

IN THE BASIC COURT OF PRIZREN

Case Number: P. 233/2013

30 October 2013

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

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF PRIZREN in the Trial Panel composed of EULEX Judge Malcolm Simmons, Presiding and Judge Zejnullah Gashi and EULEX Judge Manuel Soares, panel members and Valentina Gashi as recording officer, in the criminal case against:

A.B., also known as A.M., D.B., B.H. and 'T.'; born B.H.¹ on 26 December 1976 at xxx, District of Glogovac, Kosovo, Male, ID number xxx, fathers name M.H., mothers name K.C., Kosovo Albanian, citizen of Kosovo, residing at xxx, District of Glogovac, married with xxx child, economic status average, in detention since 17 April 2012;

CHARGED in the Indictment of the EULEX Special Prosecutor PPS No. 50/2011 dated 15 April 2013 and filed on 16 April 2013, as amended on 30 October 2013, in the following Counts:

COUNT 1

ORGANISED CRIME, under Article 274 paragraphs 1, 2 and 3 of the Criminal Code of Kosovo, punishable by a fine of up to 500.000 EUR and by imprisonment of seven to twenty years

BECAUSE between 5 February 2012 and 17 April 2012, A.B., on the territory of Kosovo Montenegro, Croatia, Slovenia and Italy, committed the offence of Organised Crime by:

¹ changed his name to A.B. at the Kosovo Civil Registration Agency on 3 July 2009, number 201-3874

1. Organising, supervising, managing or directing the activities of an organised criminal group consisting of O.K., C.K., E.K., L.K., 'N.', A.B., A.C., N.N., M.B., A.M., I.H., M.H.("B"), T.H., Sh.B., N.P., Z.G., M.C., Z.M., G.M., and other unidentified perpetrators;
2. Committing a serious crime, namely Smuggling of Migrants, as part of an organised criminal group consisting of O.K., C.K., E.K., L.K., 'N.', A.B., A.C., N.N., M.B., A.M., I.H., M.H.("B"), T.H., Sh.B., N.P., Z.G., M.C., Z.M., G.M., and other unidentified perpetrators; and/or
3. Actively participating in the criminal or other activities of the said organised criminal group knowing that their participation would contribute to the commission of the said serious crimes by the group; in order to obtain, directly or indirectly, a financial or other material benefit.

COUNT 2

SMUGGLING OF MIGRANTS, under Article 138 (1) of the Criminal Code of Kosovo, in co-perpetration under Article 23 of the CCK,

BECAUSE 3 February 2012 and 17 April 2012, A.B., on the territory of Kosovo, Montenegro, Croatia, Slovenia and Italy, committed the offence of Smuggling of Migrants by engaging in the smuggling of persons who are not nationals or permanent residents of the state to cross a border without complying with the requirements for legal entry, for the following migrants:

- (1) Between 5 February 2012 and 25 February 2012, smuggling Z.G., Turkish citizen, A.G., Turkish citizen, M.G., Turkish citizen, R.G., Turkish citizen, B.G., Turkish citizen, and G.K., Turkish citizen, from Croatia through Slovenia to Italy.
- (2) Between 26 February 2012 and 10 March 2012, smuggling H.K., Turkish citizen, and G.K., Kosovo citizen from Croatia through Slovenia to Italy.

(3) Between 24 February 2012 and 16 March 2012, smuggling A.B., Kosovo citizen, M.H., Kosovo citizen, R.J., Kosovo citizen and A.K., Kosovo citizen, from Kosovo through Montenegro and Croatia to Slovenia, with Italy as the intended destination.

(4) Between 17 March 2012 and 28 March 2012, smuggling B. (last name known), and two other migrants from Kosovo through Montenegro and Croatia and into Slovenia, with Italy as the intended destination.

AFTER having held the Main Trial sessions in open court on 28 and 30 October 2013, in the presence of the Accused A.B., his Defence Counsel H.K. and in the presence of EULEX Special Prosecutor Alister Cumming of the Special Prosecution Office of Kosovo and after deliberation and voting held on 30 October 2013,

PURSUANT to Article 359 of the Criminal Procedure Code² (hereinafter “CPC”) on this 30th day of October 2013, in open court and in the presence of the Accused, his Defence Counsel and the EULEX Special Prosecutor, the Court renders and announces the following

JUDGMENT

A.B., with personal details above, in detention since 17 April 2012 is found as follows:

Pursuant to Article 363 paragraph 1 (1.1) of the CPC,

² Criminal No. 04/L-123

Count 1: **REJECTED** because the prosecutor withdrew the charge during the main trial;

Further, pursuant to Article 365 of the CPC,

Count 2: **GUILTY** of Smuggling of Migrants under Article 138 paragraph 1 of the Criminal Code of Kosovo (hereinafter “CCK”), in co-perpetration under Article 23 of the CCK.

BECAUSE the Accused, A.B., engaged in the smuggling of migrants, mostly of Turkish origin, from Kosovo to Croatia and Slovenia and onwards to their final destination in Italy and other EU countries, including Hungary, Austria, Germany, and other countries in Western Europe. Specifically:

1. Between 5 February 2012 and 25 February 2012, A.B. smuggled a group of six Turkish migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as Z.G., born 30.10.1973, A.G., born 14.7.1997, M.G., 25.8.1994, B.G., born 2.10.2008, and G.K., born 1.6.1967.

The planning of the criminal offence began on 5 February 2012, when A.B. entered into an agreement with ‘N.’, a recruiter and main organizer on a transnational level, to regularly smuggle migrants through Montenegro and Croatia into Slovenia and Italy. After this agreement, A.B. contacted other members of the criminal group from 6 to 19 February 2012 in order to get them prepared. These members included Z.G.1 in Croatia, Sh.B. in Italy, A. (last name unknown) in Kosovo, and an unidentified member of the group in Montenegro. A. would work with A.B. in Kosovo to co-ordinate the drivers and Z.G.1 would take care of transportation of the migrants in Croatia towards Slovenia, while Sh.B. would oversee their onward crossing into Italy and transportation thereafter.

The planning of the operation was further concretized on 21 February 2012, when A.B. entered into a direct agreement with L.K., a main organizer on a level above 'N.' in the same organized criminal group, to smuggle a group of six persons in the next days. These six migrants were Turkish citizens Z.G., A.G., M.G., B.G. and G.K.. L.K. informed A.B. that the migrants consisted of a family of five adults and one seven year old child. He agreed to the smuggling of these persons from Zagreb, Croatia to Italy. Other members of the wider transnational criminal group had already transported them from Turkey to Croatia, where A.B. would take over. The migrants were each charged 1,400 euros for their transportation from Croatia through Slovenia to Italy alone.

While L.K. was the direct and main contact point for A.B., the overall direction was given by her husband O.K., the leader of the criminal group. This is demonstrated by L. asking for permission from O. while talking on the phone with A.B. about the forthcoming operation. A.B. also received instructions directly from O.K. regarding the smuggling of this specific group of migrants. In particular, O.K. enquired about the drivers, the timing and modalities of the movement of the migrants and entry into the planned destination country, and where the migrants would be accommodated in Rijeka and money that would be taken from them in Croatia. C.K., the brother of O., was also involved in the smuggling arrangements from Turkey and communicated directly with A.B..

A.B.'s role was to communicate with the transporters from Croatia to Slovenia to Italy, the crucial stages of the migrants' journey, given that these were the stages that the crime was concretised by the illegal crossing of borders into EU states. In doing so, A.B. spoke with M.C.. M.C. organized the drivers directly, communicating back to A.B. frequently to gain instructions and agree money arrangements. Moreover, A.B. arranged for accommodation of the migrants in Opatija, Croatia, in the "Hotel Opatija" run by G.M., another member of the group in Croatia who also works with M.C..

In addition, A.B. was involved in the activities in Slovenia with his associate known as R.L. who contributed to the commission of the offence as a driver for the group from Slovenia to Italy.

On the evening of 23 February 2012, the migrants departed from Zagreb, Croatia to Rijeka, Croatia in two groups. Some of the group went by taxi for 350 euros from Zagreb to Rijeka, while the remainder went by bus after A.B. expressed his concern to L.K. that they would be caught if they all travelled by taxi at night. In Rijeka they were met by the drivers organized by M.C., who took them to "Hotel Opatija" run by G.M.. The migrants were made to pay 200 euros for staying one night. On 24 February 2012, A.B. discussed the final arrangements with M.C. for transportation of the migrants from Rijeka, Croatia to Slovenia and onwards to Italy. M.C. and another associate travelled to Rijeka that evening in order to be ready to transport the migrants the next morning.

On 25 February 2012, at around 05:00hrs, M.C. and another driver picked-up the migrants from Hotel Opatija. At this point, the migrants were made to hand over another 1,200 euros to the drivers (500 euro to one, 700 euro to the other). Three migrants travelled in each of the two vehicles towards the Croatian border with Slovenia. The border was in fact crossed at Starod, with the migrants entering into Slovenia illegally at some time before 11:00hrs.

Around 11:00hrs that day, the migrants were met by another driver in a Mercedes vehicle at Račice, Ilirska Bistrica region, Slovenia, who was secured by A.B. to bring them to Italy. The prior plan had been to bring them to Udine, Italy, but on the day the driver took them towards Trieste, Italy.

The migrants Z.G., A.G., M.G., B.G. and G.K., were all stopped at a police control point as they illegally crossed into Italy between 11:00 and 13:00hrs and were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

The ages and identities of the migrants' accord with the factual circumstances communicated in the intercepted calls of A.B., namely that the migrants were a family including a child. Notably, the youngest child of the group (B.G.) was only 3 years of age at the time of the events, even younger than the 7-8 years old indicated. In addition, three other children were also smuggled since R.G. was 13 years old, A.G. 14 years old and M.G. 17 years old at the time. Only two members of the group were adults (Z.G., 38, and G.K., 44).

2. Between 26 February 2012 and 10 March 2012, A.B. smuggled two migrants illegally from Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as H.K., Turkish citizen, born 4.5.1984 (then aged 27 years), and G.K., Kosovo citizen, born 2.2.1991 (then aged 21 years).

The planning of the criminal offence began on 26 February 2012, when A.B. agreed to smuggle G.K. from Kosovo to Italy. Further, on 27 February 2012, A.B. agreed with the K. brothers to transport two Turkish migrants from Zagreb, Croatia to Italy. The migrants had already been transported from Turkey to Croatia by other members of the transnational organized criminal group. On 6 March 2012, O.K. called A.B. personally, at which point it was clarified that one Turkish migrant would be going. This migrant to be smuggled was H.K.. Later that day, A.B. agreed with L.K. that H. would be transported at the same time as the migrant from Kosovo.

A.B.'s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.M., who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with Sh.B., Kosovo citizen, T.H., Kosovo citizen and H.B., Serbian citizen living in Montenegro who served as the guides and transporters. These three members of the group directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

The migrant departed from Rijeka, Croatia to Slovenia on 8 March 2012, crossing illegally into the region of Ilirska Bistrica, Slovenia by boat to the vicinity of Koper. They continued their journey towards Italy by night on 9 March 2012, in an effort to avoid the border police.

A.B. directly communicated with the migrants along the way, telling them in precise detail where to cross between Slovenia and Italy. From these communications, the illicit nature of the entry is extremely clear. For example, he instructed the migrant not to jump over a fence but to walk around it across railway tracks, since there were guard dogs. He further directed the migrants to walk through pine trees towards Italy, indicating that they were entering Italy via an illegal crossing point through the forest.

The migrants H.K., and G.K., as well as the transporters Sh.B., H.B., T.H. were all stopped at a police control point as they illegally crossed into Italy in the early hours of 10 March 2012. They were deported to Slovenia where they were arrested by the Slovenian Police in the Ilirska Bistrica region.

From intercepted communications in the aftermath of the arrests, the role of Sh.B., H.B., T.H. as transporters for the criminal group was revealed. They were housed in a camp for illegal immigrants in Croatia together with the two migrants, since their entry was also unauthorized. T.H. and G.K. were released and deported to Kosovo on 15 March 2012, while Sh.B. was released and deported on 16 March 2012. Notably, the illegal nature of their

activities in Croatia is demonstrated from A.B.'s suggestion to Sh.B. to come up with an excuse for their presence in Croatia for the Kosovo Border Police upon arrival at Pristina airport which was not true.

Photographic surveillance of A.B. by EULEX Police on 12 March 2012 further corroborates the evidence of his involvement in this smuggling operation, since he is photographed collecting T.H. and G.K. from Pristina airport.

3. Between 24 February 2012 and 16 March 2012, A.B. smuggled four migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. These migrants were identified as A.B.1., Kosovo citizen, born 25.5.1985 (age 26), M.H., Kosovo citizen, born 30.11.1980 (then aged 31), R.J., Kosovo citizen, born 15.5.1987 (then aged 24), and A.K., Kosovo citizen, born 1.11.1983 (then aged 28).

Planning of the smuggling operation began on 24 February 2012, when A.B. received a call from "V.", a member of his group in Kosovo, informing him that four migrants had been recruited (referred to as "four vehicles" in coded language) and they were ready to be transported from Kosovo abroad. Overall, A.B. reported to O.K. for the operation. The migrants were each charged 2,500 euros for their transportation from Kosovo through Montenegro, Croatia and Slovenia to Italy alone. They left this amount with I. (last name unknown) in Kosovo, as security, until their transportation into Europe was completed.

A.B.'s main role was to communicate with the transporters from Croatia to Slovenia to Italy, the stages that the crime was again concretised by the illegal crossing of borders into EU states. In doing so, A.B. discussed the activities in Croatia with M.C., who organized the drivers. A.B. also tasked G.M., who provided accommodation at "Hotel Opatija" near Rijeka, Croatia. M. and G. also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with M.H., Kosovo citizen, I.H., Kosovo citizen, H.B., Serbian citizen living in Montenegro, and R.R., Serbian citizen. I.H., H.B., and R.R. served as the guides and transporters from Kosovo onwards, while M.H. took care of arrangements on the Italian side. I.H., H.B., and R.R. directly accompanied the migrants along the journey. They also illegally entered Slovenia themselves.

In addition, A.B. discussed the activities in Montenegro, a transit country, with his associate known as "C." who contributed to the commission of the offence as a driver for the group from Montenegro to Croatia and Slovenia.

The migrants departed Kosovo for Montenegro on or around 14 March 2012. The migrants and transporters stayed with "C." in Montenegro. A.B. told "C." to ensure that the migrants each give the driver an additional 300 euros and 700 euros to another Montenegrin associate managing the transportation. In the event, the Montenegrin associate in fact took 1,000 euros from the migrants.

From Montenegro, on 15 March 2012, the migrants were driven by two Montenegrin members of the criminal group to Croatia where they were accommodated by G.M. at "Hotel Opatija", near Rijeka. At some point, they switched cars to evade the authorities. They were then taken by ship to Dubrovnik, Croatia. A.B. kept in touch with "C." and the other Montenegrin members of the criminal group along the way, providing continuous directions on the route to take, money arrangements and accommodation. The boat arrived around 09:40hrs on 16 March 2012.

From there, the migrants were taken in the direction of a border crossing in Ilirska Bistrica region, Slovenia. A new driver from Slovenia was told by A.B. to wait for the migrants the other side of the Croatia- Slovenian border. The migrants crossed the border on foot on the night of 16 March 2012 and early hours of 17 March 2012. A.B. was aware of plans for them

to go onwards to cross the border from Slovenia into Italy in the direction of Gorizia, in the Friuli Venezia Giulia region of northeast Italy.

However, the four migrants A.B., M.H., R.J., and A.K., as well as the transporters I.H., H.B., and R.R. were all caught by the Slovenian police in Ilirska Bistrica and arrested.

4. Between 17 March 2012 and 28 March 2012, A.B. smuggled three migrants illegally from Kosovo through Montenegro and Croatia into Slovenia, with Italy as the intended destination. One of the migrants was identified as B. (last name unknown), Kosovo citizen.

Planning for this smuggling operation began on 17 March 2012, when A.B. arranged with a recruiter to send a new group abroad for 2,800 euros per migrant. The recruiter informed A.B. that he had overcharged the migrants by 200 euros, but A.B. told him he could keep it for himself.

A.B.'s main role was to communicate with the transporters from Kosovo to Montenegro, Montenegro to Croatia, Croatia into Slovenia and onwards from there into Italy. The crime was concretized by the illegal crossing of the Croatia – Slovenia border and entry into Slovenia and Italy without authorization.

In carrying out the smuggling of the migrants, A.B. discussed the activities in Montenegro with an associate named and in Croatia with M.C., each of whom organized the drivers within their respective areas. A.B. also tasked G.M. and her sister, who provided accommodation at Hotel Opatija near Rijeka, Croatia. M., G. and her sister also reported to Z.M., a manager for the criminal group in Croatia.

Furthermore, A.B. worked with I.H., and Sh.B. who served as the guides and transporters

from Kosovo onwards.

On or around 04:00hrs on 22 March 2013, the three migrants departed from Kosovo to Montenegro. They arrived in Budva, Montenegro around 11:00hrs, where they were met by a member of the group in Montenegro at the bus station. They were accommodated for the night by another Montenegrin associate. The next day, they were driven to Dubrovnik, Croatia where they were met by another transporter. A.B. told his associate known as “K H.” in Montenegro to ensure that each of the migrants gave the driver 300 euro at Budva and another 100 euro each when they arrived in Dubrovnik. The group crossed the Croatia – Slovenia border on or around 27 March. Thereafter, they were to travel onwards into Italy with another driver. However, the migrants were arrested by the Slovenian Police and deported to Kosovo.

THEREFORE, by reason of the aforesaid, the Court imposes the following sentence:

Having been found guilty under Count 2 of Smuggling of Migrants under Article 138 paragraph 1 of the CCK the Accused is sentenced to a term of imprisonment of 3 (three) years.

Pursuant to Article 73 paragraph 1 of the CCK the time spent in detention from 17 April 2012 to the date hereof shall be credited towards the sentence.

Pursuant to Articles 451, 453 and 450 of the CPC the Accused shall reimburse the costs of the criminal proceedings, assessed in the sum of 100 (one hundred) Euros.

Any property claim shall be pursued through the civil courts.

This Judgment may be announced in the press and public media.

Judge Malcolm Simmons

Presiding Judge

Judge Manuel Soares

Panel Member

Judge Zejnullah Gashi

Panel Member

Valentina Gashi

Recording Officer