

**BASIC COURT OF MITROVICA**

**P. No. 184/15**

8 August 2016

**IN THE NAME OF THE PEOPLE**

**THE BASIC COURT OF MITROVICA**, in a Trial Panel composed of EULEX Judge Katrien Gabriël Witteman as Presiding Trial Judge and EULEX Judges Iva Niksic and René van Veen as Panel Members, with the participation of EULEX Legal Officer Chiara Tagliani as Recording Officer, in the criminal case against:

**X. K., , currently in detention on remand since 07 October 2015;**

Accused through the Indictment of the Special Prosecution Office of the Republic of Kosovo dated 9 November 2015 with PPS number 08/09 of committing the criminal offences of:

**“War Crime against the Civilian Population” under multiple counts**, provided for and punished by Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under Article 31 and 152 of the Criminal Code of the Republic of Kosovo (CCRK)<sup>1</sup>, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of the 1977 Additional Protocol II;

and

**“Unauthorized Ownership, Control and Possession or Use of Weapons”**, provided for and punished by Article 374 Paragraph 1, in connection with Article 120, item 38 of the CCRK;

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<sup>1</sup> Code No. 04/L-082;

after having held the Main Trial hearings, all open to the public, on 18 March 2016, 11, 12, 13, 18, 19, 20 and 25 April 2016, 13, 23, 24, 25 and 30 May 2016, 7, 8, 12, 14 July 2016 and 2 and 4 August 2016 in the presence of the Special Prosecutor of the Republic of Kosovo, the Accused X. K. and his Defence Counsel H. M. and M. V.;

Having deliberated and voted pursuant to Article 357 of the CPC on 5 August 2016;

Pursuant to Article 362, 363, 364, 365, 366, 450, 451 and 453 of the CPC;

Renders the following:

## **JUDGMENT**

### **I**

#### **CHARGE I**

**War Crime against the Civilian Population, provided for and punished by Article 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under Article 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application, committed at Kosovo Liberation Army (KLA) centers located in K. and C. (Albania):**

### **Under Count 1: Murder as War Crime against the Civilian Population**

The Defendant **X. K.** is found **NOT GUILTY**,

because it has **NOT** been proven that:

the defendant in his capacity as a member of the KLA holding a high ranking position in the KLA Center in K. (Albania), in co-perpetration with other KLA members, murdered A. B. while he was illegally detained in K. Camp by beating and shooting him, in K. (north of Albania) on June 4th or 5th, 1999.

Therefore, pursuant to Article 364 Paragraph 1 Subparagraph 1.3 of the CPC the accused X. K. is acquitted of this Count.

### **Under Count 2: Illegal Detention as War Crime against the Civilian Population**

The Defendant **X. K.** is found **GUILTY**,

because it has been proven that

the defendant in his capacity as a member of the KLA, in co-perpetration with S.G. and other KLA members, arrested and illegally detained Witnesses A, B, C, D, E, F, H, K, A.B. and other unknown civilians in such center for a prolonged period of time, in K. (north of Albania) during April, May and through mid-June of 1999.

By doing so, the Defendant X.K. committed and is criminally liable for the criminal act of War Crime against the Civilian Population punished by Article 22 and 142 of the Criminal Code of the CCSFRY, currently criminalized under Article 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application.

### **Under Count 3: Inhumane Conditions as war crime against the civilian population**

The Defendant **X.K.** is found **GUILTY**,

because it has been proven that

the defendant in his capacity as a member of the KLA, in co-perpetration with S.G. and other KLA members, kept Witnesses A, B, C, D, E, F, H, A.B. and other unknown

civilians detained in such center under inhumane conditions (small cells, with lack of water, food, sanitation, air and access to medical treatment),  
in K. (north of Albania) during April, May and through mid-June of 1999.

By doing so, the Defendant X.K. committed and is criminally liable for the criminal act of War Crime against the Civilian Population punished by Article 22 and 142 of the Criminal Code of the CCSFRY, currently criminalized under Article 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application.

#### **Under Count 4: Torture as War Crime against the Civilian Population**

The Defendant **X.K.** is found **GUILTY**,

because it has been proven that

the defendant in his capacity as a member of the KLA in co-perpetration with S.G. and other KLA members,

- tortured Witnesses A, B, C, H and A.B. by beating them to the point of unconsciousness with batons, bats, and sticks,

in K. (north of Albania) on an unknown date in May 1999.

By doing so, the Defendant X.K. committed and is criminally liable for the criminal act of War Crime against the Civilian Population punished by Article 22 and 142 of the Criminal Code of the CCSFRY, currently criminalized under Article 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application.

#### **Under Count 5: Violation of Bodily Integrity or Health as War Crime against the Civilian Population**

The Defendant **X.K.** is found **GUILTY**,

because it has been proven that

the defendant in his capacity as a member of the KLA, in co-perpetration with S.G. and other KLA members, violated the bodily integrity and health of Witnesses A, B, C, D, E, F, H, and A.B. by repeatedly beating them or ordering others to do so, in K. (north of Albania) during April, May and through mid-June of 1999.

By doing so, the Defendant X.K. committed and is criminally liable for the criminal act of War Crime against the Civilian Population punished by Article 22, 30 and 142 of the Criminal Code of the CCSFRY, currently criminalized under Article 8, 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application.

**Under Count 6: Illegal Detention as War Crime against the Civilian Population**

The Defendant **X.K.** is found **GUILTY**,

because it has been proven that

the defendant in his capacity as a member of the KLA in co-perpetration with other KLA members

- illegally detained Witnesses K, L, M and N in the KLA camp in C. (north of Albania) during April, May and through mid-June of 1999, and

- illegally detained Witnesses L and N in a garage in P. on unknown days in June of 1999.

By doing so, the Defendant X.K. committed and is criminally liable for the criminal act of War Crime against the Civilian Population punished by Article 22 and 142 of the Criminal Code of the CCSFRY, currently criminalized under Article 31 and 152 of the CCRK, in violation of Common Article 3 to the Geneva Conventions of 1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application.

**Count 7: Violation of Bodily Integrity or Health as War Crime against the Civilian Population** punished by Article 22 and 142 of the CCSFRY, currently criminalized under Article 31, and 152 of the CCK in violation of Common Article 3 to the Geneva Conventions of

1949 and of Article 4 and 5 of their Additional Protocol II of 1977 effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application

because the defendant in co-perpetration with other KLA members in his capacity as a member of the KLA violated the bodily integrity and health of an unknown individual from P.

in C. (north of Albania) on an unknown date in May or June, 1999

is rejected pursuant to Article 363 Paragraph 1 Subparagraph 1.1 of the CPC

because the SPRK Prosecutor during the main trial withdrew the count.

**Under CRIMINAL CHARGE 2: Unauthorized Ownership, Control and Possession or Use of Weapons**

The Defendant **X.K.** is found **GUILTY**,

because it has been proven that

on the date of his arrest (06.10.2015) a 7.62 mm pistol M56 and three clasp knives were found in his vehicle,

in P. (Kosovo) on 06 October 2015

By doing so, X.K. committed and is criminally liable for the criminal act of Unauthorized Ownership, Control and Possession or Use of Weapons in violation of Article 374 Paragraph 1 in connection with Article 120, item 38, of the CCRK.

**II.**

**The Defendant X.K. is SENTENCED**

**Under CRIMINAL CHARGE 1**

**For Count 2**

to **5 (five) years** of imprisonment;

**For Count 3**

to **6 (six)** years of imprisonment;

**For Count 4**

to **7 (seven)** years of imprisonment;

**For Count 5**

to **6 (six)** years of imprisonment;

**For Count 6**

to **6 (six)** years of imprisonment;

**For CRIMINAL CHARGE 2**

to a fine of € **1.500 (one thousand five hundred euro's)**.

**Pursuant to Article 80 of the CCRK**

**the Defendant X.K. is SENTENCED**

to an aggregate punishment of **8 (eight) years** of imprisonment and a fine of € **1.500 (one thousand five hundred euro's)**.

**Pursuant to Article 83 Paragraph 1 of the CCRK**

the time served in detention as well as any period of deprivation of liberty in relation to the criminal offences since 06 October 2015 until today are included in the imprisonment.

### **III.**

#### **Confiscated items**

The following items, temporarily sequestrated by ruling of the Pre-Trial Judge dated 12 October 2015:

1. Pistol M57 7.62 Cal Ser No. 19Z45Z
2. 2 Magazine Full-Total 19 Bullets
3. 1 Pistol Holster
4. 1 Black Lock Blade Knife
5. 1 Green Lock Blade Knife
6. 1 Red Multi-Tool Knife

shall be destroyed pursuant to Article 115 Paragraph 5 of the CPC.

### **IV.**

#### **Injured parties**

The Trial Panel takes note that the Injured Parties did not submit any claim for compensation during the Trial. They are instructed that they may pursue their property claim in civil litigation



V.

**Costs of proceedings**

Pursuant to Article 453 Paragraph 1 of the CPC, the defendant shall reimburse the costs of criminal proceedings, at the scheduled amount of € 2.000 (two thousand euro's).

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**Presiding Trial Judge**

**Katrien Gabriël Witteman**

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**Panel Member**

**Iva Niksic**

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**Panel Member**

**René van Veen**

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**Recording Officer**

**Chiara Tagliani**

**Legal Remedy: Pursuant to Article 380 of the CPC, an appeal against this judgment may be filed within 15 days from the day the copy of the Judgment has been served. The appeal should be addressed to the Court of Appeals through the Basic Court of Mitrovica.**