. When advised by an unidentified person to open a bank account to receive the compensation, the witness states that **KP** reacted badly to this stating '*you should not open a bank account because I will give you the money since they will transfer the same in my bank account*'.²²
9. **XK**
- 9.1. Record of Examination of Witness/Injured Party dated 23/01/2012.²³
- 9.2. The evidence of this statement was read into the record by agreement between the parties.²⁴
10. **XK's** relevant evidence can **BE** summarised as follows:
- 10.1. On 23/08/2003, **XK** was travelling in a Suzuki motor vehicle driven with **BA**, **XH**, **NA**, and **BE** on the X-X highway in the location of X. The driver lost control and the vehicle turned over, thereby causing varying degrees of injuries to the passengers, **XK** suffering light bodily injuries, and requiring hospital treatment for all.
- 10.2. In October 2003, **XK**, **NA**, **XH** and **BA** went to court in relation to this accident in X. At the Court, **KP** and **ZM** were present. **XK** was asked (though he cannot remember by whom) whether he wished to sue **BA** for the injuries suffered, but **XK** did not want to do so and signed a paper to that effect, so he believed. Thereafter, **XK** worked abroad and heard no more of this matter until summoned by a police officer in 2010.

¹⁷ Evidence Binder I, divider 2 (NOTE: an improved practice would be assign a separate unique exhibit reference number to every piece of material evidence in the case when the exhibit is first gathered)

¹⁸ Main Trial Minutes, 29/01/2013, p16

¹⁹ Examination with Prosecutor 03/03/2011; Main Trial Minutes, 29/01/2013p17

²⁰ Evidence Binder I Divider 23

²¹ Minutes of Main Trial 29/01/2013, p20

²² Record of Examination by the Prosecutor 03/03/2011

²³ Evidence Binder I Divider 07

²⁴ Minutes of Main Trial 04/02/2013, p2

10.3. **XK** confirms that he was not required to attend and did not attend any court hearing at X on 14 June 2005 and at no stage has either himself or any member of his family acting on his behalf received any compensation from any source in relation to this accident.

10.4. By inference therefore, the witness denies ever being aware of or receiving the compensation as set out in the following documents:

10.4.1. ICC Form of Discharge reference B-281-02-03-GD dated 22/04/2004 for **XK** Euros 3,550²⁵

10.4.2. Ruling of KLINË/KLINA MUNICIPAL COURT C nr 916/2004 dated 14/06/2005 awarding **XK** Euros 7,177.35²⁶

11. NA

11.1. Record of Examination of Witness/ Injured Party dated 22/02/2011²⁷

11.2. The evidence of this statement was read into the record by agreement between the parties.²⁸

12. This witness's account of the traffic accident and occupants of the vehicle is consistent with the above accounts.²⁹ This witness suffered serious bodily injuries that required hospital treatment for 4 days and further home based treatment for an additional two months.

13. About 2 months later, the witness received a phone call from **KP** asking if the witness wanted to sue the driver. The witness declined. Several months later again, the witness received a phone call from a female stating that she was from the Insurance company in Pristina and that the witness should go to **KP** at the Municipal Court of Klinë/Klina with regards to his compensation claim. The Witness did so and initially **KP** told him that it was too late to do anything. However, **KP** then told him to obtain the medical evidence and he would do what he could. Some months later, **KP** contacted the witness again and arranged to take him to X. The witness did so and signed a blank paper. Sometime after that, **KP** called the witness to his office. When the witness attended, **KP** gave him Euros 1,400 saying that this *'couldn't even cover my (KP's) expenses and I only did this because I was told that you have difficult financial circumstances'*. The witness expressly denied ever commencing a lawsuit, instructing a lawyer on his behalf or attending at trial on 14 June 2005 in the Municipal Court of Klinë/Klina.³⁰

14. By inference therefore, the witness denies ever being aware of or receiving the compensation as set out in the following documents:

14.1. IIC Form of Discharge reference B-281-04-03-GD dated 07/06/2004 for **NA** in the sum of Euros 11,000³¹

²⁵ Evidence Binder I, divider 26

²⁶ Evidence Binder I, divider 11

²⁷ Evidence Binder I Divider 06

²⁸ Minutes of Main Trial 04/02/2013, pp2-3

²⁹ Record of Witness Examination 22/02/2011

³⁰ Record of Examination 22/2/2011

³¹ Evidence Binder I, divider 25

- 14.2. 10.4.2. Ruling of KLINË/KLINA MUNICIPAL COURT C nr 916/2004 dated 14/06/2005 awarding **NA** the sum of Euros 24,700.30³²

15. XH

- 15.1. Record of Examination of Witness/ Injured Party 22/2/2011³³
15.2. The evidence of this statement was read into the record by agreement between the parties.³⁴

16. The witness's account was largely consistent with the other witnesses with regards to the traffic accident.

17. This witness suffered head injuries, internal bleeding as a result of the accident. He has not received any compensation in relation to the incident. He has not issued a lawsuit, engaged a lawyer to represent him, or ever attended any hearing at the Municipal Court of Klinë/Klina.

18. By inference therefore, the witness denies ever being aware of or receiving the compensation as set out in the following documents:

- 18.1. IIC Form of Discharge reference B-281-03-03-GD dated 07/06/2004 for **XH** in the sum of Euros 13,870³⁵
18.2. Ruling of KLINË/KLINA MUNICIPAL COURT C nr 916/2004 dated 14/06/2005 awarding **XH** the sum of Euros 24,108.5³⁶

19. AB

- 19.1. Main Trial 30/01/2013

20. This witness was the expert witness appointed to calculate the amount of damages appropriate for the four claimants in the traffic claim. He confirmed that he carried out his expertise based on the Ruling of the Municipal Court of Klinë/Klina, assigned by KP. He reviewed the medical evidence that was provided in relation to each Claimant in determining the appropriate level of compensation. This witness never had to attend at Court in the traffic related proceedings. This witness had very little relevant evidence on the matter before the trial panel of **AR**.

21. SA

- 21.1. Record of Examination of witness/ injured party dated 01/03/2011
21.2. The evidence of this statement was read into the record by agreement between the parties.³⁷

³² Evidence Binder I, divider 11

³³ Evidence Binder I, divider 05

³⁴ Minutes of Main Trial 04/02/2013, pp2-3

³⁵ Evidence Binder I, divider 24

³⁶ Evidence Binder I, Divider 11 and submitted to the Forensic Laboratory of Kosovo as Sample IJ with Order of 16/04/2013

22. The witness is a representative of the Insurance Association of Kosovo. Of importance is the fact that her evidence is derived from her files on the basis of what the documents recorded (i.e. without knowing whether such documents reflect the true situation or not). She reported that the lawyer **ZM** had filed a request for compensation to the Association. With the assistance of a sub-contracting firm called *Asistanca*, the claimants compensation was assessed and paid as part of an Out-of-Court (extra judicial) settlement as follows:

- 22.1. **BE**– Euros 15,400
- 22.2. **XH**- Euros 13,870
- 22.3. **XK**– Euros 3,550
- 22.4. **NA** – Euros 11,000

23. Thereafter, **ZM** is reported to have filed an additional claim for lost profit. As a result, and after a hearing at the Municipal Court of Klinë/Klina at which the defendant **AR** acted on behalf of the Insurance Association of Kosovo the court issued a settlement judgment as follows:

- 23.1. **BE**- Euros 13,421.30
- 23.2. **XH**– Euros 24,108.00
- 23.3. **XK**- Euros 7,177.35
- 23.4. **NA** – Euros 24,700.30
- 23.5. Together with Euros 1,850 costs

24. The money was paid on 06/09/2005 into the bank account of **ZM**.

25. **ZM**

- 25.1. Criminal report dated 28/12/2010 (not evidence in the case)
- 25.2. Record of Examination as witness/injured party dated 04/02/2011
- 25.3. Examination by the Prosecutor dated 25/03/2011 (continuation of the 4/02/2011 session).
- 25.4. Minutes of Main Trial dated 30/01/2013

26. On 28/12/2010, **ZM** submitted a criminal report to the SPRK against **KP** and **AR** alleging that they had conducted a fraudulent insurance claim and court action relating to the traffic accident of **BE** in which they had obtained unlawfully a substantial sum of money. The report itself elaborates in more detail **ZM**'s beliefs as to how the fraud was conducted.³⁸ The content of this document is not considered by the panel as evidence in the case. Its only relevance is to establish the fact that **ZM** is the originator of a criminal complaint in this case.

27. **ZM** states that **BE** had not signed his authorisation in his presence. Instead, **ZM** received it straight from **KP**³⁹. Though the witness accepted knowledge of **BE**, he denied any knowledge of any claim for **XH**, **XK** and **NA**.⁴⁰ At the Main Trial, **ZM** stated that he represented **BE** in two sessions.⁴¹

³⁷ Minutes of Main Trial 04/02/2013, pp2-4

³⁸ Criminal Report dated 28/12/2010, Evidence Binder I, divider 1

³⁹ Examination by the Prosecutor 04/02/2011; minutes of main trial 30/01/2013, p4

⁴⁰ Examination by the Prosecutor 04/02/2011

⁴¹ Minutes of main trial 30/01/2013, p3

28. **ZM** stated that he could not remember if members of the Judicial Panel were present in regards to this case. Nor could he remember if **AR** was present. **ZM** asserted that it was **KP** who proposed adjourning the court session on 7/06/2005 as it was necessary to obtain expertise evidence. **ZM** stated that thereafter he knew nothing else of this case until approximately December 2010 (i.e. he was not aware of and did not attend the hearing that was held on 14/06/2005).⁴² He further clarified that though the Court and Insurance Association files contain documents which purport to be minutes of further hearing containing his signature, **ZM** denied that he had been present and asserted that the signature was not his.⁴³
29. **ZM** became aware that the case had continued in his absence when he was notified by the Municipal Court of Klinë/Klina that the Insurance Association of Kosovo had filed a criminal report against him. He made substantial enquiries of the Association of Insurers files and Court files⁴⁴ to see that the compensation claim had been settled, with two sums, one of about Euros 13 or 14,000, and one of about Euros 70,000 and involving 4 individuals.⁴⁵ Under cross-examination, **ZM** expressly denied that he had ever seen the expertise evidence that had been obtained in the case.⁴⁶
30. When shown a series of documents by the Prosecutor obtained from the file of the Association of Insurers (which regrettably were not identified by the Prosecutor), **ZM** denied that the signatures were his.
31. At the main trial, **ZM** was shown the following documents:
- 31.1. Form of Authorisation dated 06/03/2004 purporting that NA authorised **ZM** to act as lawyer.⁴⁷ **ZM** denies the authenticity of this document.⁴⁸
- 31.2. Form of Authorisation dated ? 2004 (*date not clearly visible*) purporting that **XH** and **XK** authorised **ZM** to act as lawyer.⁴⁹ **ZM** denies the authenticity of this document.⁵⁰
- 31.3. ICC Form of Discharge reference B-281-02-03-GD for **XK** in the sum of Euros 3,550.⁵¹ **ZM** asserts that both his stamp and signature on this document are forged.⁵²
- 31.4. ICC Form of Discharge reference B-281-03-GD dated 03/02/2004 for **BE** in the sum of Euros 15,400.⁵³ **ZM** asserts that both his stamp and signature on this document are forged.⁵⁴
- 31.5. IIC Form of Discharge reference B-281-03-03-GD dated 07/06/2004 for **XH** in the sum of Euros 13,870.⁵⁵ **ZM** asserts that both his stamp and signature on this document are forged.⁵⁶

⁴² Examination by the Prosecutor 04/02/2011; minutes of main trial 30/01/2013, p3

⁴³ Minutes of main trial 30/01/2013, p5

⁴⁴ See document in evidence file I, divider 20 – letter dated 22/12/2010 to KLINË/KLINA MUNICIPAL COURT seeking copy of files C nr 916/2004 & C nr 149/05

⁴⁵ Minutes of main trial 30/01/2013, pp3-4

⁴⁶ Minutes of Main Trial 30/01/2013, p25

⁴⁷ Evidence Binder I, divider 4

⁴⁸ Minutes of Main Trial 30/01/2013, p8

⁴⁹ Evidence Binder I, divider 5

⁵⁰ Minutes of Main Trial 30/01/2013, p8

⁵¹ Evidence Binder I, divider 26

⁵² Minutes of Main Trial 30/01/2013, p8

⁵³ Evidence Binder I, divider 23

⁵⁴ Minutes of Main Trial 30/01/2013, p8

- 31.6. Minutes of Main Trial C nr 916/2004 dated 15/10/2004.⁵⁷ At this hearing, the case was adjourned to obtain expertise evidence. **ZM** accepts the signature on the document as his.⁵⁸
- 31.7. Minutes of Main Trial C nr 916/2004 dated 15/03/2005.⁵⁹ At this hearing, the minutes purport to record that **ZM** was present but neither a representative of the respondent nor the expert witness was present. The session was adjourned. **ZM** denies that the signature is his.⁶⁰
- 31.8. Minutes of Main Trial C nr 916/2004 dated 07/06/2005.⁶¹ At this hearing, the minutes purport to record that **ZM** was present for the Claimant, and **AR** was present for the Respondent, and all 4 Claimant parties were present. **ZM** denies that the signature is his.⁶²
- 31.9. Minutes of Main Trial C nr 916/2004 dated 14/06/2005.⁶³ At this hearing, the minutes purport to record that **ZM** was present for the Claimants and **AR** was present for the Respondent and made an award of financial compensation for all 4 claimants and costs in the total sum of Euros 71257.45. The Ruling specified that the money was to be paid into **ZM's** ProCredit Bank Account Number 1110166329000105. **ZM** denies that the signature on these minutes is his. Further, though he admits knowledge of **BE**, he denies any knowledge of the other claimants.⁶⁴
- 31.10. Minutes of Main Trial C nr 916/2004 dated 14/06/2005.⁶⁵ At this hearing (alleged to be the same date and time as the minutes at paragraph 29.4 above), the minutes purport to record that **ZM** was present for the Claimant and **AR** was present for the Respondent and made an award of financial compensation to **BE** and costs in the total sum of Euros 15271.3. The Ruling specified that the money was to be paid into **ZM's** ProCredit Bank Account Number 1110166329000105. **ZM** denies that the signature on the minutes is his.⁶⁶
32. **ZM** accepts that on 05/12/2003 he gave **KP** authorised access to the witness's bank account, which the witness never checked because he was a friend of and trusted **KP**.⁶⁷ A sum of Euros 71,257.45 was paid into **ZM's** ProCredit Bank account number 1110166329000105 on 10/08/2005.⁶⁸ **ZM** denies ever knowing that this sum was paid into this account.⁶⁹ Withdrawals were made from that account by **KP** on 07/09/2005.⁷⁰
33. During cross-examination of **AR** by **ZM** as Injured Party, a further set of minutes for the hearing on 07/06/2005 were produced by **ZM** from his office copy of the case file. These minutes are of profound importance. Handwriting evidence establishes that the Minutes from **ZM's** file be **AR** genuine signatures from both **ZM** and **AR**. These minutes adjourned the case for an indefinite

⁵⁵ Evidence Binder I, divider 24

⁵⁶ Minutes of Main Trial 30/01/2013, p9

⁵⁷ Evidence Binder I, divider 8

⁵⁸ Page 7 of the Minutes of the Main Trial of 30/01/2013, Volume 1 divider 5

⁵⁹ Evidence Binder, divider 9

⁶⁰ Page 7 of the Minutes of the Main Trial of 30/01/2013, Volume 1 divider 5

⁶¹ Evidence Binder, divider 10

⁶² Page 7 of the Minutes of the Main Trial of 30/01/2013, Volume 1 divider 5

⁶³ Evidence Binder I, divider 11

⁶⁴ Minutes of Main Trial 30/01/2013, p7

⁶⁵ Evidence Binder I, divider 12

⁶⁶ Minutes of Main Trial 30/01/2013, p7

⁶⁷ Minutes of Main Trial 30/01/2013, pp11-12

⁶⁸ Evidence Binder I, divider 13

⁶⁹ Minutes of Main Trial 30/01/2013, p13

⁷⁰ Evidence Binder I, First divider 8

period to obtain additional evidence. On the other set of minutes for the same day handwriting evidence establishes that **AR's** signature is genuine but that of **ZM's** is not. Those minutes adjourn the case until 14/06/2005 – a hearing that **ZM** states that he knew nothing about and never attended.

34. AR

- 34.1. Examination by the Prosecutor dated 14/03/2011
 - 34.2. Minutes of Main Trial dated 10/04/2013
35. During his interview on 14/03/2011, **AR** stated that he worked as a lawyer for the Insurance Association of Kosovo from 10/11/2003 until 01/03/2004, from 01/03/2004 to 01/09/2004 he worked as an internal auditor and from 01/09/2004 until 13/06/2005 he worked as a full time internal auditor and represented the Insurance Association and Guarantee Fund of Kosovo, undertaking all of the cases for these two entities. He asserted specifically that he had terminated his employment on 13/06/2005 and therefore could not have represented the Association of the Fund on 14/06/2005. When confronted with the minutes of the hearing at the Municipal Court of Klinë/Klina on 14/06/2005, **AR** repeated his assertion that those minutes could not **BE** accurate and the signature could not be his because he had terminated his employment. **AR** accepted that he was appointed for the Respondent in the case of **BE** and asserted that it remained a non-completed case when he left his employment.⁷¹ As noted above (paragraphs 31.9 and 31.10) there are two set of minutes for the hearing on 14/06/2005. Handwriting expert evidence in fact establishes that **AR's** signature on one set of minutes⁷² is **certainly AR's** signature and on the second set of minutes⁷³ the signature **could** be **AR's** (see paragraph 41.2 below). The fact that there is certainty about one signature establishing that he was present and signing the document means that the panel can be satisfied that any uncertainty about the signature which 'could' be **AR's** is removed. This is enough evidence for the panel to be satisfied that **AR's** explanations that he did not attend court on 14/06/2005 on behalf of the Insurance Association of Kosovo and the Guarantee Fund and that the signatures on the minutes are not his are simply not true.
36. At the main trial on 10/04/2013 **AR** stated that he had a contract with the Guarantee Fund as a lawyer from 10/11/2003. He would act on behalf of the Fund pursuant to that contract but would be authorised by the fund on a case by case basis. He was authorised to act in case C nr 916/2004 (**BE**). This authorisation would permit **AR** to sign off on court settlements.⁷⁴
37. **AR** accepted attending at the hearing on 14/06/2005, which was held in the Judge's room rather than open court,⁷⁵ and signing the settlement in C nr 916/2004 in the sum of Euros 71,257.45. In doing so, **AR** asserted that he had read and considered all of the evidence in the case. He expressly asserted that **ZM** was present in the hearing on 14/06/2005.⁷⁶ **ZM** denies being present (see paragraphs 31.9 and 31.10 above) and the handwriting expert evidence establishes that no

⁷¹ Examination by the Prosecutor 14/03/2011

⁷² Evidence Binder I, divider 11

⁷³ Evidence Binder I, divider 12

⁷⁴ Minutes of Main Trial 10/04/2013, p11

⁷⁵ Minutes of Main Trial 10/04/2013, p21

⁷⁶ Minutes of Main Trial 10/04/2013, p 11 and p 22

signature on any minutes of 14/06/2005 was in fact ZM's (see paragraph 41.2 below). The Panel is therefore driven to the clear conclusion that, contrary to AR's assertions ZM was not present at that hearing and ZM did not sign any document in the case that day.⁷⁷ When asked about the second settlement in the case on 14/06/2005 in the sum of Euros 13,421.30⁷⁸ AR denied that the signature on the Minutes was his. He acknowledges that there cannot be two settlements in relation to the same case and therefore implicitly accepts that a criminal offence of some sort has occurred but seeks to blame ZM for that offence.⁷⁹ With regard to the signature which purports to be AR's, the handwriting expert stated this signature 'could' be AR's (see paragraph 41.2 below).

38. With regards to the payment in relation to this case of the sum of Euros 71,257.45 into ZM's account⁸⁰ AR denied any knowledge of such a payment having been made.⁸¹
39. In relation to the above evidence, it is important to note that whereas when questioned by the prosecutor on 14/03/2011 AR asserted that he ceased employment with the Guarantee Fund on 13/6/2005, in his evidence before the trial panel, AR accepted that he was employed with the Guarantee Fund until 30/06/2005 and therefore was available to attend the Municipal Court of Klinë/Klina on 14/06/2005 and in fact did attend.⁸²
40. When questioned by the Injured Party, ZM, AR stated that ZM was present at the court hearing on 07/06/2005 because he had signed the minutes. The minutes in the case file⁸³ record that the case was adjourned to 14/06/2005. It is extremely important to note that during the trial, it became apparent that ZM had a set of minutes relating to 07/06/2005 in his own office file relating to the case. This document was seized by the Court and added to the Case file as evidence. The second set of minutes for 07/06/2005 recovered from ZM's office file recorded that the case was adjourned for an unspecified duration of time. The signatures purporting to be ZM's and AR's on the second set of minutes were found to be genuine by the expert witness. ZM's signature on the first set of minutes was found to not be genuine by the expert witness whereas the signature of AR on the second set of minutes was found to be genuine. Therefore it is clear that ZM was presented with minutes informing him that the case was adjourned to an unspecified date which he signed. Thereafter, another set of minutes adjourning the case for one week was created and signed by AR and KP but ZM's signature was forged. There can be no other conclusion in the circumstances than that AR knew what was going on and had agreed to cooperate with KP in creating a false record intending to continue the case sessions without ZM's presence, or as ZM said '*whereby I was thrown out of the game*'.⁸⁴

41. Handwriting Evidence

⁷⁷ Minutes of Main Trial 10/04/2013, p11 and p13

⁷⁸ Evidence Binder I, divider 12

⁷⁹ Minutes of Main Trial 10/04/2013, p14

⁸⁰ Evidence Binder I, divider 13

⁸¹ Minutes of Main Trial 10/04/2013, p15

⁸² Minutes of Main Trial 10/04/2013, p17

⁸³ Evidence Binder I, divider 10 (item H in the handwriting expertise)

⁸⁴ Minutes of Main Trial 10/04/2013, p26

41.1. Two handwriting expert reports were obtained. The first dated 6 March 2013 in fact examined documents which were not in issue in the case and can be disregarded.

41.2. The second, the report of 05/06/2013 is highly relevant and its key findings are set out in the table below.

Evidence Binder Reference	Exhibit Ref in expert report	Exhibit description	Expert Finding
Divider 12	C	C nr 916/2004 Minutes of Main Hearing for 14/06/2005	The Respondents signature (AR) could be genuine ZM's signature is false
Divider 1	D	Criminal report by ZM against KP and AR	ZM's signature is genuine
Divider 3	E	Authorisation for ZM to act as lawyer for BE	ZM's signature is genuine
Divider 8	F	C nr 916/2004 Minutes of Main Trial on 15/10/2004	ZM's signature is genuine
Divider 9	G	C nr 916/2004 Minutes of Main Trial on 15/03/2005	ZM's signature is false
Divider 10	H	C nr 916/2004 Minutes of Main Trial on 7/6/2005 (from Court file)	ZM's signature is false AR's signature is genuine
Divider 11	IJ	C nr 916/2004 Minutes of Main Trial on 14/06/2005	ZM's signature is false AR's signature is genuine
Divider 20	K	Letter from ZM to President of the KLINĚ/KLINA MUNICIPAL COURT dated 22/12/2010	ZM's signature is genuine
Divider 10	L	C nr 916/2004 Minutes of Main Trial on 7/6/2005 (from ZM's office file)	ZM's signature is genuine. AR's signature is genuine

42. SUMMARY OF FINDINGS

42.1. Based upon the above evidence the Panel concludes as follows;

42.2. That **BE** together with others suffered injury in a road traffic accident in August 2003. As a result of that accident a claim was made against the Association of Insurers/ Guarantee Fund

for Kosovo for compensation. The case was given the number C nr 916/2004. **KP** was the judge. **KP** arranged for **ZM** to act as authorised lawyer on behalf of **BE** and **AR** was authorised to act for the Guarantee Fund by whom he was then employed as a lawyer.

- 42.3. On 15/10/2004, a hearing was held at which **ZM** proposed obtaining financial expert evidence (i.e. of an actuary). No one appeared at that hearing for the Respondent. **ZM**'s signature on the Minutes of Hearing is genuine.
- 42.4. At some stage, additional claimants were added to the claim namely: **XK, XH** and **NA**. **ZM** had no knowledge of these additional claimants.
- 42.5. On 07/06/2005, a hearing occurred in the case. **ZM** attended for the Claimant **BE** and **AR** attended for the Respondent. Two sets of minutes exist for that hearing. One of those sets of minutes is false. One set of minutes was produced at Court by **ZM** from his office copy of the case file. Those minutes adjourned the case to an unspecified date to obtain further evidence. Both **ZM** and **AR** signed those minutes. Both signatures are genuine. The second set of minutes from the same day purport to adjourn the case until 14/06/2005. **AR**'s signature on that document is also genuine. However, **ZM**'s signature on that document is false. The Panel concludes that the second set of minutes is a fictitious creation designed to allow a criminal offence to **BE** committed and that **KP** and **AR** were fully aware of that fact and knowingly played an active part in that conduct.

On 14/06/2005 a further hearing was held. Two sets of minutes for the case on the same day exist. **KP** was the judge. **AR** attended on behalf of the Respondent. Though the minutes record that **ZM** was present, the handwriting evidence establishes that **ZM**'s signature on both sets of minutes is false. The court concludes that he was not present at the session. **AR**'s signature on the minutes which award a total of Euros 71,257.45 to the claimants **BE, XK, XH** and **NA** through an in court settlement is genuine. **AR**'s signature on the minutes which award Euros 13,421.30 to **BE** through an in court settlement 'could' be genuine. In the light of the other findings about **AR**'s active and knowing participation in illegal conduct, the Panel concludes that there is no doubt that this signature is also **AR**'s. These minutes are false because due to the absence of any representative for the claimant(s), no in court settlement could have been reached. **KP** used his position as a judge to make up these false minutes. By co-signing these minutes **AR** contributed substantially to the actions of **KP**.

- 42.6. As a result of this conduct, **KP** and **AR** in co-perpetration succeeded in obtaining at least Euros 71,257.45 to which they were not lawfully entitled. That money was paid into a bank account in **ZM**'s name on 06/09/2005⁸⁵. **ZM** had effectively given over control of this account for the use of **KP**. Though **ZM**'s conduct in giving **KP** uncontrolled access to this account was at best naïve, he is not on trial in this case. **KP** withdrew Euros 50,000 from that account on 07/09/2005. The evidence does not establish what happened to the remaining Euros

⁸⁵ Evidence Binder I, divider 13

21,257.35. There is no evidence to establish that any money was ever paid either directly or indirectly to **AR** from this criminal act.

42.7.

These facts establish that **KP** and **AR** are both guilty of the offence of Abuse of Official Position committed in co-perpetration. In case of co-perpetration there is no need for each perpetrator to fulfill all elements of the criminal offence. It is sufficient when the perpetrators all together fulfill these elements. The Panel concludes that though **AR** himself was not an official person as mentioned in Art 339, **KP** was. As they both played active parts and the criminal offence itself could not have been completed without the activity of both, both share criminal liability for the offence under the principle of co-perpetration.

43. SENTENCE

43.1. The defendant, **AR** was charged with the offence of Abuse of Official Position (committed in co-perpetration with **KP**) contrary to Articles 23 and 339 paragraphs 1 and 3 of the CCK. The criminal law of Kosovo changed on 01/01/2013. Article 3.1 of the (new) CCRK provides that when the law changes during the course of the main trial the law in force at the time the offence was committed shall apply. However, Article 3.2 also provides that in the event of a change in the law during the main trial the law more favourable to the defendant shall apply. In this case, before the change in the law on 01/01/2013 the defendant, **AR** was exposed to maximum penalty of eight (8) years imprisonment contained in Article 339 paragraph 3 of the CCK. However, following the change in the law he was exposed to the lower maximum penalty of five (5) years imprisonment contained in Article 422 paragraph 1 of the (new) CCRK. Therefore the more favourable law is the (new) CCRK which reflects the old offence of Abuse of Official Position in Article 422 paragraph 1 and the old element of co-perpetration in Article 31 of the CCK.

BASIC COURT OF PEJË/PEĆ

P.nr.86/13

Dated this 14th day of June 2013

Court Recorder

Presiding Judge

Christine Sengl

Jonathan Welford-Carroll

Panel Member

Panel Member

Cornelie Peeck

Nushe Kuka-Mekaj

Legal Remedy:

Authorized persons may file an appeal in written form against this verdict through the Basic Court of Pejë/Peć to the Court of Appeals within fifteen days from the date the copy of the judgment has been served, pursuant to Article 398 paragraph 1 of the KCCP.

Annex A

Exhibits contained in Evidence Binder I submitted by the prosecutor with the Indictment:

Nr.	Document	Date	Comments
1	Criminal Report	05/01/2010	
2	Statement of Claim in the name of BE	28/09/2004	
3	Authorisation from BE	20/09/2004	
4	Authorisation from NA	06/03/2004	
5	Authorisation from XH and XK	Illegible	
6	Decision by Insurance Association of Kosovo	13/06/2005	
7	Authorisation of Guarantee Fund of Kosovo	04/10/2004	
8	Minutes of Main Trial from Municipal Court of Klinë/Klina	15/10/2004	
9	Minutes of Main Trial from Municipal Court of Klinë/Klina	15/03/2005	
10	Minutes of Main Trial from Municipal Court of Klinë/Klina.	07/06/2005	<u>There are two sets of minutes. The first document at this divider is the authentic set of minutes and contains a genuine signature of ZM's. The second document (in the plastic cover) is NOT genuine. The purported signature of ZM's was not made by him. This set of minutes was submitted to the trial panel by ZM from his case file during the main trial session on 10/04/13.</u>
11	Minutes of Main Trial from Municipal Court of Klinë/Klina	14/06/2005	
12	Minutes of Main Trial from Municipal Court of Klinë/Klina	14/06/2005	
13	Statement on the transfer of funds to bank a/c of ZM	10/08/2005	
14	"Diploma" of BE	07/11/1997	
15	Report of Road Traffic Accident on 23/08/03	23/08/2003	
16	Ruling to Conduct Investigations	24/11/2003	
17	Decision by Kosovo Chamber of Advocates	18/09/2003	
18	Statement from a/c in Raiffeisen Bank held by AR	13/07/2005	
19	Statement of Claim by Insurance Association of Kosovo	16/12/2012	
20	Request from ZM to President of Municipal Court of Klinë/Klina	22/12/2012	
21	Form of Discharge and Medical Report for BE	20/01/2004	

22	Form of Discharge for BE	20/01/2004	
23	Medical Certificate for BE	23/08/2003	
	Form of Discharge for BE	03/02/2004	
	Actuarial Report for BE	23/12/2004	
24	Form of Discharge for XH	07/06/2004	
	Form of Discharge and Medical Report for XH	08/09/2003	
25	Form of Discharge from ICC Assist for NA	07/06/2004	
	Form of Medical Discharge for NA	Not dated	
	Form of Medical Discharge for NA	14/10/2003	
	Form of Discharge and Medical Report for NA	Not dated	
26	Form of Discharge from ICC Assist for XK	22/04/2004	
	Form of Discharge and Medical Report for XK	14/06/2005	
27	Minutes on handing over the subjects	08/07/2005	
28	Proposal by AR to terminate investigates	22/03/2011	
29	Note to file unsigned but purporting to be from SPRK Prosecutor	11/03/2011	
30	Memo from Insurance Association of Kosovo to SPRK	16/03/2011	
31	Minutes of Interview with BE	03/03/2011	
1	Minutes of Interview with ZM	04/02/2011	
2	Minutes of Interview with SA	01/03/2011	
3	Minutes of Interview with KP	04 & 24/08/2011	
4	Minutes of interview with AR	14/03/2011	
5	Minutes of interview with XH	22/02/2011	
6	Minutes of interview with NA	22/01/2011	
7	Minutes of interview with XK	23/01/2012	
8	Record from bank account of ZM recording lodgment of €71,257.41 on 06/09/2005	28/07/2009	
9	Free samples of the signature of AR given in the main trial session on 04/02/2013 and sent to the Forensic Laboratory of Kosovo with the Order of 16/04/2013	04/02/2013	
10	Free samples of the signature of ZM given to the prosecutor on 11/02/2013 and sent to the Forensic Laboratory of Kosovo with the Order of 16/04/2013	11/02/2013	

Annex B

Exhibits furnished to the trial panel during the main trial sessions:

1	Minutes of 07/06/2005 from C. nr. 916/2004		Submitted by ZM from is case file during the main trial session on 10/04/2013.	These minutes were examined by the Kosovo Forensic Laboratory ("KFL"). The purported signature of ZM's is NOT genuine.
2	Report of Graphologist Mr. HK dated 22/02/2013		Submitted by injured party, ZM during the main trial session on 10/04/2013.	

Annex C

Exhibits generated by Order of the presiding Judge during the main trial sessions:

1	Case file in C. nr. 149/2005		Obtained from Municipal Court of Klinë/Klina by Order of the Presiding Judge dated 07/02/2013	
2	Report from KFL dated 06/03/2013.		Compiled pursuant to Order of the presiding Judge dated 07/02/13.	This report focused on irrelevant factors and was ultimately of little or no use to the trial panel.
3	Report from KFL dated 05/06/13		Compiled pursuant to Order of the presiding Judge dated 16/04/13.	