

BASIC COURT OF MITROVICË/MITROVICA

P no. 42/14

PP.I. no. 103/2013

12 February 2015

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICË/MITROVICA, in the trial panel composed of EULEX Judge Franciska Fiser, acting as Presiding Trial Judge, EULEX Judge Nuno Manuel Ferreira De Madureira and EULEX Judge Paulo Duarte De Mesquita Teixeira, with EULEX Legal Officer Jana Božović as Recording Officer in the criminal case against:

Đ.K., father's name H., mother's maiden name H.S., born on in , with residence in , at neighborhood with no number, ethnicity, citizen of the Republic of Kosovo, married, by profession, employed as , average economic status, in detention on remand from 3 June 2013;

Indicted with:

Count 1 Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of the Criminal Code of Kosovo ("CCK");

Count 2 Facilitating Prostitution, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK;

Count 3 Sexual Assault, contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK;

Count 4 Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) and (4) of the CCK;

Count 5 Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK;

Count 6 Rape, contrary to Article 193, Paragraph (3) Subparagraph (4) of the CCK;

Count 7 Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraph (2) and (3) in conjunction with Article 20 of the CCK;

Count 8 Rape, contrary to Article 193, Paragraph (2) Subparagraph (3) of the CCK; and

Count 9 Facilitating or compelling prostitution, contrary to Article 241, Paragraph (3) of the CCRK;

After holding the main trial, closed to the public, on 15, 16, 17 and 20 October 2014, on 10 November 2014, on 2, 8 and 9 December 2014, on 27 and 28 January 2015, on 11 February 2015, in the presence of the Defendant Đ.K. , his Defence Counsels Kapllan Baruti and Habib Hashani, EULEX Prosecutor Lili Oprea Steluta, Representative of the Injured Parties Burhan Maxhuni, Based on the ruling on (upon) Prosecution Petition for Protective Measures dated 8 September 2014 during the witness testimony of the injured parties: A. F. on 16 October and 8 December 2014, N. T. on 17 October and 8 December 2014, A. L. on 20 October and 8 December 2014, S. N. on 10 November and 9 December 2014 and witnesses: H. P. on 17 October and 8 December 2014, R. A. 20 October and 8 December 2014 and B. F. on 2 December 2014 the Defendant was removed from the courtroom.

Following the trial panel's deliberation and voting held on 11 February 2015;

Pursuant to Articles 359 and 366 of the Criminal Procedure Code of Kosovo (hereinafter: CPC) on 12 February 2015 announces in public and in the presence of the Accused, his Defence Counsels and the EULEX Prosecutor;

the following:

J U D G M E N T

I.

Under Count 1

Đ. K. is found **GUILTY** because:

It is proven beyond reasonable doubt that the defendant on unknown dates between and , in his house located in , neighbourhood, knowing her age, had more than once sexual intercourse with S. N., born on .

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) of CCK, thereby *re-qualifying* the original charge of Sexual Abuse of Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with Paragraph (5), Subparagraph (3) of CCK.

Under Count 2

Đ. K. is found **GUILTY** because:

It is proven beyond reasonable doubt, that the defendant on unknown dates between and at his house located at neighbourhood, proposed S.N., born on , to have sexual intercourse with unknown persons, amongst them other staff, his brother and a Serbian person, for an amount of 50 euros which amount would be split in equal parts between the Defendant and injured party S.N., but the injured party refused to do so.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Attempted Facilitating Prostitution, contrary to Article 201, Paragraph (4) in conjunction with Paragraph (1) and Article 20 of the CCK.

Under Count 3

Đ. K. is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that at unknown date and time in _____, in his vehicle ”
” the defendant touched with sexual intent the juvenile S.T., who was 15 years old, in the
following way: while the defendant was driving his vehicle, the juvenile S.T. was sitting in the
co-driver seat, whereas the injured party S.N. was sitting in the back seat. The defendant started
to fondle, with sexual intent, the injured party S.T. on her left leg.

THEREBY, **D. K.** is **ACQUITTED** of committing the criminal offence of Sexual Assault,
contrary to Article 195, Paragraph (4) in conjunction with Paragraph (1) of the CCK.

Under Count 4

D. K. is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that on _____ in the morning hours at the same
location as under count 1 of the enacting clause, the defendant forced injured party under 16
years of age, to have sexual intercourse and intentionally caused her intoxication with alcohol of
the person under 16 years of age – injured party – juvenile S.T. who was 15 years old with the
purpose of breaking down her resistance and showing her firearm, pistol of unknown brand and
calibre which he kept in the closet and he recorder the sexual intercourse with video camera.

THEREBY, **D. K.** is **ACQUITTED** of committing the criminal offence of Sexual Abuse of
Persons under the age of 16 years, contrary to Article 198, Paragraph (1) in conjunction with
Paragraph (5), Subparagraph (3) and (4) of the CCK.

Under Count 5

D. K. is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt, that at unknown time and date in until at the location as under count I of the enacting clause forced the injured party S.T. of 16 years of age to have sexual intercourse without her consent. Knowing that she is 16 years old, the defendant requested that she have sexual intercourse with him and when the injured party, minor S.T. refused, the defendant intentionally caused her intoxication with alcohol with the purpose of breaking down her resistance and showing her a firearm, pistol of unknown brand and calibre by saying her: “No one can do anything to me, neither nor the police because I have all of them in my pocket” and in this manner, managed to scare the injured party S.T., by forcing her into having sexual intercourse with him without her wish, because of this when injured party S.T. went to her house attempted to commit suicide drinking sedative pills and Domestos and as a result she was laid in the hospital”.

THEREBY, **D. K.** is **ACQUITTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (4) in conjunction with Paragraph (2) Subparagraph (2) of the CCK.

Under Count 6

D. K. is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt that in spring of around hrs at his house in the side of located at neighbourhood, the defendant forced the injured party N. T. to have sexual intercourse with him without her consent, by getting her drunk with some suspicious substances, in the manner so he made a previous verbal agreement for an amount of 20 euros so she would clean his house located in the north so the defendant took her to his house and initially he prepares a coffee for her and the injured party who as soon as she started to drink it felt dizzy and then lost consciousness and the defendant by taking advantage of her infirm state committed the sexual act with her, and recorded her with camera.

THEREBY, **Đ.K.** is **ACQUITTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (3) Subparagraph (4) of the CCK.

Under Count 7

Đ. K. is found **GUILTY** because:

It is proven beyond reasonable doubt that at the end of [redacted] at unknown time in [redacted] village – Municipality, the defendant proposed and took the injured party A.L., born on [redacted], a student, Kosovo ethnicity, who never been alone in [redacted] and suffering from skin illness – acne on her face, with his vehicle to a skin specialist, a [redacted] doctor in [redacted] (J. I.) who specified the diagnosis and the therapy. After the consultation at the doctor, the prescription was taken by the defendant. After looking for the medicine in [redacted] and [redacted], on the way to the village of [redacted], the defendant stopped the vehicle close to a petrol station, and requested from injured party that in exchange for buying the medication, she should have sexual intercourse with him and he began to touch her on the chest and tried to kiss her. The injured party refused this and began screaming and crying, fled from the vehicle and intended to jump from a bridge.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Attempted Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraph (3) in conjunction with Article 20 of the CCK, thereby *re-qualifying* the original charge of Attempted Sexual Assault, contrary to Article 195, Paragraph (2) Subparagraphs (2) and (3) in conjunction with Article 20 of the CCK.

Under Count 8

Đ. K. is found **GUILTY** because:

It is proven beyond reasonable doubt that from the end of [redacted] until [redacted] at his house located at [redacted] in the [redacted] side of [redacted] the defendant forced the injured party A. F. to continue to

have for several times sexual intercourse without her consent in the manner, when she told the defendant she wanted to stop having sexual intercourse with him, the defendant threatened her to spread out the word that she had had sexual intercourse with him so her family would find out this, he would come to her house, disgrace her, tells her brothers about their relationship.

THEREBY, **Đ. K.** is **CONVICTED** of committing the criminal offence of Rape, contrary to Article 193, Paragraph (1) of CCK, thereby *re-qualifying* the original charge of Rape, contrary to Article 193, Paragraph (2) Sub-Paragraph (3) of the CCK.

Under Count 9

Đ. K. is found **NOT GUILTY** because:

It is not proven beyond reasonable doubt that at unknown time since until at the location as in the count 1 of the enacting clause with the purpose of unlawful financial benefit for himself, he threatened injured party A. F. to commit an action, so initially, after he gave the injured party time after time money in amount of 20 – 50 euros and when the injured party told him that she wanted to stop the contact with him, the defendant seriously threatened her and forced her to commit sexual act with him or return 900 euros, when the injured party asked from him to give her some two months until she finds a job, he tells her “one night of sex with me and 5 euro will be deducted from your debt”.

THEREBY, **Đ. K.** is **ACQUITTED** of committing the criminal offence of Facilitating or compelling prostitution contrary to Article 241, Paragraph (3) with reference to Article 228, Paragraph (8) of the CCRK.

II.

1. THEREFORE, pursuant to the provisions of Article 2, Article 43, Paragraph (1) Sub-Paragraph (1.2) and Article 45, Paragraphs (1) and (2) of CCRK, the court imposes the following sentences:

- **Đ. K.** having been convicted of the said criminal offence under Count 1 is **SENTENCED** to 5 years of imprisonment; and
- **Đ. K.** having been convicted of the said criminal offence under Count 2 is **SENTENCED** to 3 years of imprisonment; and
- **Đ.K.** having been convicted of the said criminal offence under Count 7 is **SENTENCED** to 3 years of imprisonment; and
- **Đ. K.** having been convicted of the said criminal offence under Count 8 is **SENTENCED** to 6 years of imprisonment.

2. Pursuant to Article 80, Paragraph (2) Sub-paragraph (2.2) of CCRK the court imposes the following **AGGREGATED** punishment:

Đ. K. is **SENTENCED** to 14 years of imprisonment.

III.

Pursuant to Article 365, Paragraph (1) Sub-paragraph (1.5) of CPC the time spent in detention on remand by **Đ. K.** from 3 June 2013 until the Judgment becomes final shall be credited against the punishment.

IV.

The Court **ORDERS** that vehicles _____, grey in colour identified with the registration plates and _____, red in colour identified with the registration plates _____ which were temporarily

confiscated by Police shall be returned immediately upon the judgment in this case becoming final.

V.

Pursuant to Article 453, Paragraphs (1) and (2) of CPC **D. K.** shall pay the costs of the proceedings in an amount of 300 euros no later than 30 days from the day this Judgment is final.

VI.

Pursuant to Articles 458, 459, 460 and 463, Paragraphs (1) and (2) of the CPC, the property claims filed by witnesses R. A. and H. P. are rejected, the Injured Parties S. N., N. T. and A. L. are instructed that they may pursue their property claims in civil litigation.

LEGAL REMEDY: A Defendant, his Defence counsel, the Prosecutor or Injured Parties have 15 days from service of this judgment right to appeal in accordance with Articles 380 Paragraph (1) and 381 Paragraph (1) of the CPC. Any appeal must be filed with the Court of first instance under Article 388 Paragraph (1) of the CPC.

BASIC COURT OF MITROVICĚ/MITROVICA
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12 February 2015

Franciska Fiser
Presiding Judge

Nuno de Madureira
Panel Member

Paulo Teixeira
Panel Member

Jana Božović

Recording Officer

Drafted in English, as an authorized language