

# SUPREME COURT of KOSOVO

~~Supreme Court of Kosovo~~

Ap.-Kž. No. 338/2011

Prishtinë/Priština

08 November 2011

## IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo held a panel session pursuant to Article 26 paragraph (1) of the Kosovo Code of Criminal Procedure (KCCP), and Article 15.4 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (LoJ) on 08 November 2011 in the Supreme Court building in a panel composed of EULEX Judge Gerrit-Marc Sprenger as Presiding Judge, EULEX Judge Horst Proetel and Kosovo Supreme Court Judges Nesrin Lushta, Emine Mustafa and Salih Toplica as panel members

And with Mr. Holger Engelmann as Recording Clerk,

In the presence of the

Defence Counsel Av. [REDACTED] for P [REDACTED] and

Defence Counsel Av. [REDACTED] for the defendant A [REDACTED] P [REDACTED]

In the criminal case number Ap.-Kž. No. 338/2011 against the defendants:

1. P [REDACTED], born on [REDACTED] in [REDACTED], Kosovo Albanian, ID number: [REDACTED], place of residence at [REDACTED] in Gjakova/Djakovica, father's name [REDACTED] mother's maiden name [REDACTED], married, father of eight (8) children, secondary school accomplished, mechanic, owner of the hotel [REDACTED], of poor financial situation, with no previous convictions,
2. A [REDACTED] P [REDACTED] nickname 'S [REDACTED]', born on [REDACTED] in [REDACTED], Kosovo Albanian, place of residence at [REDACTED] [REDACTED] father's name [REDACTED], mother's maiden name [REDACTED] married, father of two (2) children, secondary school education, trader, former owner of the bar ' [REDACTED]', of poor financial situation, with no previous convictions,

3. V [REDACTED] D [REDACTED], born on [REDACTED] in [REDACTED], where she resides in the town [REDACTED] citizen of Moldova, last known place of residence in Kosovo at [REDACTED], Gjakova/Djakovica, father's name [REDACTED], mother's maiden name [REDACTED], primary school education, widow, mother of [REDACTED] children, waitress, of poor economic situation, with no previous convictions,

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4. E [REDACTED] P [REDACTED], born on [REDACTED] in [REDACTED], citizen of Moldova, last known place of residence in Kosovo at [REDACTED], Gjakova/Djakovica, father's name [REDACTED], mother's maiden name [REDACTED], primary school education, single, waitress, of poor financial situation, with no previous convictions, held on house detention from 29 September 2007 until 26 October 2007,

In accordance with the Verdict of the 1<sup>st</sup> Instance District Court of Pejë/Peć in the case P. No. 445/09, dated 06 April 2011 and registered with the Registry of the District Court of Pejë/Peć on the same day, **the defendants were found guilty of the following criminal offenses:**

**Under Count 1 of the Indictment:**

P [REDACTED] P [REDACTED], because in January 2007 [he] recruited the injured party L [REDACTED] C [REDACTED], having paid her travelling expenses from Moldova to Kosovo. She was deceived by P [REDACTED] P [REDACTED] into believing she was coming to Kosovo to work as a waitress. Upon her arrival she was forced by P [REDACTED] P [REDACTED] to provide sexual services to the clients of the night club 'W [REDACTED] P [REDACTED]'. L [REDACTED] C [REDACTED] was economically vulnerable and dependent upon P [REDACTED] P [REDACTED]. He had paid her travelling expenses and she was required to repay those expenses from her earnings. Those earnings included money she earned from providing sexual services to the clients of W [REDACTED] P [REDACTED]. P [REDACTED] P [REDACTED] was in a position of power vis-à-vis L [REDACTED] C [REDACTED] and he abused that power to exploit her into providing sexual services to the clients of 'W [REDACTED] P [REDACTED]'.

Therefore, he committed the criminal offence of Trafficking in Persons under Article 139 par.1 of the Criminal Code of Kosovo (CCK).

A [REDACTED] P [REDACTED], V [REDACTED] D [REDACTED] and E [REDACTED] P [REDACTED] [were] acquitted, because it was not proven that they have committed the criminal offence under Count 1 of the Indictment.

**Under Count 2 of the Indictment:**

A [REDACTED] and V [REDACTED] D [REDACTED], because from November 2006 to 07 April 2007 in Gjakova/Djakovica A [REDACTED] P [REDACTED] transferred from Kosovo to V [REDACTED] D [REDACTED] through "Western Union" funds in the amount of 3,150 €. During the same period in Gjakova/Djakovica V [REDACTED] D [REDACTED] transferred 10,900 € to

various recipients in Moldova of which the Court is sure that at least 6,000 € was transferred by V [REDACTED] D [REDACTED] on behalf of A [REDACTED] P [REDACTED]

A [REDACTED] P [REDACTED] is a criminal who is involved in at least one illegal business. The Court has looked at every possible legitimate source of his income and finds that at least 9,150 € is the proceeds of crime.

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V [REDACTED] D [REDACTED] is the girlfriend of A [REDACTED] P [REDACTED]. She worked at 'W [REDACTED] P [REDACTED]'. They told the Court they were planning on buying property together in Moldova. She knew or at least had cause to know that a proportion of the money transfers she made on his behalf was the proceeds of crime, namely prostitution.

The Court finds that A [REDACTED] P [REDACTED] in joint enterprise with V [REDACTED] D [REDACTED] transferred the sum of 6,000 € to recipients in Moldova for the purpose of concealing the source of the money, that was the proceeds of prostitution, thereby promoting the underlying criminal acts.

Therefore, they committed the criminal offence under Section 10.2 of UNMIK Regulation No. 2004/2, as amended under UNMIK Regulation No. 2006/53, in conjunction with Article 23 of PCCK.

E [REDACTED] P [REDACTED] [was] acquitted, because it has not been proven that she committed the criminal offence under Count 2 of the Indictment.

#### **Under Count 4 of the Indictment:**

P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED], because between November 2006 to 07 April 2007 at the premises of the night club 'W [REDACTED] P [REDACTED]', in [REDACTED] village, Gjakova/Djakovica Municipality, in co-perpetration, in a continuing manner knowingly recruited and organized girls including O [REDACTED] C [REDACTED] and L [REDACTED] C [REDACTED] for the purpose of prostitution. The girls were sold to the clients of 'W [REDACTED] P [REDACTED]' for sex. The premises of 'W [REDACTED] P [REDACTED]' were located within a radius of less than 350 meters from the '[REDACTED] Primary School, in [REDACTED]'

Therefore they committed the criminal offence of Facilitating Prostitution under Article 201 par. 3 in conjunction with par. 1 and 2 and in conjunction with Article 23 of PCCK;

#### **And were convicted as follows:**

P [REDACTED] P [REDACTED] for the criminal offence under Count 1 of the Indictment with four (4) years imprisonment and for the criminal offence under Count 4 of the Indictment with two (2) years imprisonment, whereas pursuant to Article 71 paragraph 1 and 2 of the CCK the 1<sup>st</sup> Instance Court has determined an aggregate punishment of five (5) years of imprisonment;

A [REDACTED] P [REDACTED] for the criminal offence under Count 2 of the Indictment with three (3) years of imprisonment and a fine of 12,000 € and for the criminal offence under Count 4 of the Indictment with two (2) years of imprisonment, whereas pursuant to Article 71 paragraph 1 and 2 of the CCK the 1<sup>st</sup> Instance Court has determined an aggregate punishment of four (4) years of imprisonment and a fine of 12,000 €;

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V [REDACTED] D [REDACTED] for the criminal offence under Count 2 of the Indictment with two (2) years of imprisonment and a fine of 6,000 €; moreover, pursuant to Article 54 paragraph 1 and 2 sub-paragraph 9 of the PCCK, the accessory punishment of Expulsion from the territory of Kosovo was imposed against her for a period of five (5) years, after the Judgment would become final.

**The Defence Counsel** of the defendant A [REDACTED] P [REDACTED], Av. [REDACTED] timely filed an appeal dated 07 August 2011 against the Verdict. It was asserted that the Verdict contains essential violations of the criminal procedure, erroneous and incomplete establishment of the factual state, violation of the Criminal Code and that the punishment imposed upon the accused was to be challenged. It was proposed to change the challenged Verdict as to acquit the defendant from all charges, as an alternative to quash the challenged Judgment and to return the case for re-trial to the first instance or – if the defendant would be found guilty also by the Supreme Court – to impose a more lenient punishment.

**The Defence Counsel** of the defendant V [REDACTED] D [REDACTED], Av. [REDACTED] timely filed an appeal dated 10 August 2011 against the Verdict as well. He also asserted that the Verdict contains essential violations of the criminal procedure, erroneous and incomplete establishment of the factual state, violation of the Criminal Code and that the punishment imposed upon the defendant was to be challenged. It was also proposed to change the challenged Verdict as to acquit the defendant from all charges.

**The defendants P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED]** each timely filed an appeal against the 1<sup>st</sup> Instance Judgment, the defendant A [REDACTED] P [REDACTED] dated 03 August 2011 and the defendant P [REDACTED] P [REDACTED] dated 06 August 2011, both of them with identical wording and content, asserting violations of the criminal law and unbalanced punishment. Therefore, each of them proposed to cancel the challenged 1<sup>st</sup> Instance Judgment and return the case to the 1<sup>st</sup> Instance for re-trial, or to change the Judgment and have a more lenient punishment imposed.

**The Special Prosecutor of Kosovo (SPRK)** dated 26 July 2011 also timely filed an appeal against the 1<sup>st</sup> Instance Judgment asserting crucial violation of the criminal procedure provisions, erroneous and incompletely established factual situation and violation of the criminal law, in particular with regards to the acquittals of E [REDACTED] P [REDACTED] in full and of A [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] regarding certain aspects of Count 1 and 2 of the Indictment. The Public Prosecutor proposed to change the 1<sup>st</sup> Instance Judgment and to find the defendants A [REDACTED] P [REDACTED] V [REDACTED]

D [REDACTED] and E [REDACTED] P [REDACTED] guilty for the criminal offense of Human Trafficking according to Article 139 paragraph 3 in relation to paragraph 1 and Article 23 of the CCK, and to find the defendant E [REDACTED] P [REDACTED] guilty for the criminal offense of Money Laundering, or to drop the challenged Verdict only in this part and return the case file to the 1<sup>st</sup> Instance for re-trial.

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Based on the written Judgment in case P. No. 445/09 of the District Court of Pejë/Peć dated 06 April 2011 (filed with the Registry of that Court on the same day), the submitted written appeals of the defendants and their respective Defence Counsels, the relevant file records and the oral submissions of the parties during the hearing session on 08 November 2011, together with an analysis of the applicable law, the Supreme Court of Kosovo, following the deliberations on 08 November 2011, hereby issues the following:

### JUDGMENT

The appeals of the defendants P [REDACTED] P [REDACTED] A [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] and the appeal of the Special Prosecutor against the judgment of the District Court of Pejë/Peć P. No. 445/2009, dated 6 April 2011, are rejected as ungrounded. The judgment is *ex officio* modified as to the legal qualification and the punishment concerning count 4 of the indictment as follows:

The defendants P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED] have committed the criminal offense of Facilitating Prostitution under Article 201 par. 1 and 2 in conjunction with Article 23 of the PCCK.

P [REDACTED] P [REDACTED] is sentenced for the criminal offense under count 4 to one (1) year and six (6) months imprisonment, resulting in an aggregate sentence of five (5) years imprisonment.

A [REDACTED] P [REDACTED] is sentenced for the criminal offense under count 4 to one (1) year and six (6) months imprisonment, resulting in an aggregate sentence of four (4) years imprisonment and a fine of 12,000 Euro.

As to the remaining parts the judgment of the first instance court is affirmed.

## REASONING

### Procedural History

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1. Indictment PP no. 37/2007, dated 17 December 2007 and filed on 02 January 2008, originally charged six (6) defendants as there are P● P●, A● P●, V● D●, E● P●, T● C● and U● K● for various criminal offences, partly conducted in co-perpetration with one or the other of the respective co-defendants. Charges were brought in particular for Trafficking in Persons pursuant to Article 139 paragraph 1 and 3 of the Criminal Code of Kosovo (hereinafter CCK), Facilitating Prostitution pursuant to Article 201 paragraphs 1, 2 and 3 of the CCK and Money Laundering pursuant to Article 11.2 of UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53, each of them in conjunction with Article 23 of the CCK.

2. On 04 February 2008 the charges against one of the defendants, T● C● for Trafficking in Persons pursuant to Article 139 paragraph 1 and 3 of the CCK and Money Laundering pursuant to Article 11.2 of UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53, each of them in conjunction with Article 23 of the CCK were separated from the proceedings at hand, since the defendant fled jurisdiction in Kosovo prior to the commencement of the first trial.

3. Confirmation hearing was held and the Indictment was confirmed on 20 February 2008.

4. In a first round, a series of main trial sessions commenced in front of the District Court of Pejë/Peć and a Judgment (P. No. 56/2008) was announced on 27 May 2008, through which the defendants P● P●, A● P●, V● D● and E● P● were found guilty of the criminal offences they were charged with, whereas the defendant U● K●, who also was charged with the criminal offence of Facilitating Prostitution pursuant to Article 201 paragraphs 1, 2 and 3 in conjunction with Article 23 of the CCK was acquitted from the charge due to lack of evidence (Article 390 paragraph 3 of the KCCP).

5. Against P● P● the District Court imposed a punishment of five (5) years of imprisonment and a fine of two thousand (2,000) €, A● P● received a punishment of six (6) years of imprisonment and a fine of 86,874 €, V● D● was sentenced with five (5) years of imprisonment and a fine of 86,874 € and E● P● received a punishment of four (4) years of imprisonment and a fine of 86,874 €.

6. While no appeal was filed against the Judgment (P. No. 56/2008) with regards to the defendant U● K●, the verdict was timely appealed by the Defence regarding all other defendants.

7. Dated 22 October and 11 November 2009 the Supreme Court of Kosovo held sessions and as a result by Ruling (Ap. No. 32/2009) partly affirmed the appeals, annulled the challenged Judgment of the District Court of Pejë/Peć, dated 27 May 2008, (P. No. 56/2008) and sent the case back to the first instance for re-trial.

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8. A new series of altogether nine (9) main trial sessions commenced in front of the 1<sup>st</sup> Instance Court on 24 November 2010, 12, 20 and 24 January, 21 and 22 February, 04 and 06 April 2011, when the latter the challenged Judgment at hand was announced.

9. During the main trial, the 1<sup>st</sup> Instance Court examined the four defendants P● P●, A● P●, V● D● and E● P● on 22 February 2011 and amongst others confronted them with their previous statements as given in front of police on 17 May and 27 July 2007 (P● P● and A● P●), on 03 May and 11 September 2007 (V● D●), and in front of the Special Prosecutor on 25 October 2007 (E● P●). Moreover, their statements as given during the first main trial in front of the Court on 22 May 2008 (P● P●) and 23 May 2008 (A● P●, V● D● and E● P●) have been considered by the 1<sup>st</sup> Instance Court in this context.

The following witnesses were questioned by the 1<sup>st</sup> Instance Court: B● V●, F● S● (12 January 2011); N● O● E● A● (02 February 2011); P● L●, M● D● and A● P● (21 February 2011).

Moreover, a high number of witness statements were read into the minutes as follows: Statements of O● C● dated 23 January, 08 April, 17 April and 10 May 2007; statements of L● C● dated 08 April and 17 April 2007, statements of N● D● dated 23 November 2007 and 20 May 2008, statement of A● B● dated 23 November 2007, statements of I● M● dated 23 November and 16 July 2007, statement of A● C● dated 15 September 2007, statements of E● H● dated 16 July, 09 April 2007 and 20 May 2008, statements of O● C● dated 03 May and 16 July 2007, statement of T● C● dated 03 May 2007, statements of M● P● dated 16 July and 08 April 2007, statement of C● S● dated 19 April 2007 and statement of A● B● dated 16 January 2007.

Numerous reports and other documents were read into the minutes as there are: Police Flash Report with case number 2007-DI-056, dated 16 January 2007; Police Officer's Report case no. 2007-DI-056, dated 17 January 2007, and drafted by Police Officer Sali Shoshi (#6257); Investigative Report on Implementation of Covert Measures of Surveillance of the Night Club 'W● P●', dated 06 February 2007 and drafted by two Police Officers, code #0001 and #0002; Police Criminal Report against P● P● and A● P● case number 2007-DI-056, dated 10 April 2007, drafted by Police Officer Sali Shoshi (#6257); Police Report on Implementing Covert Measures, dated 08 April 2007, drafted by Police Officers Enver Ademi (#2027) and Nazim Osmani (#2201); photocopies of the money used for simulated purchase, two 100 € bills and four 50 € bills, which are attached to the criminal report; photographs of the Night Club 'W● P●' from inside and outside, which are attached to the criminal report, meeting record of the school counsel expressing parents', teachers' and school counsel's dissatisfaction about opening a public house near the elementary school, which is attached to the criminal report; three CD-s (named 'time of the arrest', 'conversation with the owner'

and 'agreement with the owner of the club') containing discussions between the Police Officers executing the covert measures and P P and A P; transcript of the said CD-s; employment contract between P P as the owner of the Night Club 'W P' in and E P, dated 08 September 2006; employment contract between A P as the owner of the Night Club ' in dated 06 February 2006; extract from the registry book of the Hotel Metropol-City; documents of the Department for Registrations, Civil Status and Civil Documents; Airport Police Report dated 03 July 2007 on travelling movement of E P, T C, T F, V D and L V; tax payer status for 'D' company owned by P P; Kosovo Tax Administration Report on the tax status of the Night Clubs 'D' owned by P P and ' ' owned by A P; Business Registration Certificates of the Night Clubs 'D' owned by P P and ' ' owned by A P, forms of declaring employees of the Night Club ' ' for N M, N S and L O with the employer A P; Report of the Kosovo Cadaster Agency on the immovable property of P P; Post-Telecommunication of Kosovo report dated 19 July 2007 on the metering and interception of number from 01 January until 17 June 2007 including contents of the SMS messages sent and report dated 26 April 2007 on the metering and interception of numbers and from 01 January until 10 April 2007; bank reports of ProCredit Bank and of Raiffeisen Bank, both dated 23 May 2007, for financial disclosure of P P's account; report of KasaBank on financial disclosure of A P's account; Financial Union of Prishtinë/Priština reports dated 27 September 2007 on financial disclosure of Western Union transactions made by V D and photocopies of the forms to send money, signed by V D as well regarding transactions made by P P and A P including the list of transactions; notification of Tax Administration dated 27 January 2011 and Prosecutors Report on Transfer of Money by the defendants dated 08 February 2011.

10. Based on its findings, on 06 April 2011, the District Court announced its judgment and found the accused guilty of the criminal offences listed above regarding Counts 1, 2 and 4 of the Indictment. Consequently, the Court imposed on the accused the punishments as also specified above.

11. **The Defence Counsel** of the defendant A P, Av. timely filed an appeal dated 07 August 2011 against the Verdict and asserted as pointed out before.

12. **The Defence Counsel** of the defendant V D, Av. timely filed an appeal dated 10 August 2011 against the Verdict as well and asserted as pointed out before.

13. **The defendants P P and A P** each timely filed an appeal against the 1<sup>st</sup> Instance Judgment, the defendant A P dated 03



August 2011 and the defendant P●P● dated 06 August 2011, both of them with identical wording and content, asserting as pointed out before.

14. **The SPRK** dated 26 July 2011 also timely filed an appeal against the 1<sup>st</sup> Instance Judgment asserting as pointed out before.

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15. **The Office of the State Prosecutor of Kosovo (OSPK)** by an opinion dated 19 September 2011 supported the appeal of the SPRK and proposed to affirm the latter, but to reject the appeals of the Defence as ungrounded.

16. On 08 November 2011, the Supreme Court of Kosovo held a session pursuant to Article 410 of the KCCP.

17. The defendants P●P● and A●P● both were represented by new Defence Counsels, who had been authorized only about 15 minutes before the session was scheduled to be held. Therefore, both of them declared that they had not had any chance to get familiar with the case. Moreover, both Defence Counsels declared - each one for his client - that the defendants P●P● and A●P● would be in Prishtinë/Priština and ready to attend the session if this would be requested by the Court, but that the Defence Counsels would not have their telephone contacts in order to call them. The Defence Counsel of the defendant A●P● Av. ● proposed to have the session postponed in order to prepare his defence strategy.

18. It was moreover established that none of the defendants, who each of them had authorized a Defence Counsel and also no other Defence Counsel was present in the Court Room. Although the summonses for the defendants V●D● and E●P●, which were sent to their last known place of residence in Kosovo, have been returned as undeliverable, leading to the conclusion that both defendants in violation of their respective obligations as set up by the challenged 1<sup>st</sup> Instance Judgment have not notified the Court about their change of address, both their Defence Counsels were successfully summonsed on 27 October 2011.

19. No representative of the OSPK was present during the session, although the OSPK was duly notified.

None of the injured parties or their legal representative was present in the session, although also the legal representative of the injured parties has been duly summonsed.

20. After the proposal of the Defence Counsel of defendant A●P●, Av. ● to postpone the session was rejected by the Court, the session commenced without further problems.

21. Defence Counsel Av. ● for defendant P●P● stressed that Article 34 and 64 of the CCK would be violated and that therefore the punishment had to be re-considered.

22. Defence Counsel Av. [REDACTED] for the defendant A [REDACTED] P [REDACTED] also stressed an alleged violation of Articles 34 and 64 of the CCK by the challenged 1<sup>st</sup> Instance Judgment and moreover asserted that allegedly the criminal offence of Money Laundering was not properly assessed by the 1<sup>st</sup> Instance Court, since no expert analysis was done and the Court had not properly considered the tax payer status of the defendant A [REDACTED] P [REDACTED] as well as the fact that the defendant was supported in his business by his family, which both aspects would speak in favor of the defendant.

### FINDINGS OF THE COURT

#### **A. Authorization of the Supreme Court to hold a session:**

23. Regarding the fact that none of the defendants was present during the session except two Defence Counsels, who have been authorized very short time in advance and thus have not had a chance of getting familiarized with the case, the question needs to be discussed, whether the Supreme Court was authorized to hold the session as scheduled nevertheless. The question in particular arises on the background of the proposal of Defence Counsel [REDACTED] to postpone the session in order for him to prepare on the case and on a defence strategy.

24. Generally, the Supreme Court finds that the panel is not prevented from holding a session due to the absence of all the defendants as well as of the representative of the OSPK. Decisive in this regard is Article 410 paragraphs 1 and 4 of the KCCP, which provides that “[n]otice of the session of the panel shall be sent to the competent public prosecutor when the criminal offence is prosecuted *ex officio*, and to the accused and his or her defence counsel” (paragraph 1) and that “[i]f parties who were duly summoned to the session fail to appear, the panel shall nevertheless hold the session. If the accused failed to report a change in address or current residence, the panel may hold the session even though the accused has not been advised thereof” (paragraph 4).

25. It was established during the session that the defendants P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED] as well as all originally authorized Defence Counsels of the four defendants as known to the Court from the information given by the case file have been duly and timely notified about the time and place of the session on 27 October 2011. Only the notifications sent to the defendants V [REDACTED] D [REDACTED] and E [REDACTED] P [REDACTED] have returned with the remark ‘undeliverable’, since obviously both defendants in violation of their explicit obligation as imposed by the 1<sup>st</sup> instance judgment have moved away, but failed to report their change of address.

26. As to the authorization of the two new Defence Counsels of the defendant P [REDACTED] P [REDACTED], Av. [REDACTED] and of the defendant A [REDACTED] P [REDACTED] Av. [REDACTED] on a very short notice prior to the session, the Supreme Court of Kosovo finds that the principle of ‘Fair Trial’ as laid down in Article 6 paragraph 1 of the European Convention on Human Rights and Basic Freedoms dated 04 November 1950 (ECHR) and specified by Article 6 paragraph 3 items (b) and (c) of the ECHR is not violated by the

fact that the panel has rejected the proposal of the Defence to postpone the session in order to give the opportunity of familiarization with the case.

The said provisions of the ECHR supports the principle of 'Equality of Weapons' between prosecution and defence, which is why a fair chance for the defendant is granted to prepare his or her defence. To the latter the possibility must be given to do everything necessary in preparation of the procedure so that he or she is enabled to present all relevant arguments to the Court (*Meyer-Ladewig, Jens; Europaeische Menschenrechtskonvention – Handkommentar; 2<sup>nd</sup> Edition 2006; Article 6 margin 90*).

In the case at hand, despite the fact that both defendants knew well about the ongoing criminal proceedings against them after they had appealed the 1<sup>st</sup> instance Judgment, P [REDACTED] P [REDACTED] as well as A [REDACTED] P [REDACTED] have been duly notified about the session of the Supreme Court panel already on 27 October 2011. Even considering that they planned to change their previous Defence Counsels, there by far has been time enough to timely authorize new Defence Counsels.

The Supreme Court of Kosovo is well aware that in principle also a defence counsel must be given enough time to prepare the case. The time to be given to a defence counsel for preparation depends on the complexity of a case and needs to be assessed on a case-by-case basis. (*i.e. ECHR dated 28 June 1984 in the case of Campell and Fell vs. United Kingdom and ECHR dated 31 March 2005 in the case Mattik vs. Germany, both quoted following Meyer-Ladewig, Jens; Europaeische Menschenrechtskonvention – Handkommentar; 2<sup>nd</sup> Edition 2006; Article 6 margin 90a*).

However, in the case at hand the change of Defence Counsels on a very short notice as described before deems to be in abuse of the defendants' legal rights, arbitrarily focusing to delay the Court procedures. Therefore, the principle as quoted before is not violated in the case at hand, since both defendants have been represented by their Defense Counsels from the early beginning of the case.

## **B. Substantial violation of the provisions of the Criminal Procedure**

### **I. VIOLATION OF ARTICLE 403 ITEM 12 OF THE KCCP AS STRESSED BY THE DEFENSE**

27. The Defence Counsels of defendant A [REDACTED] P [REDACTED], Av. [REDACTED] and of defendant V [REDACTED] D [REDACTED], Av. [REDACTED] both have challenged the 1<sup>st</sup> Instance Judgment for substantial violation of the criminal procedure. The enacting clause of the challenged Judgment would be incomprehensible and the Judgment would be lacking the reasons for decisive facts. In particular, they challenged that the provided reasons were unclear and significantly contradictory, confusing and inconsistent with evidence and facts established in the main session. Therefore, Article 403 item 12 of the KCCP would be violated.

28. The Supreme Court of Kosovo finds that no violation of Article 403 item 12 of the KCCP, leading to an annulment of the challenged Judgment and to the re-trial of the case can be established in the case at hand. Although both appeals in this regard are more or less unsubstantiated, it may be briefly explained that the requirements for the enacting clause of a judgment are regulated under Articles 396 paragraphs 3 and 4 as read with Article 391 of the KCCP.

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Article 396 paragraphs 3 and 4 of the KCCP stipulates as follows:

*(3) The enacting clause of the judgment shall include the personal data of the accused (Article 233 paragraph 1 of the present Code) and the decision by which the accused is pronounced guilty of the act of which he or she is accused or by which he or she is acquitted of the charge for that actor by which the charge is rejected.*

*(4) If the accused has been convicted, the enacting clause of the judgment shall contain the necessary data specified in Article 391 of the present Code, and if he or she was acquitted or the charge was rejected. The enacting clause shall contain a description of the act with which he or she was charged and the decision concerning the costs of criminal proceedings and the property claim if such claim was filed.*

Article 391 of the KCCP as referred to by Article 396 paragraph 4 of the KCCP stipulates in its paragraph 1, which is relevant in the case at hand, as follows:

*(1) In a judgment pronouncing the accused guilty the court shall state:*

- 1) The act of which he or she has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed, and facts and circumstances on which the application of pertinent provisions of criminal law depends;*
- 2) The legal designation of the act and the provisions of the criminal law applied in passing the judgment;*
- 3) The punishment imposed on the accused ...*

29. The Supreme Court of Kosovo finds that the enacting clause of the challenged Judgment contains two points of concern, which is with regards to Count 2 of the Indictment the fact that the enacting clause of the Judgment refers to “the criminal offence under Section 11.2 of UNMIK Regulation No. 2004/02” and with regards to Count 4 of the Indictment the fact that the enacting clause finds the defendants P [REDACTED] and A [REDACTED] P [REDACTED] guilty for the commission of “the criminal offence of Facilitating Prostitution under Article 201 par.3 in conjunction with par. 1 and 2 and in conjunction with Article 23 of PCCK”, whilst no decisive facts as required by Article 201 paragraph 3 of the CCK are mentioned. Both points of concern do not lead to the annulment of the challenged Judgment.

**1. Reference to a “criminal offence under Section 11.2 of UNMIK Regulation No. 2004/02”:**

30. The Supreme Court finds that the criminal offence of Money Laundering is regulated under Section 10.2 of UNMIK Regulation No. 2004/02, while Section 11 of the same Regulation talks about confiscation.

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However, at the end of the enacting clause the challenged Judgment lists the relevant provisions as violated in the case at hand, saying that “[t]herefore, pursuant the provisions of Articles [...], Section 10,2 (d), (e) of the UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53 [...] the Court imposes the following sentences:” (p.5 through 6 of the challenged Judgment in its English version).

Therefore, the Supreme Court of Kosovo considers the reference made to Section 11.2 of the respective UNMIK Regulation as clerical error. The latter also easily can be understood while reading the enacting clause as a whole.

**2. Lack of decisive facts regarding Article 201 paragraph 3 of the CCK:**

31. It is established that the enacting clause of the challenged Judgment finds the defendants P● P● and A● P● guilty for the commission of the criminal act of Facilitating Prostitution pursuant to Article 201 paragraph 3 in conjunction with paragraphs 1 and 2 of the CCK, but does not contain the decisive facts as required by paragraph 3 of the said provision.

Article 201 paragraph 3 of the CCK stipulates as follows:

*Whoever, by force, threat of force, or by holding another person in a situation of personal or economic dependency compels such a person to engage in prostitution shall be punished by imprisonment from one to eight years.*

On the contrary, the enacting clause in its relevant part reads as follows:

*“P● P● and A● P● are found guilty, because between November 2006 to 07 April 2007 at the premises of W● P●, in ● village, Gjakova Municipality, in co-perpetration, in a continuing manner knowingly recruited and organized girls including O● C● and I● C● for the purpose of prostitution. The girls were sold to the clients of W● P● for sex. The premises of W● P● were located within a radius of less than 350 meters from the ● Primary School, in ● village.*

*Therefore they committed the criminal offence of Facilitating Prostitution under Article 201 par. 3 in conjunction with par. 1 and 2 and in conjunction with Article 23 of PCCK.”* (p.5 of the challenged Judgment in its English version).

No reference is made to any force, threat of force or holding the victims in a situation of personal or economic dependency in order to compel them to engage in prostitution.

Although the Supreme Court of Kosovo realizes that the reasoning of the 1<sup>st</sup> Instance Judgment contains numerous indications regarding the limitation of freedom of movement as implemented to O● C● and I● C● by defendant P● P● as well as that they feared him and that they both have been economically dependent from the defendants who allegedly had paid their travelling expenses from Moldova to Kosovo and asked them to pay back from their earnings, all this is not reflected in the enacting clause. This weakness cannot be compensated either by reading the reasoning instead.

However, the Supreme Court finds that the enacting clause in this regard can be modified in that the reference to Article 201 paragraph 3 of the CCK is taken out, but that there is no need for the annulment of the Judgment.

32. As to the remaining part, the Supreme Court of Kosovo finds that the enacting clause of the challenged Judgment meets all requirements as listed above. Regarding the personal data as required by Articles 396 paragraph 3 as read with Article 233 paragraph 1 of the KCCP, the challenged Judgment is very precise about all four defendants.

The only information missing is the ID number of each of the defendants, which the latter underlies the purpose to make the identity of the defendants sure beyond all doubts. Since this question was not disputed at any stage of the proceedings, the lack of ID numbers cannot lead to the annulment of the challenged Judgment.

The 1<sup>st</sup> Instance Judgment moreover clearly states on the guilt of each of the defendants P● P●, A● P● and V● D● and makes undisputable reference to the acts they were found guilty for in accordance with the Indictment, as required by Article 396 paragraph 3 of the KCCP. (Even regarding the defendant E● P●, who was acquitted from the charge against her, the enacting clause of the challenged Judgment – also in compliance with Article 396 paragraph 3 of the KCCP – clearly states that and from which charge she was acquitted).

The enacting clause moreover is in full compliance with Article 396 paragraph 4 as read with Article 391 of the KCCP, since regarding the defendants P● P●, A● P● and V● D● who have been found guilty and were sentenced, the acts of which they were found guilty as well as the facts and circumstances indicating the criminal nature of the committed acts and the decisive facts and circumstances on which the application of pertinent provisions of criminal law depends are properly elaborated on the challenged enacting clause. Also the legal designation of the respective criminal acts and the provisions of the criminal law applied are correctly referred to.

## II. VIOLATION OF ARTICLE 403 ITEM 12 OF THE KCCP AS STRESSED BY THE PROSECUTION

33. The SPRK has challenged the 1<sup>st</sup> Instance Judgment because in the acquitting part of the Verdict, Count 1 of the enacting clause, the Court had not stated the reasons in relation to the decisive facts. Moreover, there would be “*significant contrasts between what was stated in the reasoning of the Judgment and the contents of the record regarding the statement that was given during the procedure*”. Therefore, Article 403 item 12 of the KCCP would be violated.

34. The Supreme Court of Kosovo finds that the allegations of the Prosecution in this regard are without merits and ungrounded.

35. As per Count 1 of the enacting clause of the challenged Judgment on Aggravated Trafficking in Persons in co-perpetration under Article 139 paragraph 1 and Article 23 of the CCK, reference is made to p.3 of the challenged Judgment (*in its English version*). There it is stated:

“Under Count 1

P●P●

Is

**GUILTY**

*Because:*

*In January 2007 P● P● recruited the injured party L● C● having paid her travelling expenses to travel from Moldova to Kosovo. She was deceived by P● P● into believing she was coming to Kosovo to work as a waitress. Upon her arrival she was forced by P● P● to provide sexual services to the clients of “W● P●”. L● C● was economical vulnerable and dependent from P● P●. He had paid her travelling expenses and she was required to repay those expenses from her earnings. Those earnings included money she earned from providing sexual services to the clients of W● P● P● P● was in a position of power vis-à-vis L● C● and he abused that power to exploit her into providing sexual services to the clients of W● P●.*

*Therefore, he committed the criminal offence of Trafficking in Persons under Article 139 par.1 of the Criminal Code of Kosovo*

A● P● V● D● and E● P●

Are

## ACQUITTED

*Because it was not proven that they have committed the criminal offence under Count 1 of the Indictment” (p. 3 of the challenged Judgment in its English version).*

36. The Supreme Court of Kosovo finds that the challenged Judgment makes clear reference to Count 1 of the Indictment, which stipulates as follows:

*“The defendants P● P● and A● P● in co-perpatration with V● D● E● P● and T● C● throughout the years 2006-2007, have organized a group of people to commit the offence of engaging in trafficking in persons, to wit: they recruited, transported, sheltered and received women from Moldova by means of coercion, including fraud, deception and threat, in order to sexually exploit the said women as sex workers at Club “●” and “W● P●” in Gjakova, where the defendants V● D●, E● P● and T● C● have supported recruitment of new victims from Moldova to Kosovo, by sending the victims working contracts and money for their flying tickets to Kosova”.*

After it is stated in the challenged enacting clause that the defendant P● P● was found guilty of the criminal offence under Count 1 of the Indictment, the 1<sup>st</sup> Instance Court beyond all reasonable doubts and without creating any misunderstanding in this regard has stated on the acquittal of the other defendants (except T● C● who had fled jurisdiction in Kosovo and therefore her case is processed separately) from the respective Count 1 of the Indictment. After the 1<sup>st</sup> Instance Court has made clear reference to the decisive facts of Count 1 of the Indictment with regards to the contributions of P● P●, the Supreme Court does not see any needs for the 1<sup>st</sup> Instance Court to repeat the factual situation again just for pure formalistic reasons but not even half a page later.

37. As per the allegation of the SPRK that there would be “significant contrasts between what was stated in the reasoning of the Judgment and the contents of the record regarding the statement that was given during the procedure”, reference is made to p. 45 through 55 of the challenged Judgment (*in its English version*). It is understood that the there mentioned ‘Second, Third and Fourth Defendants’ are A● P● V● D● and E● H● (P●), since according to the Indictment they are listed in this order as number 2., 3. and 4. of the originally six (6) defendants.

38. Regarding the defendant A● P● the 1<sup>st</sup> Instance Court has found that “N● D● [...] denied that she was forced by the Second Defendant to have sexual intercourse with clients. O● C● [...] testified that she had not been forced by the Second Defendant to provide sexual services the customers of ●” Moreover, the Court has found “that as at 1 November 2006 the girls formerly in the employ of the Second Defendant at ● had transferred to W● P● [...] No substantive evidence was put before the Court the Second Defendant committed an offence under Article 139 of the PCKK” (p.53 through 54 of the English version of the challenged Judgment).



39. Regarding the defendant V [REDACTED] D [REDACTED] the 1<sup>st</sup> Instance Court has found that “N [REDACTED] D [REDACTED] testified that she had been persuaded by T [REDACTED] C [REDACTED] to work as a waitress in Kosovo. The Third Defendant and T [REDACTED] C [REDACTED] are sisters. [...] There was no evidence the Third Defendant through T [REDACTED] C [REDACTED] had recruited Ms. D [REDACTED]”. Moreover the Court has found that “O [REDACTED] C [REDACTED] said she had been persuaded to come to Kosovo by L [REDACTED] M [REDACTED]. Clearly there was some connection between the Third Defendant and L [REDACTED] M [REDACTED] because cash transfers in the total sum of 400 Euros were made by the Third Defendant to L [REDACTED] M [REDACTED] in April 2007. Those transfers were made after O [REDACTED] C [REDACTED] had arrived in Kosovo. Was this a payment to L [REDACTED] M [REDACTED] for recruiting O [REDACTED] C [REDACTED]? No evidence was put before the Court that the Third Defendant through L [REDACTED] M [REDACTED] had recruited Ms. C [REDACTED] L [REDACTED] C [REDACTED] testified that she had been persuaded by T [REDACTED] C [REDACTED] to work as a waitress in Kosovo. It was the Prosecution case that on 1 and 2 February 2007 the Third Defendant made two transfers in the total sum of 1,200 Euros which sum was intended to pay their respective travelling expenses. However, the Court finds that L [REDACTED] C [REDACTED] arrived in Kosovo in January 2007 – before the relevant transfers. [...] in the six months prior to L [REDACTED] C [REDACTED] arrival in Kosovo the Third Defendant made two transfers through Western Union to T [REDACTED] C [REDACTED] in the total sum of 3,500 Euros. Indeed, C [REDACTED] testified it was the First Defendant who paid her travelling expenses. The First Defendant denied he had asked the Third Defendant to transfer money on his behalf. No evidence was put before the Court that the Third Defendant through T [REDACTED] C [REDACTED] had recruited L [REDACTED] C [REDACTED]” (p.54 through 55 of the English version of the challenged Judgment).

40. As per the defendant E [REDACTED] P [REDACTED] reference is made to p. 55 of the challenged Judgment in its English version. The 1<sup>st</sup> Instance Court found that “O [REDACTED] C [REDACTED] and L [REDACTED] C [REDACTED] gave evidence that they had been persuaded to come to Kosovo by L [REDACTED] M [REDACTED] and T [REDACTED] C [REDACTED] respectively. No evidence was put before the Court that the Fourth Defendant had made money transfers to either L [REDACTED] M [REDACTED] or T [REDACTED] C [REDACTED]. Indeed, no evidence was put before the Court that the Fourth Defendant either personally or as part of an organized group had been engaged in trafficking either O [REDACTED] C [REDACTED] or L [REDACTED] C [REDACTED]. [...] No substantial evidence was put before the Court that the Fourth Defendant either alone or in co-perpetration had committed an offence under Article 139 of the PCCK” (p.55 of the English version of the challenged Judgment).

The Supreme Court has made long elaboration on the issue as addressed by the SPRK in the regards at hand in order to make clear that the enacting clause of the challenged Judgment is properly based upon a full-fledged and logical reasoning and that no violation of Article 403 item 12 of the KCCP can be established in the case at hand.

41. As per the the SPRK stressing that “significant contrasts between what was stated in the reasoning of the Judgment and the contents of the record regarding the statement that was given during the procedure” would exist, the Supreme Court finds that this allegation is not substantiated at all and therefore cannot be analyzed in the context given.

No hints are given regarding the kind of evidence and regarding the part of procedure referred to.

### C. Erroneous and incomplete determination of the factual situation

#### I. ERRONEOUS AND INCOMPLETE ESTABLISHMENT OF FACTS IN FAVOR OF THE DEFENDANTS AS FOUND GUILTY

42. The Defense Counsels of defendant A [REDACTED] P [REDACTED] Av. [REDACTED] and of defendant V [REDACTED] D [REDACTED], Av. [REDACTED], both in particular have challenged the 1<sup>st</sup> Instance Judgment, since the establishment of the factual situation as carried out by the District Court would be erroneous and incomplete. Regarding the charges on Trafficking in Persons and Money Laundering, the 1<sup>st</sup> Instance Court had not properly assessed that uncontestedly A [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] had a close intimate relationship and as a part of their life planning would be willing to invest in Moldova. Therefore, all money transferred would be clean money. The Court moreover had not properly considered the statements of several witnesses of the Defense. Finally, as to the charges regarding Facilitation of Prostitution the 1<sup>st</sup> Instance Court had not properly assessed that uncontestedly also E [REDACTED] H [REDACTED] (P [REDACTED]) and the acquitted U [REDACTED] K [REDACTED] had had an intimate love relationship. The two witnesses of the Prosecution, Police Officers Nazim Osmani and Enver Ademi, had provided unclear statements.

43. The Supreme Court of Kosovo finds that 1<sup>st</sup> Instance Court has thoroughly assessed all evidence available in the case at hand. Reference is made to the long list of evidence as provided at p. 10 through 12 of the challenged Judgment (*in the English version*) and repeated at p. 8 and 9 of the Supreme Court Judgment at hand.

In particular, the 1<sup>st</sup> Instance Court has carefully analyzed all witness statements and paid particular attention to all relevant aspects of their statements for the case at hand. Reference is made to p. 13 through 32 of the challenged Judgment (*in its English version*). After the four defendants had been interrogated, which the latter is reflected at p. 32 through 44 of the challenged Judgment (*in its English version*), the Court has evaluated the evidence in a very detailed manner and with reference to each of the Counts of the Indictment, which is laid down at p. 44 through 72 of the challenged Judgment (*in its English version*).

Although the Judgment does not explicitly elaborate on the credibility of statements and reliability of witnesses, all relevant witness statements are set in relation with each other and corroborate each other.

44. **As per Count 1 of the Indictment**, which is on Aggravated Trafficking in Persons in co-perpetration under Article 139 paragraph 1 and Article 23 of the CCK and which the defendant P [REDACTED] was found guilty for, the reasons of the Judgment are provided at p.45 through 55 of the challenged Judgment (*in its English version*). The 1<sup>st</sup> Instance Court has assessed in particular the statements of the defendant E [REDACTED] H [REDACTED] (P [REDACTED]),

who was a victim as well together with the witnesses O●C●, L●C● (who both during the period in question had been employees of the first defendant P● and also N●D● (who the latter was employed by the second defendant A●P● and set their statements in relation with each other. The Court found that in particular both witnesses, O●C● and L●C● have stated that the girls in the bar 'W●P●' were allowed or "...did not dare to go out" and leave to the streets only with the permission of defendant P●P●, who "... was the boss" (p.48 and 49 of the English version of the challenged Judgment). The Court also found that particularly witness L●C● has stated that "... if I knew I would have to do other things besides being a waitress I wouldn't have come to Kosovo" and that "[i]t was always against our will" (p.50 of the challenged Judgment in its English version). Although witness L●C● also has stated that she "... voluntarily agreed because it was in [her] interest" (p.51 of the challenged Judgment in its English version), a situation also O●C● was in, according to her statement, the Court found that "the consent of a victim of trafficking in persons to the intended exploitation is irrelevant" and that both witnesses finally have consented because they were economically vulnerable and otherwise would have been sent back to Moldova (p.49 of the challenged Judgment in its English version). Both witnesses have stated that the defendant P●P● had paid their trip tickets to Kosovo and that they were supposed to pay him back from their earnings.

45. **As per Count 4 of the Indictment**, which is on Facilitating Prostitution under Article 201 paragraph 1, 2 and 3 as read with Article 23 of the CCK and which the defendants A●P● and P●P● have been found guilty for, the reasons of the Judgment are provided at p. 55 through 64 of the challenged Judgment (*in its English version*). In this context the corroboration of evidence as assessed by the 1<sup>st</sup> Instance Court for example becomes clear while analyzing the statements of defendant E●H● (P●), who has stated that she got extra payment of 50 € for sexual services and that P●P● as the owner of the bar would have got another 50 € (p.56 through 57 of the English version), while Police Officer Enver Ademi has stated that "[t]he owner informed us that for one waitress the fee was 100 €" (p. 63 of the English version). This in addition was corroborated by the photocopies of the money used for simulated purchase and two 100 € bills and four 50 € bills as attached to the criminal report, which the latter was read into the minutes according to point 6 of the listed evidence (p.11 of the English version of the challenged Judgment).

46. **As per Count 2 of the Indictment**, which is on Money Laundering under Section 10.2 of UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53 as read with Article 23 of the CCK and which the defendants A●P● and V●D● have been found guilty for, the reasons of the Judgment are provided at p.65 through 72 of the challenged Judgment (*in its English version*). The 1<sup>st</sup> Instance Court has assessed in detail the tax declarations of the second defendant A●P● from the years 2005 and 2006, the value of the bar '●' at the time of its turnover in the period 3/2006, which was declared to be 1,132 €, the money transfers and withdrawals with regards to the bank account of the defendant A●P● at KasaBank and through Western Union. Recipients of money transactions to

Moldova, amongst whom also T [REDACTED] C [REDACTED] and A [REDACTED] C [REDACTED] have been, were identified as well. The analysis, which can be looked up at p. 67 through 71 of the challenged Judgment (*in its English version*) was made based on the bank report as read into the minutes according to the list of evidence as provided at p. 12 through 13 of the challenged Judgment (*in its English version*), which the latter was corroborated by SMS protocols and assessed on the background of the statements of the defendants as given in front of the Court.

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## II. ERRONEOUS AND INCOMPLETE ESTABLISHMENT OF FACTS AS CONSIDERED BY PROSECUTION REGARDING THE ACQUITTALS

47. The SPRK has stressed that the factual situation regarding several contributions to criminal acts from the sides of A [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] as well as regarding the contributions of E [REDACTED] P [REDACTED], which have led to partial and full acquittal of the defendants, had been erroneously and incompletely established by the Court. In particular, the Court had not properly assessed the statements of Police Officers Enver Ademi and Nazmi Osmani as recorded on 02 May 2007, according to which both witnesses beyond all reasonable doubts had identified P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED] on 07 April 2007 in the context of the events in the W [REDACTED] P [REDACTED] hotel. Moreover, one of the registered 50 € banknotes with serial number X11477267624 had been found afterwards in a wallet in the apartment where V [REDACTED] D [REDACTED] was living. Finally, the Court had not properly considered that according to the statement in particular of witness N [REDACTED] D [REDACTED] the girls were brought to Kosovo by E [REDACTED] P [REDACTED] and T [REDACTED] C [REDACTED] and that also E [REDACTED] P [REDACTED] – as well as V [REDACTED] D [REDACTED] – have transferred higher amounts of money from Kosovo to Moldova through Western Union, under number 131 on 05 June 2007 and under number 196 on 27 September 2007.

48. The Supreme Court of Kosovo finds that the allegations of the SPRK are without merits and therefore ungrounded.

Despite that the intent of the SPRK is unclear when challenging the assessment of the witness statements of Police Officers Enver Ademi and Nazim Osmani, since these statements are relevant particularly with regards to Count 4 of the Indictment on Facilitating Prostitution, which the charged defendants have been found guilty for, the Supreme Court has established that the evidence was properly assessed. Reference is made in particular to 25 through 31 of the challenged Judgment (*in its English version*), where both statements have been thoroughly analyzed.

The same refers to the finding of a 50 € banknote with serial number in a wallet in the apartment where V [REDACTED] D [REDACTED] was living. Despite that V [REDACTED] D [REDACTED] was never charged with Count 4 of the Indictment it needs to be established again that the handing over of money by the Police Officers to A [REDACTED] P [REDACTED] never was questionable, the mere finding of a wallet containing such banknote in a room where

V [REDACTED] D [REDACTED] was living does not necessarily lead to the closing of a chain of custody to the detriment of the latter.

As per the alleged involvement of E [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] into issues of Trafficking in Persons and Money Laundering as stressed by the SPRK in the context at hand, reference is made to what was elaborated already before under point A. at p.13 through 14 of the Judgment at hand.

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49. Generally it needs to be stressed as already referred to in many other decisions before, as there are amongst others the case against J [REDACTED] K [REDACTED] (Ap.-Kz. No. 84/2009) dated 03 October 2009 or against B [REDACTED] H [REDACTED] et al. (Ap.-Kz. No. 264/2011) dated 11 October 2011, that the Supreme Court of Kosovo finds it is neither under the competence of the appeal panel nor possible in fact to replace the findings of the First Instance Court by its own, especially not without taking all the evidence again. In the case R [REDACTED], A [REDACTED] and D [REDACTED] (Supreme Court of Kosovo, AP-KZ 477/05 dated 25 January 2008, page 20), the Supreme Court of Kosovo in this context has pointed out that “*appellate proceedings in the PCPCK rest on principles that is for the trial court to hear, assess and weigh the evidence at trial [ ... ]. Therefore, the appellate court is required to give the trial court a margin of the deference in reaching its factual findings. It should not disturb the trial court’s findings to substitute its own, unless the evidence relied upon by the trial court could not have been accepted by any reasonable tribunal of factor where its evaluation has been ‘wholly erroneous’*”.

#### **D. Substantial violation of the Criminal Law**

50. Both aforementioned Defence Counsels as well as the defendants P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED] have stressed that the challenged Judgment would violate the criminal law as well, since the defendants had been found guilty although the factual situation was not properly established.

51. Since it was found before that no erroneous or incomplete evaluation of the factual situation could be established in the case at hand, the Supreme Court of Kosovo moreover finds that also no violation of the criminal law as a pure consequence of an improper evaluation of facts can be established here.

#### **E. Decision on the punishment**

52. Both Defense Counsels as well as the defendants P [REDACTED] P [REDACTED] and A [REDACTED] P [REDACTED] have stressed that the punishment imposed would be unjust and that – if not the defendants need to be acquitted from all charges – at least a more lenient punishment has to be established.

### 1. *Reformatio in pejus*:

53. Although not challenged by the defendants and the aforementioned Defence Counsels, it needs to be stressed ahead of further elaborations in the context at hand that no violation of the principle of restriction of *reformatio in pejus* by the challenged Judgment was found. The Supreme Court has considered the issue on the background of the fact that the first Verdict of the District Court of Pejë/Peć (P. no. 56/2008), dated 27 May 2008 in the case at hand has found the defendants P● P●, A● P●, V● D● and E● P● guilty for the Counts the Indictment has charged them with and has sentenced P● P● with imprisonment of five (5) years and a fine of two thousand (2,000) €, A● P● with six (6) years imprisonment and a fine of 86,874 €, V● D● with imprisonment of five (5) years and a fine of 86,874 € and E● P● with four (4) years imprisonment a fine of 86,874 €.

Since only the defendants and their Defence Counsels had appealed the Verdict of the first main trial but not the Prosecution, the Supreme Court finds that the appeals in favor of the defendants cannot lead to a more severe punishment, even after the Supreme Court by Ruling Ap. No. 32/2009 dated 10 November 2009 has annulled the first Verdict of the District Court of Pejë/Peć and sent the case back to the first instance for re-trial.

However, the challenged 1<sup>st</sup> Instance Judgment, while acquitting the defendant E● P● from the charge against her, has found the defendants P● P●, A● P● and V● D● guilty as pointed out before and has sentenced P● P● with an aggregate sentence of imprisonment of five (5) years, but without imposing any fine against him, A● P● with an aggregate imprisonment sentence of four (4) years and a fine of twelve thousand (12,000) € and V● D● with imprisonment of two (2) years and a fine of six thousand (6,000) €.

54. Therefore the Supreme Court finds that all sentences are clearly below the punishments as imposed by the first Verdict of the District Court of Pejë/Peć (P. no. 56/2008) dated 27 May 2008, so that the principle of restriction of *reformatio in pejus* is not violated here.

### 2. Lawfulness and fairness of the decision on punishment:

55. The Supreme Court finds that the decision on punishment needs to be partially reconsidered and amended regarding the defendants P● P● and A● P●, considering that the part of the enacting clause of the challenged Judgment finding them guilty for the commission of Facilitating Prostitution pursuant Article 201 paragraph 3 of the CCK has been removed.

56. Regarding both the defendants P● P● and A● P● the 1<sup>st</sup> Instance Court has imposed for the criminal offense under Count 4 of the Indictment,

which is on Facilitating Prostitution under Article 201 paragraph 1, 2 and 3 as read with Article 23 of the CCK, a separate punishment of two (2) years of imprisonment against each of the defendants.

The Supreme Court finds that this separate punishment cannot be upheld anymore, after the guilt of both defendants for the commission of Facilitating Prostitution under Article 201 paragraph 3 of the CCK had to be removed from the enacting clause due to the lack of mentioning the respective decisive facts of that provision. Therefore, the separate punishment for the commission of the criminal offence of Facilitating Prostitution pursuant to Article 201 paragraphs 1 and 2 of the CCK needs to be reduced to one (1) year and six (6) months for each of the two defendants.

**57. Regarding the defendant P●P●** the 1<sup>st</sup> Instance Court has imposed for the criminal offence under Count 1 of the Indictment, which is on Aggravated Trafficking in Persons in co-perpetration under Article 139 paragraph 1 and Article 23 of the CCK, a separate punishment of four (4) years of imprisonment.

Based on the two separate punishments as mentioned before, a new aggregate punishment needs to be imposed against the defendant, according to Article 71, paragraphs 1 and 2, item (2) of the KCCP. However, the Supreme Court of Kosovo considers an aggregate punishment of five (5) years of imprisonment as it was originally imposed by the 1<sup>st</sup> Instance Court as still appropriate, considering the intensity and criminal relevance of the acts committed. This is also covered by the law, taking into consideration the punishment frames as opened by Article 201 paragraph 1 (imprisonment up to three (3) years) and paragraph 2 (imprisonment from six (6) months up to five (5) years) of the CCK and of Article 139 paragraph 1 (imprisonment from two (2) to twelve (12) years) of the CCK.

**58. With regards to the defendant A●● P●●** the 1<sup>st</sup> Instance Court has imposed for the criminal offence under Count 2 of the Indictment, which is on Money Laundering under Section 10.2 of UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53 as read with Article 23 of the CCK a separate imprisonment of three (3) years.

Based on the two separate punishments as mentioned before, a new aggregate punishment of altogether needs to be imposed against the defendant. However, the Supreme Court of Kosovo considers an aggregate punishment of four (4) years of imprisonment according to Article 71, paragraphs 1 and 2, item (2) of the KCCP as still appropriate, considering the intensity and criminal relevance of the acts committed. This is also covered by the law, taking into consideration the punishment frames as opened by Article 201 paragraph 1 (imprisonment up to three (3) years) and paragraph 2 (imprisonment from six (6) months up to five (5) years) of the CCK and of Section 10.2 of UNMIK Regulation 2004/02 as amended by UNMIK Regulation 2006/53 (imprisonment of up to ten (10) years and a fine of up to three times of the value of the property, which is the subject of the criminal offence).

59. In its remaining parts, the decision on punishment as met by the 1<sup>st</sup> Instance Court deems lawful as well as fair. Reference is made to the punishments imposed as pointed out before. The 1<sup>st</sup> Instance Court has decided in accordance with the framework of possible punishments given by the relevant laws.

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60. **With regards to the defendant V [REDACTED] D [REDACTED]** the 1<sup>st</sup> Instance Court has imposed for the criminal offence under Count 2 of the Indictment on Money Laundering under Section 11.2 of UNMIK Regulation No. 2004/02 as amended by UNMIK Regulation No. 2006/53 as read with Article 23 of the CCK imprisonment of two (2) years.

61. Also the additional fines imposed against A [REDACTED] P [REDACTED] and V [REDACTED] D [REDACTED] in the context of commission of the criminal offence of Money Laundering both are not in contradiction with the law. Section 10.2 of UNMIK Regulation 2004/02 as amended by UNMIK Regulation 2006/53 provides for the criminal offence a possible punishment of “... *imprisonment of up to ten years and a fine of up to three times the value of the property which is the subject of the criminal offence*”. The Supreme Court therefore finds that the fines are within the legal frame of the law.

62. The Supreme Court of Kosovo in total considers that the 1<sup>st</sup> Instance Court correctly and completely has taken into consideration all the circumstances that influence in severity of punishment and has fairly evaluated those circumstances. Therefore, no reason can be seen to lower the punishment. Taking also into consideration the level of social risk of the commission of criminal offenses as well as the level of responsibility of the defendants, the latter are well served with the sentences as imposed.

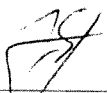
For the foregoing reasons the Supreme Court decided as in the enacting clause.

**SUPREME COURT OF KOSOVO**  
**AP.-KŽ. No. 338/2011**  
**08 November 2011**  
**Prishtinë/Priština**

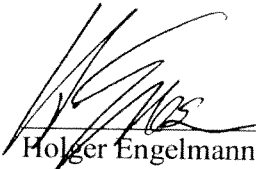


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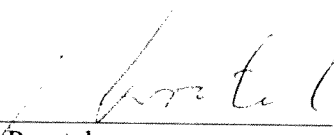
**Presiding Judge:**

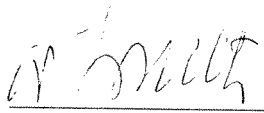
  
\_\_\_\_\_  
Gerrit-Marc Sprenger  
EULEX Judge

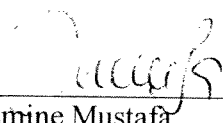
**Recording Clerk:**

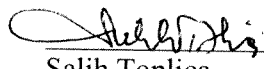
  
\_\_\_\_\_  
Holger Engelmann  
EULEX Legal Officer

**Members of the panel:**

  
\_\_\_\_\_  
Horst Proetel  
EULEX Judge

  
\_\_\_\_\_  
Nesrin Lushta  
Supreme Court Judge

  
\_\_\_\_\_  
Emine Mustafa  
Supreme Court Judge

  
\_\_\_\_\_  
Salih Toplica  
Supreme Court Judge