

BASIC COURT OF PEJË/PEĆ
P.nr. 38/12
Dt. 23 January 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 Pejë/Peć, in the trial panel composed of the EULEX Judge Dariusz Sielicki as Presiding Judge, the EULEX Judge Malcolm Simmons and the Kosovo Judge Shaban Shala as panel members, assisted by the Recording Officer Nexhmije Mezini, in the criminal case against the accused:

1. **B. N.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in detention since the date of his arrest on 10 June 2011 until 01 June 2012 when he was released on bail,
2. **N. B.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in detention since the date of his arrest on 10 June 2011 until 01 June 2012 when he was released on bail,
3. **B. B.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in detention since the date of his arrest on 10 June 2011 until 01 June 2012 when he was released on bail,
4. **A. B.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in detention since the date of his arrest on 13 June 2011 until 29 May 2012 when he was released into house detention which was terminated on 20 November 2012,
5. **A. By.** son of father xxx, born on xxx in xxx in xxx, national of the Republic of Kosovo, in detention since the date of his arrest on 11 June 2011 until 29 May 2012 when he was released into house detention which was terminated on 20 November 2012,
6. **M. B.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in

detention since the date of his arrest on 11 June 2011 until 31 May 2012 when he was released on bail,

7. **S. B.** son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo, in detention since the date of his arrest on 10 June 2011 until 29 May 2012 when he was released into house detention which was terminated on 20 November 2012,
8. **A. P.** son of father xxx, born on xxx, residing in xxx, resident of the Republic of Kosovo
9. **Z. Z.** aka "Z", son of father xxx, born on xxx in xxx, residing in xxx, resident of the Republic of Kosovo

charged with the Indictment of the Special Prosecution Office of Kosovo (SPRK) PPS.no.11/11, dated 28 October 2011 with the following act:

that since an undetermined date until 10 June 2011, acting in a structured group, with the intent to obtain material benefit and by endangering the lives and safety of migrants, they have smuggled citizens of the republic of Kosovo, in such a way that they found migrants interested to go to various European countries, they agreed a price the migrants had to pay, the price being in the amount of 1500 Euro up to 3000 Euro per person and then the same migrants were sent illegally, through various people in Serbia, some of them through Serbia and Hungary and some of them through Montenegro, Croatia and Slovenia, to various European countries, amongst these migrants were E. I., B. Th., S. B., F. F., I. V., A. K., A. M., I. H., I. P., L. C., B. A., A. Th., P. V., Z. H., S. V., B. V., M. H. as well as other unidentified migrants,

which said actions were classified as the following criminal offences:

- Organized Crime, under Article 274 paragraph 2 in conjunction with Article 23 of the Criminal Code of Kosovo (CCK), because they have actively participated in the criminal activities or other activities of an organized criminal group, knowing that their participation will contribute to the commission of serious crimes by the organized criminal group;

- Smuggling of Migrants, under Article 138 paragraph 6, in conjunction with Article 23 of the CCK, since the criminal offence was committed in such a way that it endangered the lives and safety of the migrants,

having held the main trial hearings in public on 10, 23, 24, 29 and 31 May 2012, 24 and 25 July 2012, 6, 8, 14, 15 and 20 November 2012 and on 22 and 23 January 2013 in the presence of:

- the accused B. N. and his defense counsel G. K.,
 - the accused N. B. and his defense counsel L. H.,
 - the accused B. B. and his defense counsel Xh. R.,
 - the accused A. B. and his defense counsel F. K.,
 - the accused A. By. and his defense counsel I. H.,
 - the accused M. B. and his defense counsel Mr. B.T.,
 - the accused S. B. and his defense counsel Mr. M. H.,
 - the accused A. P. and his defense counsels B. E. and S. Z.
 - the accused Z. Z. and his defense counsel Mr. E. A.,
- after the trial panel deliberation and voting held on 23 January 2013, based on Article 391 Paragraph 1 of the Kosovo Code of Criminal Procedure of 6 November 2008 (KCCP);

on 23 January 2013, pursuant to Article 392 Paragraph 1 of the KCCP, pronounces in public, the following

V E R D I C T

I. **B.K.** is guilty because:

between 01 June 2011 and 10 June 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1800 he smuggled B.Th., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Republic of Austria by arranging for him transportation by bus and facilitating for him in an undetermined way his entry into the Schengen Area without complying with the necessary requirements for

legal entry through the border between Serbia and the Schengen Area,

by which B.K. committed the criminal offence of Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the Criminal Code of the Republic of Kosovo of 20 April 2012 (CCRK);

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1 of the CCRK to 2 (two) years imprisonment and a fine in the amount of Euro 3000 (three thousand).

II. **N.B.** is guilty because:

1. between 1 January 2011 and April 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 5400 smuggled P.V., B. V. and Z. H., nationals of the Republic of Kosovo, who were not permanent residents or citizens of any Schengen Area state from the territory of the Republic of Kosovo to the territory of Hungary by arranging for them transportation by bus to the Republic of Serbia from where they went on foot across the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area;
2. in April 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 2200 he smuggled S.V., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Republic of Austria by arranging for him transportation by bus to Serbia from where he went on foot through the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area and then was transported by truck to the territory of the Republic of Austria;

3. on 10 June 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 4000 he attempted to smuggle S.B. and F.F., Republic of Kosovo nationals, who were not permanent residents or citizens of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Republic of Austria by providing S.B. with genuine passport No. xxx of H.K., issued by the Federal Republic of Yugoslavia, altered by an unidentified person by replacing the photograph of the legitimate holder with S.B. photograph and by providing F.F. with genuine passport No. xxx of B.Th., issued by the Federal Republic of Yugoslavia, altered by M.B. by replacing the photograph of the legitimate holder with F.F. photograph, and arranging for S.B. and F.F. transportation by bus to the Republic of Serbia from where they were supposed to go on foot through the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area and then to be transported to the territory of the Republic of Austria which was not accomplished because S.B. and F.F. were stopped by the Kosovo Police while crossing the boundary between the Republic of Kosovo and the Republic of Serbia,

by which N.B. committed in continuation as defined by Article 81 of the CCRK:

- the criminal offenses of Smuggling of Migrants contrary to Article 170 Paragraph 1 of the CCRK in relation to the criminal offences described at II.1 and II.2;
- the criminal offense of Attempted Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the CCRK and Article 28 Paragraphs 1 and 2 of the CCRK in relation to the criminal offence described at II.3,

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1 and Article 81 Paragraph 1 of the CCRK, for the criminal offences described at II.1, II.2, and II.3 to 4 (four) years

imprisonment and a fine in the amount of Euro 10 000 (ten thousand).

III. **B.B.** is guilty because:

1. In April 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1800, in co-perpetration with A.B., he smuggled A.M., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state from the territory of the Republic of Kosovo to the territory of the Republic of Austria by arranging for him transportation by bus to the Republic of Serbia from where he went on foot across the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area,
2. In March 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1650 and with the assistance of Z.Z., who paid him the above mentioned amount of money, smuggled in an undetermined manner E.I., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of the Swiss Confederation from the territory of the Republic of Kosovo to the territory of the Swiss Confederation without complying with the necessary requirements for legal entry into this country,

by which B.B. committed in continuation as defined by Article 81 of the CCRK the criminal offenses of:

- Co-perpetration in Smuggling of Migrants pursuant to Article 170 Paragraph 1 and Article 31 of the CCRK in relation to criminal offence described at III.1;
- Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the CCRK in relation to criminal offence described at III.2;

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1 and Article 81 Paragraph 1 of the CCRP, for the criminal offences described at III.1 and III.2 to 3 (three) years of

imprisonment and a fine in the amount of Euro 4000 (four thousand)

IV. A.B.is guilty because:

1. In April 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1800, in co-perpetration with B.B., he smuggled A.M., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Republic of Austria by arranging for him transportation by bus to Serbia from where he went on foot through the border with Hungary without complying with the necessary requirements for legal entry into Schengen Area,

by which A.B. committed the criminal offence of:

- Co-perpetration in Smuggling of Migrants pursuant to Article 170 Paragraph 1 and Article 31 of the CCRK.

2. In September 2010, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1100 provided M.H., a national of the Republic of Kosovo, who was not a citizen or resident of Switzerland, with a fraudulent travel document knowing that M.H. intended to use it for entry into Turkey and subsequently into Switzerland without the necessary requirements for legal entry into these states, whereas the said M.H. used the document for that purpose,

by which A.B. committed the criminal offence of:

- Smuggling of Migrants by Providing Fraudulent Travel Documents pursuant to Article 170 Paragraph 2 of the CCRK.

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1 of the CCRK, for the criminal offence described under IV.1 to 2 (two) years of

imprisonment and a fine in the amount of Euro 3000 (three thousand);

pursuant to Article 170 Paragraph 2 of the CCRK, for the criminal offence described under IV.2 to 1 (one) year of imprisonment and a fine in the amount of Euro 2000 (two thousand);

and pursuant to Article 80 Paragraph 2 subparagraph 2.2 and 2.4 of the CCRK for both of the above offences A.B. is hereby sentenced to an aggregate punishment of 2 (two) years and 6 (six) months imprisonment, and an aggregate punishment of a fine in the amount of Euro 4000 (four thousand).

V. **A.By.** is guilty because:

1. in September 2010, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 2200, and with the assistance of A.P., who had put him in contact with I.P. and who paid him the above mentioned amount of money, he smuggled I.P., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state from the territory of the Republic of Kosovo to the territory of the Republic of Serbia and then to the territory of Austria without complying with the necessary requirements for legal entry into the Schengen Area,
2. between 15 March 2011 and 15 April 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 2200 and with the assistance of A.P., who had put him in contact with L.C., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area state he smuggled L.C. from the territory of the Republic of Kosovo to the territory of the Republic of Serbia from where he went on foot to Hungary and then in an unknown manner to the territory of Austria without complying with the necessary requirements for legal entry into the Schengen Area,

by which A.By. committed in continuation as defined by Article 81 of the CCRK:

- the criminal offenses of Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the CCRK;

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1 and Article 81 Paragraph 1 of the CCRK, for the criminal offences described at V.1 and V.2 to 3 (three) years of imprisonment and a fine in the amount of Euro 4000 (four thousand).

VI. **M.B.** is guilty:

because between 1 May 2011 and 10 June 2011, in the territory of the Republic of Kosovo, he altered a public document, namely a genuine passport no. xxx B.Th., issued by the Federal Republic of Yugoslavia, by replacing with the use of a pliers the photograph of the legitimate holder with a photograph of F.F., with the intent that this document be used as genuine for crossing the boundary of Kosovo;

by which M.B. committed the criminal offence of Falsifying Documents pursuant to Article 332 Paragraph 3 of the CCK;

therefore, he is hereby

sentenced

pursuant to Article 332 Paragraph 3 of the CCK to 1 (one) years of imprisonment and pursuant to Article 54 Paragraph 1 and 2 subparagraph 1 of the CCK to a fine in the amount of Euro 1000 (one thousand).

VII. **S.B.** is guilty because:

1. In 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 3600 smuggled B.A. and another unidentified male, nationals of the Republic of Kosovo, who were not permanent residents or citizens of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Schengen Area by arranging for them transportation by bus to the Republic of Serbia from where they went on foot through the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area,

2. between 1 January 2011 and 9 June 2011, in the territory of the Republic of Kosovo, with the intention of obtaining for himself the material benefit of Euro 1600 smuggled an unidentified male named F. from K. village, who was a national of the Republic of Kosovo and was not a permanent resident or citizen of any Schengen Area state, from the territory of the Republic of Kosovo to the territory of the Schengen Area, by arranging for him transportation by bus to the Republic of Serbia from where he went on foot through the border with Hungary without complying with the necessary requirements for legal entry into the Schengen Area,

by which S.B. committed in continuation as defined by Article 81 of the CCRK:

- the criminal offenses of Smuggling of Migrants pursuant to Article 170 Paragraph 1 of the CCRK;

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1, Article 75 Paragraph 1 subparagraph 1.2 and Article 76 Paragraph 1 subparagraph 1.4, and Article 81 Paragraph 1 for the criminal offences described at VII.1 and VII.2 to 1(one) year and 6 (six) months of imprisonment and a fine in the amount of Euro 500(five hundred).

VIII. **A.P.** is guilty because:

1. in September 2010, in the territory of the Republic of Kosovo, he gave assistance to A.By. who acted with the intention to obtain for himself a material benefit of Euro 2200 by putting A.By. in contact with I.P., a national of the Republic of Kosovo, who was not a permanent resident or a citizen of any Schengen Area country and by promising A.P. to pay and subsequently paying him an amount of Euro 2200 for having smuggled I.P. from the territory of the Republic of Kosovo to the territory of the Republic of Serbia and from there to the territory of the Republic of Austria without complying with the necessary requirements for legal entry into the Schengen Area.

2. between 15 March 2011 and 15 April 2011, in the territory of the Republic of Kosovo, he gave assistance to A.By., who acted with the intention to obtain for himself a material benefit of Euro 2200, by putting A.By. in contact with L.C., a national of the Republic of Kosovo, who intended to emigrate illegally from the Republic of Kosovo, whereas A.By. smuggled L.C. who was not a permanent resident or a citizen of any Schengen Area country from the territory of the Republic of Kosovo to the territory of the Republic of Austria by arranging for him transportation by bus from the Republic of Kosovo to the territory of the Republic of Serbia from where he went on foot to Hungary and then in an unknown manner to the territory of the Republic of Austria without complying with the necessary requirements for legal entry into the Schengen Area.

by which A.P. committed in continuation as defined by Article 81 of the CCRK:

- the criminal offense of Assistance to Smuggling of Migrants pursuant to Article 170 Paragraph 1 and Article 33 Paragraph 2 of the CCRK;

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1, Article 75 Paragraph 1 subparagraph 1.2 and Article 76 Paragraph 1 subparagraph 1.4, Article 33 Paragraph 1, and Article 81 Paragraph 1 of the CCRK for the criminal offences described at VIII.1 and VIII.2 to 10 (ten) months of imprisonment and a fine in the amount of Euro 500 (five hundred);

pursuant to Article 51 Paragraph 2 and Article 52 Paragraph 2 of the CCRK the punishment of imprisonment imposed against A.P. shall not be executed if A.P. does not commit another criminal offense for the verification time of 2 (two) years.

IX. **Z.Z.** is guilty because:

in March 2011, in the territory of the Republic of Kosovo, he gave assistance to B.B., who acted with the intention to obtain for himself the material benefit of Euro 1650, by promising to pay him and subsequently

paying him an amount of Euro 1650 for having smuggled E.I., a national of the Republic of Kosovo who was not a permanent resident or a citizen of the Swiss Confederation, from the territory of the Republic of Kosovo to the territory of the Swiss Confederation without complying with the necessary requirements for legal entry into that country.

by which Z.Z. committed the criminal offence of Assistance with Smuggling of Migrants pursuant to Article 170 Paragraph 1 and Article 33 of the CCRK;

therefore, he is hereby

sentenced

pursuant to Article 170 Paragraph 1, Article 75 Paragraph 1 subparagraph 1 and Article 76 Paragraph 1 subparagraph 1.4, and Article 81 Paragraph 1 of the CCRK for the criminal offence described at IX above to 6 (six) months of imprisonment, and a fine in the amount of Euro 300 (three hundred);

pursuant to Article 51 Paragraph 2 and Article 52 Paragraph 2 of the CCRK the punishment of imprisonment imposed against Z.Z. shall not be executed if Z. Z. does not commit another criminal offense for the verification time of 1 (one) year.

- X. Pursuant to Article 46 Paragraph 2 of the CCRK the deadline for payment of the fines by the accused **B.K., N.B., B.B., A.B., A.By., S.B., A.P.** and **Z.Z. is hereby determined as 3 (three) months.**
- XI. Pursuant to Article 39 Paragraph 2 of the CCK the deadline for payment of the fine by the accused **M.B. is hereby determined as 3 (three) months.**
- XII. The accused **B.K., N.B., B.B., A.B., A.By., M.B, S.B., A.P.** and **Z.Z.**

are hereby

acquitted

of having committed Organized Crime, under Article 274 paragraph 2 in conjunction with Article 23 of the Criminal Code of Kosovo (CCK), because they have not actively participated in the criminal activities or other activities

of an organized criminal group, knowing that their participation will contribute to the commission of serious crimes by the organized criminal group.

XIII. Pursuant to 83 Paragraph 1 of the CCRK the periods of deprivation of liberty of the defendants are to be credited against the punishment of imprisonment imposed on them, respectively:

- for B.K. from 10 June 2011 until 01 June 2012,
- for N.B. from 10 June 2011 until 01 June
- for B.B. from 10 June 2011 until 01 June 2012
- for A.B. from 13 June 2011 until 20 November 2012,
- for A.By. from 11 June 2011 until 20 November 2012,
- for S.B. from 10 June 2011 until 20 November 2012.

XIV. Pursuant to Article 83 Paragraph 1 of the CCK the period of deprivation of liberty of the defendant M.B. from 11 June 2011 to 31 may 2012 is to be credited against the punishment imposed on him.

XV. Pursuant to Article 54 Paragraphs 1 and 3 sub-paragraph 7 and Article 60 Paragraph 1 of the CCK, the accessory punishment of confiscation of the pliers used in the commission of the criminal offence and currently in the possession of Kosovo Police Organized Crime Department Prishtinë/Priština Region is imposed against the defendant, M. B.

XVI. Pursuant to Article 102 paragraph 1 in conjunction with Article 99 paragraph 2, sub-paragraph 6 of the KCCP, the cost of the criminal proceedings shall be partially reimbursed by the accused as follows:

- by B.K. in the lump sum of Euro 150 (one hundred fifty),
- by N.B. in the lump sum of Euro 300(three hundred),
- by B.B. in the lump sum of Euro 200(two hundred),
- by A.B.in the lump sum of Euro 200 (two hundred),

- by A.By. in the lump sum of Euro 200 (two hundred),
- by M.B.in the lump sum of Euro 150 (one hundred fifty),
- by S.B. in the lump sum of Euro 200 (two hundred),
- by A.P. in the lump sum of Euro 30 (thirty),
- by Z. Z. in the lump sum of Euro 30 (thirty).

The remaining cost of the criminal proceedings shall be paid from the budgetary resources, pursuant to Article 102 paragraph 2 of the KCCP.

BASIC COURT OF PEJË/PEĆ
P.nr.38/12
Dated this 23rd day of January 2013

Court Recorder

Presiding Judge

Nexhmije Mezini

Dariusz Sielicki

Panel Member

Panel Member

Malcolm Simmons

Shaban Shala

Legal Remedy:

An appeal must be announced within 8 days from the announcement of this verdict and shall be filed with the court of first instance, pursuant to Article 400 paragraph 1 of the KCCP.

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.