

COURT OF APPEALS

Case number: **PAKR 77/2017**

Date: **14 November 2017**

THE COURT OF APPEALS OF KOSOVO in a Panel composed of Court of Appeals Judge Driton Muharremi as Presiding Judge, EULEX Judge Anna Adamska-Gallant as Reporting Judge, and Court of Appeals Judge Abdullah Ahmeti as Panel member, with the participation of EULEX Legal Officer Kerry Moyes as the Recording Officer, in the criminal proceedings against:

M.S.;

charged under Indictment PPS No 5/2012 filed on 27 December 2013 as follows:

Count 1 - Abuse of Official Position in co-perpetration, in violation of Article 339 (1) and (2) in conjunction with Article 23 of the former Criminal Code of Kosovo (CCK), currently penalized under Article 422 in conjunction with Article 31 of the CCK 2013;

Count 2 - Accepting Bribes in co-perpetration, in violation of Article 343 (1) in conjunction with Article 23 of the former CCK, currently penalized under Article 428 in conjunction with Article 31 of the CCK 2013;

Count 3 - Trading in Influence in co-perpetration, in violation of Article 345 (1) in conjunction with Article 23 of the former CCK, currently penalized under Article 431 (1) and Article 31 of the CCK 2013;

Count 4 - Avoiding Payment of Mandatory Customs Fees in co-perpetration, in violation of Article 318 (1) and (4) in conjunction with Article 31 of the CCK 2013;

Count 5 - Providing Assistance to Perpetrators after the Commission of the Offence, in violation of Article 388 (1) of the CCK 2013;

Count 6 - Providing Assistance to Perpetrators after the Commission of the Offence in violation of Article 388 (1) and (2) of the CCK 2013;

Count 7 - Failure to Report Criminal Offences or Perpetrators, in violation of Article 386 (1) subparagraph 9 of the CCK 2013;

Count 8 - Unauthorized Ownership, Control or Possession of Weapons, in violation of Article 374 (1), in conjunction with Article 120, item 38 of the CCK 2013;

deciding upon the motion of the defence counsel of M.S. filed orally during the public session of the Appellate Panel on 29 September 2017;

having heard the response of the Appellate Prosecutor presented during the same session;

having deliberated on 11 October 2017 and further deliberated and voted on 14 November 2017;

pursuant to Article 402 paragraph 4 and Article 178 of the Criminal Procedure Code (CPC);

renders the following

RULING

- 1. The defendant M.S. is released from the measure of detention on remand effective immediately.**
 - 2. The defendant M.S. is ordered to attend Ferizaj police station once a week, on every Monday.**
 - 3. The travel documents of the defendant M.S. are temporarily confiscated, and the defendant must surrender his travel documents to the Office of State Prosecutor within 48 hours of being released from the measure of detention on remand.**
 - 4. The Court may order the measure of detention on remand to be imposed if the defendant violates this Ruling.**
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REASONING

RELEVANT PROCEDURAL BACKGROUND

1. On 23 March 2013 the Prosecutor issued a Decision on Initiation of Investigation, which was expanded on 28 March 2013 upon issuance by the Prosecutor of a Decision to Expand the Investigation.
2. On 11 September 2013 the defendant M.S. was arrested and on 12 September 2013 the pre-trial Judge ordered detention on remand against all the defendants in the case, including the defendant M.S. He was released into house detention on 28 April 2015. He remained in house detained until this measure was revoked on 6 October 2016 and detention on remand was imposed because with the judgment announced on the same day he was sentenced for 8 years of imprisonment.
3. The judgment was appealed both by the Defence of the defendant M.S. and by the Prosecutor.
4. The Appellate Panel deliberated on 11 October on 14 November 2017. On this second day, the Panel voted.

FINDINGS OF THE COURT OF APPEALS

5. The Court of Appeals decided to grant the appeal filed by the defendant M.S. and his Defence Counsel A.R. on 26 January 2017, to reject the appeal filed by the Special Prosecutor on 26 January 2017, to annul the Judgment of the Basic Court of Ferizaj P. nr. 250/2013 dated 6 October and to return the case for retrial. That being so, the Court of Appeals considered the issue of the continued detention on remand of the defendant M.S., pursuant to paragraph 4 of Article 402 of the CPC.
6. The Court of Appeals notes that the defendant M.S. has been in detention on remand or in house detention since 12 September 2013. This is over 4 years. The first trial took place over a lengthy period of time, almost 2 and a half years. As the decision of the Court of Appeals is to return the case for retrial, it is likely that it will take a considerable amount of time for the retrial to conclude. The Court of Appeals therefore considered whether the conditions in Articles 185 and 187 of the CPC continue to be met,

and concluded that they are not. Instead, the Court of Appeals considers that the measure of attendance at Police Station pursuant to Article 178 of the CPC is sufficient to meet the risks concerning the defendant M.S.

7. As the case is returned to the Basic Court for retrial, the grounded suspicion that the defendant M.S. has committed a criminal offence continues to exist. The criminal offences with which he is indicted are serious, and the likely punishment if convicted presents a strong motive for the defendant to flee or to go into hiding. The defendant is a person of reasonable means, and which are sufficient to fund such a course of action. Therefore, the conditions for the measure of attendance at Police Station pursuant to Article 178 paragraph 1 of the CPC are met. The Panel further imposes the temporary confiscation of the defendant's travel documents, pursuant to Article 178 paragraph 7 of the CPC. The Court of Appeal concludes that this measure is sufficient to meet the risks and that a more restrictive measure is no longer justified.
8. Therefore, it is decided as in the enacting clause.

Done in English, an authorized language.

Reasoned Ruling completed on 14 November 2017.

Presiding Judge

Recording Officer

Driton Muharremi

Kosovo Court of Appeals Judge

Kerry Moyes

EULEX Legal Officer