

COURT OF APPEALS

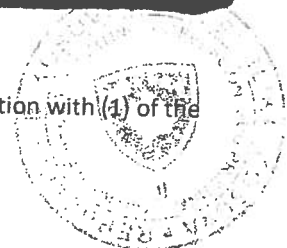
Case number: PAKR nr. 945/2012

P. Nr. 164/2008

Date: 5 May 2014

The Court of Appeals of Kosovo, in a Panel composed of EULEX Judge Philip Kanning (Presiding and Reporting) and Kosovo Court of Appeals Judges Abdullah Ahmeti and Fillim Skoro as Panel members, and EULEX Legal Officer Natalie Dawson as the Recording Officer, in the criminal case number P. Nr. 164/2008 before the Basic Court of Prishtinë/Priština, concerning the following Defendants and respective verdicts:

1. <sup>J. N.</sup> [REDACTED]  
[REDACTED]  
[REDACTED]
  - a. Incitement to Falsification of Official Documents contrary to Article 348(1) in conjunction with Article 24 of the Provisional Criminal Code of Kosovo (hereinafter 'the Code') – GUILTY
  - b. Aggravated Fraud in Office contrary to Article 341(3) of the Code- ACQUITTED
2. <sup>A. A.</sup> [REDACTED]  
[REDACTED]  
[REDACTED]
  - a. Incitement to Falsification of Official Documents contrary to article 348(1) in conjunction with article 24 of the Code - GUILTY
  - b. Abusing the Official Position contrary to article 339(3) in conjunction with (1) of the Code - GUILTY
3. <sup>S. S.</sup> [REDACTED]  
[REDACTED]  
[REDACTED]
  - a. Abusing the Official Position contrary to article 339(3) in conjunction with (1) of the Code - GUILTY



Deciding upon the appeals of:

- Defence Counsel R [REDACTED] G [REDACTED] on behalf of the Defendant J [REDACTED] N [REDACTED] on 9 August 2011
- Defence Counsel A [REDACTED] A [REDACTED] on behalf of the Defendant A [REDACTED] A [REDACTED] on 10 August 2011

Against the Judgment of the Pre-Trial Judge in this case at the Basic Court of Prishtinë/Priština, in case P. Nr. 164/2008 on 11 November 2010;

Having considered the Responses of the Appellate Prosecutor to both appeals;

Having deliberated and voted on 5 May 2014;

Acting pursuant to Articles Articles 423 and 424 Provisional Criminal Procedure Code of Kosovo (hereinafter 'KCCP');

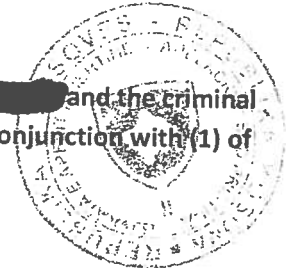
Renders the following:

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#### JUDGMENT

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1. The Appeal of Defence Counsel R [REDACTED] G [REDACTED] on behalf of the Defendant J [REDACTED] N [REDACTED] is hereby accepted.
2. The Judgment of the Trial Panel is hereby annulled in relation to J [REDACTED] N [REDACTED].
3. The Indictment is dismissed in relation to J [REDACTED] N [REDACTED].
4. The Appeal of Defence Counsel A [REDACTED] A [REDACTED] on behalf of the Defendant A [REDACTED] A [REDACTED] is accepted in part, and rejected as unfounded in part.
5. The Judgment of the Trial Panel is hereby annulled in relation to A [REDACTED] A [REDACTED] regarding the criminal offence of Incitement to Falsify Official Documents contrary to article 348(1) in conjunction with article 24 of the Code only.
6. The Indictment is dismissed in relation to A [REDACTED] A [REDACTED] regarding the criminal offence of Incitement to Falsify Official Documents contrary to article 348(1) in conjunction with article 24 of the Code only.
7. The Judgment of the Trial Panel is affirmed in relation to A [REDACTED] A [REDACTED] and the criminal offence of Abusing the Official Position contrary to article 339(3) in conjunction with (1) of the Code.



## REASONING

### 1. Procedural Background and the Impugned Ruling

- a. On 28 February 2008 the Public Prosecutor filed an indictment PPS 480-5/2007 against S [REDACTED] S [REDACTED] J [REDACTED] N [REDACTED] and A [REDACTED] A [REDACTED] at the District Court of Prishtinë/Priština.
- b. On 14 September 2009 the Main Trial commenced.
- c. On 11 November 2010 the Trial Panel delivered its judgment.
- d. The sentences imposed on each Defendant were:
  - S [REDACTED] S [REDACTED] - one (1) year imprisonment suspended for four (4) years if no further offence is committed;
  - J [REDACTED] N [REDACTED] - three (3) months imprisonment suspended for one (1) year if no further offence is committed;
  - A [REDACTED] A [REDACTED] - two (2) years imprisonment suspended for four (4) years if no further offence is committed;
- e. On 9 August 2011 J [REDACTED] N [REDACTED] filed an appeal.
- f. On 10 August 2011 A [REDACTED] A [REDACTED] filed an appeal.
- g. On 23 October 2012 the State Prosecutor filed an opinion.
- h. No appeal has been filed by S [REDACTED] S [REDACTED].

### 2. Submissions of the Parties

#### Defence Written Submissions:

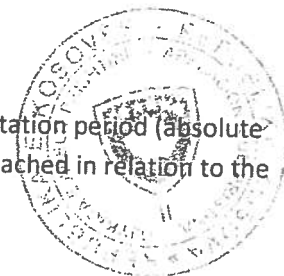
- a. There have been essential violations of the KPCC;
- b. There have been essential violations of the criminal law;
- c. There has been an erroneous or incomplete verification of the factual situation. The trial panel did not properly evaluate and weigh the credibility of the witnesses.
- d. A [REDACTED] A [REDACTED] also challenges the sanction imposed by the court.
- e. The Judgment should be annulled and returned to the Basic Court for re-trial, or the Defendant should be acquitted by the Court of Appeals.

#### Prosecutor's Written Submissions:

- a. There have been no essential violations of the KPCC or the criminal law.
- b. The Prosecutor concurs with the findings of the Trial Panel as to the facts and the convictions.
- c. The Judgment of the District Court should be affirmed.

#### Oral Submissions:

- a. The Prosecutor and Defence Counsels concur that the statutory limitation period (absolute bar), pursuant to Articles 90(1)(5) and 91(6) of the Code has been reached in relation to the



criminal offence of Incitement to Falsify Official Documents contrary to article 348(1) in conjunction with article 24 of the Code.

- b. All parties therefore submit that the Judgment of the District Court should be annulled and the Indictment dismissed in relation to this offence.
- c. A [REDACTED] A [REDACTED] himself submits that he has not committed any criminal offence because he was not in a position to give orders.

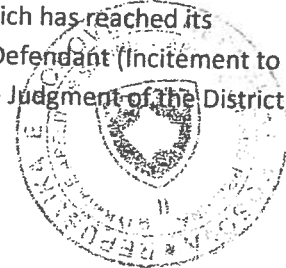
### 3. Findings of the Panel

1. The Appeals are admissible and timely filed.
2. J [REDACTED] N [REDACTED] did not attend today's session and no explanation was provided to the court for his absence. The Panel concluded that service of the summons on Mr N [REDACTED] was timely. In accordance with Article 410(4) KCCP the Panel took the decision to proceed. Mr G [REDACTED] did not object on behalf of Mr N [REDACTED].

### The Statutory Limitation

3. The Panel considered the submissions of all parties in relation to the criminal offence of Incitement to Falsify Official Documents contrary to Article 348(1) in conjunction with Article 24 of the Code.
4. Pursuant to Article 90(1)(5) of the Criminal Code, the statutory limitation for an offence of this nature is three (3) years, after which period criminal proceedings cannot commence. Pursuant to Article 91(6) the absolute bar on criminal prosecution is six (6) years, twice the statutory limitation period.
5. That being the case, the absolute bar on criminal proceedings was reached in 2011.
6. The appeals were filed within the limitation period, but the case did not come before the Court of Appeals Panel until after that date had passed.
7. In accordance with the Code, the proceedings in relation to the criminal offence of Incitement to Falsify Official Documents are at an end.
8. Therefore the Judgment of the District Court must be annulled, and the Indictment dismissed in relation to J [REDACTED] N [REDACTED] and A [REDACTED] A [REDACTED] in relation to the offence of Incitement to Falsify Official Documents.
9. In relation to J [REDACTED] N [REDACTED] he was not convicted of any other offence, and therefore all matters against him are at an end.
10. In relation to A [REDACTED] A [REDACTED], the criminal offence of Abusing the Official Position remains to be considered.
11. The Panel considered Article 419 KCCP in relation to the Co-Defendant S [REDACTED] S [REDACTED]. S [REDACTED] S [REDACTED] was not charged or convicted of the offence which has reached its absolute bar in terms of statutory limitation in relation to her Co-Defendant (Incitement to Falsify Official Documents). Therefore no change is required to the Judgment of the District Court as far as S [REDACTED] S [REDACTED] is concerned.

A [REDACTED] A [REDACTED] – Criminal Offence of Abusing the Official Position



12. It is clear from the Judgment of the District Court that the Trial Panel found the testimony of the witness B L to be credible and attached a great deal of weight to it.
13. The Panel considered Mr L testimony in detail and concurs with the findings of the Trial Panel. Mr L testimony was coherent, plausible and persuasive.
14. The Panel heard submissions from Mr A that the political circumstances pertaining to the commission of the offence were influential and responsible. The Panel concludes that the political pressures at the material time are irrelevant to the commission of this particular offence on its particular facts.
15. The Panel finds that the evidence before the Trial Panel supports the guilty verdict.
16. The Panel therefore affirms the Judgment of the District Court in relation to the offence of Abusing the Official Position.
17. The Panel finds the sentence imposed upon Mr A by the Trial Panel to be entirely appropriate and justified, taking into account the circumstances and the time he spent in detention on remand during the course of the proceedings.

Drafted in English, authorized language. Ruling reasoned and signed on 6 May 2014.

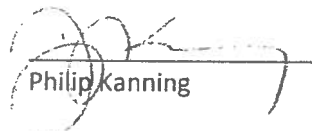
Recording Officer



Natalie Dawson

EULEX Legal Officer

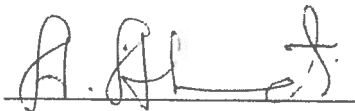
Presiding Judge



Philip Kanning

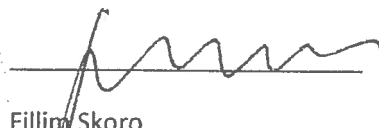
EULEX Judge

Members of the Panel:



Abdullah Ahmeti

Court of Appeals Judge

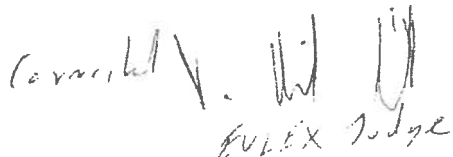
Fillim Skoro

Court of Appeals Judge

COURT OF APPEALS

PAKR nr. 945/2012

P. Nr. 164/2008



EULEX Judge

5 May 2014