

8 July 2014

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Willem Brouwer as Presiding Judge, and EULEX Judge Timo Vuojolahti and Supreme Court Judge Avdi Dinaj as panel members, assisted by EULEX Legal Officer Natalie Dawson acting in the capacity of recording clerk,

In the criminal case against the following defendant:

7K [REDACTED]

In respect of the criminal offences of:

1. **War crime against civilian population** as per articles 22 and 142 CCSFRY, and article 23 and 120 of the CCK then in force BECAUSE:
 - i. On or about 24 May 1999 in the capacity of guardian in the Prison of [REDACTED] treated prisoner [REDACTED] inhumanely, causing him immense suffering and violating his bodily integrity or health by beating and hitting him with rubber batons and punching him until he was left unconscious and subsequently died on 25 May 1999;
 - ii. On or about 24 May 1999 in the capacity of guardian in the Prison of [REDACTED] treated prisoner [REDACTED] inhumanely, causing him immense suffering and violating his bodily integrity or health by making him pass through two lines of [REDACTED] Prison Guards, Police and paramilitaries whereupon he, and other unidentified prisoners, were beaten and hit with rubber batons, kicked and punched by the Defendant and others.
2. **Unauthorised ownership, control, possession or use of weapons** as per article 323(2) of the CCK then in force, BECAUSE he kept in his possession a valid weapon without permit at his house in [REDACTED] village, [REDACTED], namely a Zastava revolver and two magazines with ammunition.

Deciding upon two Requests for Protection of Legality on behalf of the Defendant KOLIC filed by:

1. Defence Counsel [REDACTED] on 8 May 2014
2. Defence Counsel [REDACTED] on 8 May 2014

Taking into account the opinion of the Office of the State Prosecutor of the Republic of Kosovo (OSP) filed on 24 June 2014.

Following the deliberation and voting, in accordance with Article 435 of the CPC, the Supreme Court issues the following:

JUDGMENT

- BM
1. The Requests for Protection of Legality filed by the Defence Counsels [REDACTED] ZJ and [REDACTED] on behalf of the Defendant [REDACTED] on 8 May 2014 are rejected as ungrounded. ZK.
 2. The Judgment of the Court of Appeals on 25 September 2013 is affirmed.

I. Procedural History:

- a. On 1 August 2011 the Special Prosecutor filed an Indictment.
- b. On 26 August 2011 the Indictment was confirmed through the Ruling of the Confirmation Judge number KA. 538/2011, a modification being made to one of the counts.
- c. At the Confirmation Hearing the Defendant [REDACTED] pleaded guilty to the weapon charge.
- d. Following the Main Trial, the Judgment was announced by the District Court of Pristina on 11 May 2012. The Defendant K [REDACTED] was convicted of both War Crimes offences listed on the Indictment, and he sentenced for all three offences to an aggregate of 14 years imprisonment and a fine of 500 euros. The Trial Panel extended detention on remand until the Judgment became final.
- e. On 25 September 2013 the Court of Appeals partially granted Appeals filed on behalf of the Defendant [REDACTED], and modified the Judgment of the Trial Panel. The change was made to the Enacting Clause, merging the two War Crimes convictions into one as the Panel found that they relate to 'one contained event, one set of circumstances' (at paragraph 89 of its Judgment).
- f. On 8 May 2014 two Defence Counsels filed Requests for Protection of Legality on behalf of the Defendant, and the Defendant filed his own Request in addition.
- g. On 24 June 2014 the State Prosecutor filed an Opinion.

II. Positions of the Parties

The Defence

- a. A number of grounds are put forward by the Defence Counsels and the Defendant himself relating to the evidence heard by the Trial Panel, and read by the Appellate Panel, which therefore relate solely to the factual assessment of the case.
- b. The evidence does not qualify as a War Crime
- c. There was no evidence of co-perpetration.

- d. The Judgment was based on inadmissible evidence.
- e. The First Instance Court exceeded the scope of the Indictment.

The Prosecutor

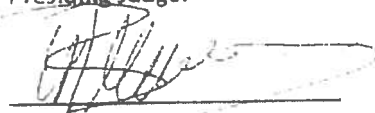
The submissions of the Defence are ungrounded. The Requests should be rejected.

III. Findings of the Court:

- a. The Supreme Court considers that all three Requests for Protection of Legality timely filed and admissible.
- b. The Panel decided to consider all three Requests for Protection of Legality filed, having considered article 19 (1.28) CPC.
- c. The Panel considered carefully the contents of each of the three Requests for Protection of Legality, as well as the Judgments of the Trial Panel and the Appellate Panel respectively.
- d. The Panel considers that the content of the Requests relates primarily to the evidence in the case, and the assessments made thereof by the Trial Panel, and later by the Appellate Panel.
- e. The Supreme Court reminds the Defence Counsels and the Defendant that Protection of Legality is an Extraordinary Legal Remedy which is available, pursuant to article 432 CPC, only in the following circumstances: a violation of the criminal law, a substantial violation of the provisions of criminal procedure, or another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision. Article 432, Paragraph 2, specifically states that such a remedy is not available on the ground of 'an erroneous or incomplete determination of the factual situation.'
- f. Protection of Legality is not to be used as an indirect method of further appeal. Any such Request filed with this purpose in mind is a misuse of this remedy. This being the case, any submissions made by the Defence Counsels or the Defendant which relate solely to the determination of the factual situation are disregarded by the Supreme Court Panel.
- g. The Panel therefore turned its attention to the other grounds put forward by the Defence. In this regard the Panel can find no violation of criminal law or procedural law.
- h. The Panel further finds that the Judgment of the Court of Appeals in this matter is well-reasoned, detailed and reaches the correct outcome. The Panel agrees with the reclassification of the convictions as regards the War Crimes matters. The Panel sees no reason to rehearse the findings of the Court of Appeals, save to say that it agrees with the assessment made by the Appellate Panel in its entirety.
- i. The Requests for Protection of Legality are therefore rejected as ungrounded and the Judgments of the Basic Court and Court of Appeals are affirmed.

Attached: Dissenting Opinion of Judge Timo Vuorio/lahti.

Presiding Judge:



Willem Brouwer
EULEX Judge



Timo Vuojolahti
EULEX Judge

Recording Officer:



Natalie Dawson
EULEX Legal Officer



Avdi Dinaj
Supreme Court Judge

SUPREME COURT OF KOSOVO
PML 125/2014
8 July 2014