

BASIC COURT OF MITROVICA
K.nr. 13/2010
11 October 2013

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICA, in the trial panel composed of EULEX Judge Philip Kanning as the Single Trial Judge (hereinafter the Court), with EULEX Legal Advisor Jana Božović as the Recording Officer in the criminal case against:

R. D., father's name **M.**, mother's maiden name **R. P.**, born on in , Republic of Serbia, with residence in the village , Municipality, completed secondary school, unemployed, single, poor economic status, previously in detention on remand from 18.08.2008 to 18.10.2008;

charged with having committed the criminal act of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances under Article 230, Paragraph (1) of the Provisional Criminal Code of Kosovo ("PCCK"), according to the Indictment PP nr. 90/08 as amended during the main trial against **D. D.** on 19 August 2010;

having held the initial hearing on 11 October 2013, open to the public, in the presence of the Accused **R. D.**, his defence Counsel appointed *ex-officio* Ljubomir Pantović, and EULEX Prosecutor Neeta Amin, all conditions are met from Article 248 Paragraph (1) of the Criminal Procedure Code ("CPC");

on the same day, pursuant to Article 366 of the CPC, pronounced in public and in the presence of the Accused, defence Counsel and the Prosecutor;

In accordance with Articles 359-366 of the CPC the Court;

renders the following:

JUDGMENT

The accused **R. D.**, personal data as above,

is

FOUND GUILTY BASED UPON HIS GUILTY PLEA

Because he cultivated cannabis, a dangerous and psychotropic drug as defined in Article 107 Paragraph (29) of the Provisional Criminal Code of Kosovo (“PCCK”), inside of his own residence and on the property, in the amount of a dried weight of 9.15 kilograms, with the intent to sell, distribute, or offer the cannabis for sale to others.

By doing so, **R. D.** committed and is criminally liable for the criminal act of **Unauthorized Production and Processing of Dangerous narcotic Drugs and Psychotropic Substances** in violation of Article 230 Paragraph (1) of the PCCK.

Therefore, R. D. is

SENTENCED

- To 2 (two) years of imprisonment for the criminal act of Unauthorized Production and Processing of dangerous Narcotic Drugs and Psychotropic Substances.
- The execution of this sentence is suspended for a verification of period of 2 (two) years pursuant to Article 51 of the CCK.
- The time spent in detention on remand between 18 August 2008 to 14 November 2008, shall be credited to the imposed punishment of imprisonment pursuant to Article 73 Paragraph (1) of the CCK.

The cannabis plants are hereby confiscated pursuant to Article 274 Paragraph (5) of the CCK.

The accused **R. D.** will not reimburse the costs of criminal proceedings pursuant to Article 453 Paragraph (4) of the CPC.

Reasoning

A. Procedural Background

Indictment PP nr. 90/08 filed with the District Court of Mitrovica by Public Prosecutor Shyqyri Sylja on 09 January 2009, charged both **R. D.** and **D. D.** with **Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances** in violation of Article 230, Paragraph (4) Subparagraph (1) as read with Paragraph (1) of the CCK. EULEX Prosecutors took over the case on 16 June 2009.

EULEX Judges took over the case on 14 October 2009 and the Indictment was confirmed by EULEX Judge Klaus Jung on 02 March 2010.

The Main Trial commenced on 18 August 2010 before the panel of EULEX Judges. The Accused D. D. did not appear despite having been duly summoned. All other parties appeared. An Order for Arrest was issued against D. D. and the trial was adjourned to the following day.

On 19 August 2010, **R. D.** did not appear before the Court due to the fact that he had not been properly served the summons by the Kosovo Police. In order to avoid further unnecessary delay, the Trial Panel issued a ruling severing the criminal proceedings against each defendant and continued the hearing as against D. D..

The Initial hearing commenced on 11 October 2013 before the Court.

EULEX Prosecutor Neeta Amin amended the charge against **R. D.** to Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Paragraph (1) of Article 230. **R. D.** pled guilty to the charge. The Court accepted the guilty plea and the judgment was orally rendered the same day.

B. Competence of the Court

The Law of Courts, Law No. 03/L-199 (LC) also entered fully into force on 1 January 2013 (Article 43). This regulates the territorial and substantive jurisdiction of the Court.

The offence falls within the substantive and territorial jurisdiction of Basic Court of Mitrovica (prior to 1 January 2013 the District Court of Mitrovica). Basic Courts in the first instance are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence, minimum of at least five years. Pursuant to Article 29 Paragraph (1) of the CPC, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The accused is charged with the criminal offence of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances under Article 230 Paragraph (1), which allows for the imposition of a sentence of one to ten years. The Indictment alleged that the Accused committed the criminal act in _____, which lies within Mitrovica District.

Therefore, the Basic Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 14 October 2009, following a hearing, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Articles 3.3

and 3.5 of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

C. Evidence

No witnesses were called to testify due to the guilty plea of the accused at the confirmation stage, pursuant to Article 327 Paragraph (2) of the PCPCK.

Upon acceptance of the guilty plea of **R. D.** on 11 October 2013 by the Court, the Defence Counsel Ljubomir Pantović and the EULEX Prosecutor opted not to make a closing.

The case file contained police reports which indicate that on 18 August 2008, Kosovo Police discovered five cannabis plants, 30 to 50 cm in height, inside the premises of **R. D.**² An additional 65 cannabis plants were found outside on his property, varying in height from 50 to 170 cm. Samples of the plants were analysed by the Central Criminology Laboratory or the Kosovo Police Service and verified to be Cannabis containing tetrahydrocannabinol (THC).³

On 11 October 2013, **R. D.** pled guilty to the charge of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances. He specifically stated that he grew the cannabis on the inside of his own residence and on the property, in the amount of a dried weight of 9.15 kilograms, without authorization to grow it, with the intent to sell, distribute, or offer the cannabis for sale to others.

After vigorous questioning by the Court and Prosecutor, the Court was satisfied that the guilty plea was entered knowingly and voluntarily, after sufficient consultation with his Defence Counsel, in accordance with Article 248 Paragraph (1).⁴

D. Legal Qualification

Applicable Law

The substantive law applicable in the case is the Criminal Code which was in force at the time when the criminal offence was perpetrated. The criminal act was committed in

¹ Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

² See Criminal Report against **D. R.** and **D. D.**, Investigating Officer Slađan Jovanović, case nr. 2008/BE/218, 19 August 2008; Officer's Report by Officer Andrić Branislav, 18 August 2008; Photographs of plants contained in case file.

³ Criminology Examination Report, Central Criminology Laboratory, Expert Sadije Hamzaj, 05 February 2009.

⁴ See Minutes of the Initial Hearing, 11 October 2013, p. 4-7.

August of 2008. The criminal code in effect at that time was the Provisional Criminal Code of Kosovo (PCCK) which entered into effect on 06 April 2004.

Article 2 Paragraph (1) of the PCCK provides that in the event of a change in the applicable law prior to the final verdict, the law more favorable to the perpetrator shall be applied. The Criminal Code of Kosovo (CCK) which entered into effect on 06 January 2009 is not more favourable to the Accused in this particular case, and therefore the PCCK is the applicable substantive law.

With regard to the applicable procedural law, due to the special circumstances in North Mitrovica and the northern municipalities of the Mitrovica district, the Court refers to the Provision Criminal Procedure Code of Kosovo (PCPCK) which entered into force on 06 April 2004. This was the criminal code in effect at the time of the commission of the offence. The Court notes that the applied paragraphs of the PCPCK are fully identical with the Kosovo Code of Criminal Procedure (KCCP) which entered into force on 06 January 2009.

On 1 January 2013 a new Criminal Procedure Code came into force in Kosovo. The Criminal Procedure Code (Criminal No. 04/L-123) (CPC) replaced the Provisional Criminal Procedure Code of Kosovo (as amended) (UNMIK regulation 2003/26 (CPCK) (Articles 539 and 541 (2)). Transitional and saving provisions apply which determine the application of the procedure under the CPC and the continued application of the CPCK in specific circumstances. According to the Legal Opinion of the Supreme Court of the Republic of Kosovo issued under No. 56/23 January 2013, provisions of the old Code shall apply *mutatis mutandis* until decision becomes final.

Criminal Offence

The accused is charged with Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances as codified in Article 230, Paragraph (1) of the PCCK, which states:

Whoever, without authorisation, cultivates, produces, processes, extracts or prepares substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances with the intent to sell, distribute or offer them for sale shall be punished by a fine and by imprisonment of one to ten years.

“Dangerous drugs and psychotropic substances” is defined in Article 107 Paragraph (29) of the PCCK as the substances which are listed in the Official Gazette of the Socialist Federal Republic of Yugoslavia nr. 70/78, 14/81, 39/82, 28/85, 10/87, 53/88, and 2/89. The Decision on the Establishing of the List of Narcotics published in the Official Gazette nr. 70/78 lists “Cannabis (Indian Hemp)” as a narcotic (item nr. 69).

It was confirmed from the Police Reports, the lab analysis and **R. D.**'s admissions during the Initial hearing that **R. D.** did cultivate a narcotic and psychotropic substance – cannabis containing THC – without any authorization to do so. **R. D.** further admitted that his intent in cultivating the cannabis was in order to distribute it to others. Therefore, the legal elements of the criminal offence have been satisfied.

E. Sentencing

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 73 Paragraph (1) of the CCK.

The Court considered as mitigating circumstances the fact that the Accused immediately admitted his criminal offence and pled guilty, that he has no prior criminal conviction and is not currently accused of any other criminal offence, and his poor economic and employment situation. There were no aggravating circumstances in this case.

For the criminal offence of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Article 230, Paragraph (1) of the PCCK the law foresees a punishment of imprisonment of one to ten years. The Court imposed a sentence of two years of imprisonment for this criminal act.

In accordance with Article 51 of the CCK, execution of this sentence is suspended for a verification period of two years provided that **R. D.** does not commit another criminal offence during this verification period. Should **R. D.** commit another criminal offence during the verification period, the Court shall order that the sentence of two years imprisonment be executed. In that event, the time which **R. D.** served in detention on remand - from 18 August 2008 to 14 November 2008- shall be credited to the imposed punishment of imprisonment.

F. Confiscated Items

The cannabis plants are confiscated pursuant to Article 274 Paragraph (5) of the PCCK.

G. Costs

R. D. was found guilty of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances. Because of his economic status, the Court did not impose any financial costs of criminal proceedings pursuant to Article 453 Paragraph (4) of the CPC.

Basic Court of Mitrovica

K. nr. 13/2010

Prepared in English, an authorized language.

Jana Božović
Recording Officer

Philip Kanning
Single Trial Judge

Legal remedy:

All parties have 15 days from service of this judgment to appeal in accordance with Articles 380 (1) and 381 (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 (1) of the CPC.