

SUPREME COURT

Prishtinë/Priština

Case number: PA II 11/2016
(P No. 938/13 Basic Court of Mitrovicë/Mitrovica)
(PAKR No. 445/15 Court of Appeals)

Date: 3 July 2017

The Supreme Court of Kosovo, in a Panel composed of EULEX Judge Krassimir Mazgalov (Presiding and Reporting), EULEX Judge Arnout Louter and Supreme Court Judge Emine Mustafa as Panel members, and EULEX Legal Officer Sandra Gudaityte as the Recording Officer, in the criminal case against, among others, the defendant

S.L.;

charged under Indictment PPS 88/11 dated 8 November 2013 (hereinafter “Indictment”) with three (3) counts of War Crimes against the Civilian Population, contrary to Article 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (Official Gazette SFRY No. 44 of 8 October 1976) (hereinafter “CCSFRY”) (currently criminalized under Articles 31 and 152 of the Criminal Code of Kosovo (hereinafter “CCK”) and in violation of common Articles 3 and 4 of the Additional Protocol II, all rules of international law effective at the time of the internal conflict in Kosovo and at all times relevant to the Indictment;

acting upon the appeal filed by defence counsel A.K. on behalf of defendant S.L. on 29 November 2016;

having considered the reply to the appeal of the Office of the Chief State Prosecutor (hereinafter “Prosecution”) filed on 20 December 2016;

having held a public session on 20 June 2017

having deliberated and voted on 3 July 2017;

pursuant to Articles 380, 381, 403(3), and 407 of the Criminal Procedure Code of Kosovo (hereinafter “CPC”)

renders the following

RULING

- I. The appeal filed by defence counsel A.K. on behalf of defendant S.L. on 29 November 2016 against Judgment PAKR No. 445/15 of the Court of Appeals dated 15 September 2016 is hereby granted.**
- II. The defendant is acquitted of the charges as detailed in Count IX of Judgment PAKR No. 445/15 of the Court of Appeals rendered on 15 September 2016 by the Supreme Court Judgment deliberated on 3 July 2017.**
- III. Detention on remand against S.L., imposed with Judgment PAKR No. 445/15 of the Court of Appeals rendered on 15 September 2016, is hereby terminated with the immediate effect.**

REASONING

I. Procedural background

1. On 8 November 2013, the Special Prosecution Office of the Republic of Kosovo (hereinafter “SPRK”) filed the Indictment against S.S. and other defendant charging them with several counts of War Crimes against the Civilian Population, contrary to Article 22 and 142 of the CCSFRY (currently criminalized under Articles 31 and 152 of the CCK) and in violation of

common Articles 3 and 4 of the Additional Protocol II, all rules of international law effective at the time of the internal conflict in Kosovo and at all times relevant to the Indictment.

2. The trial commenced on 22 May 2014, and was concluded on 27 May 2015. It consisted of 46 court sessions. On 27 May 2015, the Basic Court of Mitrovicë/Mitrovica rendered its Judgment P 938/13. S.L. was found guilty for the following criminal act: that acting in a brutal manner intentionally took the life of an unidentified Albanian speaking male around 40 (forty) years old by putting a TT type pistol to the male's head while the man had his hands tied and was guarded by two unidentified KLA soldiers, and then fired three shots to the male's head and thereby caused his death, in an undetermined location between the villages of Galica and Dubovc, on an undetermined date in September 1998, and this action is hereby classified as murder under Article 30(2)(1) of the Criminal Law of the Socialist Autonomous Province of Kosovo of 28 June 1977 (hereinafter "CLSAPK") (hereinafter will be referred to as "Count I" based on the paragraph number of the enacting clause of the Basic Court Judgement), and sentenced to 12 (twelve) years of imprisonment. S.L. was acquitted of the criminal offences as detailed in the remaining 2 (two) counts.
3. On 6 and 7 August 2015, the SPRK and the defence counsel on behalf S.S. filed their appeals against Judgment P 938/13 of the Basic Court of Mitrovicë/Mitrovica.
4. On 15 September 2016, the Court of Appeals rendered Judgement PAKR 455/15. The Court of Appeals granted the appeal filed by defence counsel A.K. on behalf of defendant S.L. and acquitted the defendant of the criminal offence as it is described in Count I as it has not been proven that the accused has committed the act which he has been charged with. The Court of Appeals further modified Judgment P 938/13 of the Basic Court of Mitrovicë/Mitrovica by finding defendants S.S and S.L. guilty, and acquitting defendant S.J. of the following criminal act: in their capacity as the KLA members and persons exercising control over the Likoc/Likovac detention centre, in co-perpetration with each other as it is defined in Article 31 of the CCK, they violated the bodily integrity and the health of an unidentified number of Albanian civilians detained in such detention centre by keeping them in inappropriate premises with lack of sanitation, inadequate nutrition, suffering frequent beatings, at least during August and September 1998, hereby classified as a war crime under 152(1) and

(2)(2.1), (2.2) of the CCK, and in case of S.L., in conjunction with Article 161(1)(1.1) of the CCK, both in violation of Article 4(2)(a) of the Additional Protocol II to the Geneva Conventions, in conjunction with Article 33(2) of the Constitution of the Republic of Kosovo (hereinafter will be referred to as “**Count IX**” based on the paragraph number of the enacting clause of the Basic Court Judgement). For this criminal offence S.L. was sentenced to 7 (seven) years of imprisonment.

5. On 29 November 2016, the defence counsel on behalf of defendant S.L. filed the appeal Judgment PAKR No. 445/15 of the Court of Appeals rendered on 15 September 2016. On 20 December 2016, the Prosecution filed its reply to the appeal moving the Supreme Court to declare the appeal as belated, or, in alternative, reject the appeal as unfounded.

II. Composition of the Panel

6. The Panel established that on 27 April 2017 (KJC No. 124/2017), the Kosovo Judicial Counsel (hereinafter “KJC”) confirmed that the appeals against the Court of Appeals Judgement in the present case shall be adjudicated by a panel composed of a majority of EULEX judges and presided by an EULEX judge.

III. Findings of the Panel

7. The Panel finds that the appeal filed by defence counsel A.K. on behalf of defendant S.L. is admissible. The appeal was filed by an authorised person (Article 381(1) of the CPC), within the prescribed deadline (Article 380(1) of the CPC), and to the competent court (Article 374(1)(1.2) of the CPC).
8. The Panel in its deliberations held on 3 July 2017 granted the appeal filed by the defence counsel on behalf of defendant S.L., and pursuant to Article 364(1)(1.3) of the CPC acquitted him of the criminal offence as it is detailed in Count IX.
9. Pursuant to Article 403(4) of the CPC, the detention on remand against S.L. shall be terminated and the defendant shall be released immediately.

10. The Judgement of the Supreme Court with detailed reasoning on the acquittal of the defendant shall be issued in due time and served on the defendant and the defence counsel.

11. Pursuant to Article 403(4) of the CPC, no appeal against this ruling shall be permitted.

For the above it has been decided as in the enacting clause.

Presiding Judge

Recording Officer

Krassimir Mazgalov

Sandra Gudaityte

EULEX Judge

EULEX Legal Officer

Panel members:

Arnout Louter

Emine Mustafa

EULEX Judge

Supreme Court Judge