

MUNICIPAL COURT OF Pristina  
GJYKATA KOMUNALE NË Prishtinë  
OPSTINSKI SUD U Pristini  
P Nr. 63/04  
Date 30 July 2009

## IN THE NAME OF THE PEOPLE

The Municipal Court of Pristina, in a trial panel composed of:

- 1) Eulex Judge Arkadiusz Sedek, as Presiding judge,
- 2) Eulex Judge Gerrit Marc Sprenger as panel member,
- 3) Local Judge Agim Maliqi,

assisted by court recorders Valentina Gashi

in the criminal case against:

Slavko STALETOVIC, son of Stale and Dobrilla (maiden name Dordevic) born on 28.08.1956 in Donja Bitina( lower Biti), married, father of two children, Serbian nationality, indicted for the criminal act of Inciting to National, Racial, Religious, and Ethnic Hatred, Discord or Intolerance, pursuant to article 115, paragraph 1 of CCK;

After having held the main trial hearings in public on 08, 15 and 30 July 2009, in the presence of the accused mentioned above, and the EULEX Public Prosecutor Paul Scoggin;

After the panel's deliberation held on 30 July 2009, and based on the Article 391 (1) of KCCP;

Pronounced in public and in the presence of the accused and the Public Prosecutor the following:

### VERDICT

The accused Slavko STALETOVIC, with personal data, mentioned above

is found guilty

of the criminal act of "Inciting to National, Racial, Religious, and Ethnic, Hatred, Discord or Intolerance, pursuant to article 115 paragraph 1 of the CCK;

Because:

the accused is found guilty of the criminal act as charged in the indictment filed by the Public Prosecutor and specifically:

On 02 September 2004, at around 10:15 in front of the gate of the elementary school "Anton Santori" which is located in the middle of the distance between Lower Biti and Upper Biti, the accused in the public place was inciting to hatred, discord or intolerance between national, racial, religious, ethnic groups living in Shterpce Municipality, by addressing the Injured party Mr. Ali Halimi in Serbian language "jebem ti albansku majku qe ti skinem gllavu" who was in the capacity of the community returns officer in Shterpce Municipality, and while Mr Halimi was video recording with digital camera Albanian pupils and parents, who were returning to school in order to continue attendance of the educational process, the accused used words of hatred such as "we did nothing to you during the war 1998-1999, what will do to you in the war to come, we should cut your throats, including children and you should take them to the butcher to slaughter them and not to school, this is Serbia and not Kosovo" and than he attempted to grab the camera but an American Police Officer intervened and pulled the accused away from the site of the incident.

## SENTENCE

Slavko STALETOVIC

Pursuant to article 3 paragraph 1(1and3), article 6, article 11 paragraph 1, article 15 paragraph 1 and 2, article 34, and 38 paragraph 1 and 2, is sentenced to imprisonment of 120 days,

Pursuant to article 41 paragraph 1(1), article 42, article 43 paragraph 2, article 44 paragraph 1, 2, and 3 the punishment shall not be executed if the convicted person does not commit another criminal offence for the period of three years after the judgment is final,

Pursuant to article 54 paragraphs 1 and 2 (1) and article 39 paragraph 1,3,4 and 5, article 64 paragraph 1 and 3 impose a fine of amount 200 Euros, within ten months paid in monthly installments of 20 Euros,

PROPERTY CLAIM

No property claim.

## COST

Pursuant to article 99 and article 102 of the CPCK, the defendant is obliged to compensate the general costs of the proceedings, which are determined in 100 Euros.

## REASONING

### I. Procedural history.

Based on the indictment filed by Public Prosecutor of Ferizaj on 31 December 2004( PP.No.1077/2004), defendant Slavko Staletovic was charged with criminal offence of Inciting to National, Racial, Religious, and Ethnic, Hatred, Discord or Intolerance, pursuant to article 115 paragraph 1 of the CCK. On 25 January 2005 the Confirmation Judge issued the ruling confirming the indictment for the aforementioned defendant.

The President of the Assembly of EUELEX Judges on 8 May 2009 issued the decision, that the case against Slavko Staletovic is assigned to EULEX District Court of Pristina team. The decision was taken according to Article 3.4, 3.6 and 4.3 of the Law on Jurisdiction (Law No. 03/L-053).

The main trial started on 8 July 2009 in open session and proceeded under the management of Panel members as specified above. Defendant Slavko Staletovic was present during whole trial, but he did not appoint a defense counsel. Injured party Ali Halimi was present only during his interrogation as a witness, although he was duly summoned for all sessions.

The Presiding Judge confirmed that the trial panel has been constituted in accordance with the law. The jurisdiction of the EULEX Judges in this case is based according to Article 3.3 b) of the law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. It must be pointed out that no objections were raised by the parties as to the composition of the panel.

During the same session after the indictment was read by the Public Prosecutor, the defendant was asked to plead guilty or not guilty. In the response to this question he rejected the accusation.

During the session of 8 July 2009 two witnesses Ismail Fetahu and Hamdi Rushti were interrogated.

On 15 July 2009 the following witnesses were examined: Ali Halimi- injured party, Mahxhun Sokoli. Upon request of the defendant the panel also called and examined the following witnesses Srdan Stanistic and Sladan Boskovic.

On 30 July 2009 the defendant Slavko Staletovic was examined and he presented his version of the events. During the same session the closing statements of Public Prosecutor and

defendant were presented. On the same day, following deliberation and voting, the Court has announced the above written enacting clause of this judgment.

## II. Factual findings regarding the event that occurred on 2 of September 2004.

In September 2004 Ali Halimi worked as an officer for the returns in Municipality of Shterpce. Local office for communities within Shterpce Municipality was established in August 2004 by Zhaklina King-the representative of the communities and UNMIK office. In the capacity of Ali Halimi was to follow the return of the Albanian pupils to the "Anton Santori" school which in the middle of the distance between Lower Biti and Upper Biti villages, as he had preliminary information that Albanian children would not be allowed to start lessons in that school. The return of Albanian pupils to that school was against the will of the parents from Serbian community. On 2 September 2004 at about 10.00. Ali Halimi took the digital camera and with his official car Lada Niva went on the journey to above-mentioned school. At around 10.15 the defendant Slavko Staletovic appeared on the spot, since being in his car on the way from the lower Vitina to Shterpce he noticed the commotion at the entry to this school. He decided to pop out in this place since he was curious what was going there.

At this time, at scene of the crime there was a group of 70-80 people including Albanian and Serbian parents, teachers from Albanian and Serbian community. Due to rising nervous tension between Albanian and Serbian ethnicities over the problem of Albanian pupils' return to the school, there were also present members of KPS and UNMIK police.

Ali Halimi was going to make pictures for the evidentiary purpose, when he was approached by Slavko Staletovic who interrupted him by addressing in aggressive way. The defendant forbade him to take any pictures by saying in Serbian language *"jebem ti Albansku majku que ti skinem gllavu"* (*fuck your Albanian mother, I will chop off your head*) and he additionally told to Ali Halimi in Albanian language *"we did nothing to you during the war 1998-1999, what will do to you in the war to come, we should cut your throats, including children and you should take them to the butcher to slaughter them and not to school, this is Serbia and not Kosovo"*. These words were spoken so loud that people gathered in this place could hear them. The defendant also tried to grab the camera belonging to Ali Halimi but an American police officer intervened and ordered the defendant to pull away from the site of the incident. Ali Halimi was afraid of this hostile reaction and thought that this incident would have serious consequences since a large number of Albanian and Serbian were present and it could lead to a conflict between these two ethnicities.

In order to de-escalate this conflict Slavko Staletovic and Ali Halimi were asked by the police officers to leave the spot and they acted accordingly to this request.

After this incident occurred Ali Halimi made steps to calm down the conflict with Slavko

Staletovic, but he was not successful as the defendant started threatening him by saying that he would kill him and flee to Serbia if he would pursue with denunciation to the authorities. This message was passed on to the injured party by one of the employee of the municipality named Afet Hasani. Due to these threats Ali Halimi has decided to report heretofore mentioned incident to the authorities as he was afraid that the defendant would go as far as to carry them out.

### III. Assessment of evidence.

The facts established in this judgment are based on the evidence presented during main trial, most notably on testimony of the injured party Ali Halimi and witnesses Ismajl Fetahu, Hamdi Rushiti, Mahxhun Sokoli . The statement given by a witness Srdan Stanisic was also taken into consideration, but only to the extent it is in line with the statements of other witnesses. The statements of the witness Sladan Boskovic was of no importance for the court, as he obviously did not see the course of events between the defendant and the injured party.

The facts regarding this event are based on the testimony of injured party Ali Halimi who is the main witness as to the history of the crime. Ali Halimi stated that on 2<sup>nd</sup> September 2004 ha was present in front of the gate of "Anton Santori" Elementary School. As an employee of Shterpece office,-the local office of communities he was obliged to follow the return of Albanian pupils to this school. Ali Halimi came on the spot with a digital camera to substantiate this event. At some point Slavko Staletovic approached him, the defendant was aggressive and he addressed to the injured party saying in Serbian language *"Jebem ti Albansku majku; que ti skinem gllavu"*( *Fuck your Albanian mother: I will chop off your head*). Slavko Staletovic also told to Ali Halimi in Albanian: " *We did not do anything to you during the war 1998-1999 you do not know what will we do to you in the next war; your children's place it is at the butchers but not at school; this is Serbia not Kosovo*". At the time the defendant used these words there were approximately 70-80 people of mixed ethnicities- Albanians and Serbs. According to this witness, the defendant attempted to hit him and take away his camera, but at that moment an American police officer intervened. With time after the event Ali Halimi tried to resolve the dispute with the defendant, but Slavko Staletovic was threatening him by saying that he would kill him and flee to Serbia. This kind of message was conveyed to Ali Halimi by an employee of the municipality Afet Hasani.

Based on this important statement of the injured party the panel is convinced, beyond reasonable doubt, that the event occurred as above-described. No indication was found that this witness may have attempted not to tell the truth. On the contrary it was evident from his demeanor during the entire examination that Ali Halimi properly recalled the events and told

the truth. The panel is aware that no discrepancies between his testimonies during main trial and the testimonies during investigation come out. These facts make the statements of this witness credible.

Furthermore, it is clear that this witness is not looking for personal revenge over the defendant. He clearly explained during interrogation that he decided to act against him because in his opinion his life was at stake. Additionally he added that Serbian ethnicity of the defendant, was not a reason why he decided to bring this case against Slavko Staletovic. He testify as follows *"I would have taken this line against any person in Kosovo, whether they were Albanian, Bosnian, or Gorani. I would have acted the same against anyone, even against my son."*

These words clearly indicate that Ali Halimi has good intentions and the only motive for his actions against the defendant is that he is seeking justice.

For the above mentioned reasons the panel has no doubt as to credibility of witness Ali Halimi and the veracity of his statements.

In addition the statements of Ali Halimi are fully corroborated by statements of other witnesses.

Witness Hamdi Rushiti stated on 8 July 2009 before the Court, that he was present at the entry of the elementary school "Anton Santori" on 2 September 2004. Hamdi Rushiti saw Slavko Staletovic approached Ali Halimi, at that time the latter was making photographs. Witness confirmed that he heard the defendant cursing the mother of injured party with offensive words: *"Fuck your Albanian mother"*. Additionally he testified that at the time the incident took place there was a crowd close to the school composed of pupils and their parents of both- Albanian and Serbian ethnicity. According to this witness there were also present on the spot KPS police and KFOR police to separate members of both ethnicities. Moreover, an international police officer intervened between Staletovic and Halimi to stop further escalation of this conflict. However, he was not able to repeat all words of the defendant, due to the lapse of time. Confronted with his previous statements, dated 27 September 2004 especially the words that were spoken by the defendant, Hamdi Rushiti confirmed these statements.

This witness has perfect possibility to hear the words of the defendant as he was very close not only to Slavko Staletovic (20 meters), but also to Ali Halimi (5-10 meters). Partial lack of memory during the interrogation can easily be explained by the lapse of time, since the crime happened 5 years ago. Taking into consideration above mentioned circumstances the panel has no doubt as to the credibility of witness Hamdi Rushiti.

Witness Ismajl Fetahu in his statement given before the Court on 8 July 2009 described the

background to the return of Albanian pupils to that school. This witness saw the defendant leaving his car and getting into the conflict with Ali Halimi. According to this witness there was a large crowd outside the school, composed of teachers, pupils and their parents of both ethnicities- Albanians and Serbs. The situation between these ethnicities was very explosive, as Serbs did not want to allow Albanian pupils return to the school. This witness also has problems with recalling the exact words that were spoken by the defendant. Confronted with his previous statements, dated 27 September 2004 and 22 October 2004, he just confirm them. It is obvious that witness at that time, right after the event occurred has been able to provide the police with more detailed statements. It is not a reason to doubt his credibility, as it is natural that his memory failed during the period of 5 years. The crucial point is that Ismajl Fetahu confirmed what exactly the defendant told the injured party and in what circumstances.

Another important eye-witness to this course of events was Mahzhun Sokoli. In the statements given before the court on 15 July 2009 this witness stated that he was present at the entry of the elementary school "Anton Santori" on 2 of September 2004. Mahzhun Sokoli saw the defendant threatening Ali Halimami , while the injured party was taking pictures of the situation. According to this witness Slavko Staletovic was using Serbian and Albanian language. Due to the time laps, also this witness did not remember exact words spoken by the defendant to Ali Halimi. Confronted with his previous statements, dated 27 September 2004 and 30 November October 2004, he just confirmed them.

Evaluating the statements of the witness Mahzhun Sokoli it is apparent that they are consistent to a very high degree. It must be also ones more pointed out, like in the case of above mentioned witnesses, that Mahzhun Sokoli right after the incident took place was able to provide the police with more detailed statements. But this is not at all reason to doubt their credibility, as this is natural that human memory failed during a period of about 5 years.

As to the statements of the witness Srdan Stanisic in the opinion of this panel they are very important. This witness was present on the spot at the capacity of official person –police officer, responsible for maintaining public order in this place. According to Srdan Stanisic he was an eyewitness to a dispute between Slavko Staletovic and Ali Halimi. The most important issue is that this witness heard some discussion "*I heard some discussion, but I could not hear exactly what*". The reason why this witness had no chance to clearly hear the discussion of the defendant and the injured party is that Srdan Stanisic was at the entrance of the school. Srdan Stanisic moved to this place due to the fact that at the entrance of the school there were more people and there "*was a big need for my presence over there*". So Srdan Stanisic was so busy and involved in his professional responsibilities that he obviously could not follow the dispute between the parties to the conflict. The witness stated honestly : "*I was far more focused on this group of people that were at the front of the school*". That is why he could not hear any offensive words during this incident. In fact the witness:" *did not hear anything I could only see them addressing each other*". This in not however the reason to diminished his credibility, as the statements of this witness are consistent with the statements

of other witnesses to very high degree and what is more important Srdan Stanisic's report is supplementary to the statements of above mentioned witnesses. The crucial point is that this unbiased witness confirmed that on the spot there were many people from both ethnicities- Albanian and Serbs.

The witness Sladan Boskovic was also present on the 2 September 2004 at the entrance of the school, as a parent of three children. Apparently, he could not give any statement concerning the course of events, since according to his words: "*I did not see any discussion between in them*" Additionally he stated: "*I did not hear anything because I was too far to hear anything.*" So the statements of this witness were of no importance to the subject matter of this case.

The defendant Slavko Staletovic defended himself not only during the investigation , but also during main trial. Interrogated during the session on 30 July 2009 he admitted that on 2<sup>nd</sup> of September 2009 he was present on the spot. The reason he decided to show up was curiosity: "*I noticed a commotion and as a curious person I stopped by. I was in my car, When I reached the school I saw that there was UNMIK police KPS, internationals. I wanted to return to my car but there was no space for me to turn. As soon as I got the opportunity to get onto the road I went to the roar with my car and started participating in the traffic (...).At that moment I noticed this person called Aliu. I saw that he had directed either a recording or photo camera. From the car I waved at him to tell him not to record me because he is entitled to, (...) but he continued. (...) I stopped in my car, and opened the door and asked him "What gives you the right to record me". After a very period of time, 1-2 seconds an US police officer immediately intervened. He warned me (...) he waved at me to leave the place (...) Of course I entered the car and left.*" The statements of the defendant up to this point are plausible, as they correspond with the evidence gathered during the proceedings.

At the same time the defendant disclaim that he used any offensive words during the event with Ali Halimi. Such an official statement was in contradiction with the statements he gave during the investigation. Confronted with declaration: "*Perhaps I cursed him by his mother, but I didn't say to him "Fuck your Albanian mother"(...) I told him: stop with taking the pictures, you can go to your mother's cant*" he disclaim indicating: "*It is not correct and I deny it . I claim that I didn't say that.*" After showing him the minutes of the statements he gave, the defendant tried to defend himself by saying: "*This is my signature and I signed the minutes after several days. It was given to me first in Albanian and I was refusing and saying I can not understand. There were some court employees who looked at me in the sort of way that made me fell under pressure and than I signed. (...) An interpreter was present when I was being questioned but minutes were not translated to me. (...). I don't have doubts about the interpreter but about his knowledge and the correct manner of conveying my words That is a problem. I know ( the interpreter) very well , he is a good man , but there is possibility to make a mistake . I know how well he speaks Serbian, we know each other*"

The statements of the defendant given during the investigation are admissible evidence, as law clearly stipulate that:” a statement by the defendant given to the police or the public prosecutor may be admissible evidence in court only when taken in accordance with the provisions of Article 229 through 236 of the present Code. Such statements can be used to challenge the testimony of the defendant in court (Article 156 of the KCCP). As the statements of the defendant were not obtained in violation of above mentioned Articles, they are considered as admissible evidence.

Taking into consideration all evidence collected during therein proceedings the panel is convinced beyond reasonable doubt that the version presented by the defendant has to be seen as a fruitless attempt to dispute allegations that he has committed assumed crime.

IV. Legal Assessment: Having perused the case file and having examined the witnesses and the defendant during court proceedings, the Court found that Slavko Staletovic is guilty beyond any reasonable doubt of the criminal offence as charged in the confirmed indictment. It is clear that the defendant has committed the crime of Inciting to National, Racial, Religious, and Ethnic, Hatred, Discord or Intolerance, contrary to article 115 paragraph 1 of the CCK, since :on 02 September 2004, at around 10:15 in front of the gate of the elementary school “Anton Santori” which is located in the middle of the distance between Lower Biti and Upper Biti, the accused in the public place was inciting to hatred, discord or intolerance between national, racial, religious, ethnic groups living in Shterpce Municipality, by addressing the injured party Mr. Ali Halimi in Serbian language “*jebem ti albansku majku qe ti skinem gllavu*” who was in the capacity of the community returns officer in Shterpce Municipality, and while Mr Halimi was taking pictures for the evidentiary purpose to substantiate the return of Albanian pupils to school, the accused used words of hatred such as “*we did nothing to you during the war 1998-1999, what will do to you in the war to come, we should cut your throats, including children and you should take them to the butcher to slaughter them and not to school, this is Serbia and not Kosovo*” and than he attempted to grab the camera but an American police officer intervned and take the accused away from the site of the incident.

The right to freedom of expression is guaranteed in the constitutions of most states. In addition, it is protected under international law in instruments such as the Universal Declaration of Human Rights (Article 19), the International Covenant on Civil and Political Rights (Article 19), the African Charter on Human and People’s Rights (Article9), the European Convention on Human Rights and Fundamental Freedoms (Article10). A person’s right to freedom of expression is not an absolute right, however, and may be limited in certain circumstances. According to Article 19 of the International Covenant on Civil and Political Rights, restrictions on freedom of expression must be “provided by law” and “necessary for respect of the rights and reputations of others” or “for the protection of

national security or of public order, or of public health or morals.” Other conventions provide for similar restrictions on this right. In particular, Article 20 of the International Covenant on Civil and Political Rights includes a positive obligation to restrict freedom of expression in the case of “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Article 20(2) provides that such advocacy “shall be prohibited by law.” Similar obligations are contained in Article 13(5) of the American Convention on Human Rights and Article 4(a) of the International Convention on the Elimination of All Forms of Racial Discrimination.

Deciding on Slavko Staletovic punishment, the court was bound by Article 115 paragraph 1 of the CCK, that imposes an imprisonment sentence up to 5 years or fine. According to Article 38 (1) and (2) of the CCK the punishment of imprisonment may not be shorter than fifteen days. The punishment of imprisonment is imposed in full years and months and, in cases where the term is up to six months, in full days Pursuant to Article 64 (1) of the CCK this panel also took into consideration the following circumstances:

1. As mitigating circumstances:

- He has no previous convictions,
- He is married, has family and he works,
- The crime happened a long time ago,
- The defendant observed the law after committing a criminal offence.

The panel also considered as mitigating that the criminal proceedings took an extraordinary long time. The delay is not imputable to the accused who has been living with the burden of criminal proceedings against him since 2004.

2. As aggravating circumstances:

- High intensity of danger to the protected value, as building tolerance and acceptance in post-conflict state like Kosovo is only possible in an atmosphere free of hatred, discord and intolerance.

Taking all these circumstances into careful consideration this panel found that imprisonment of 120 days would be appropriate and necessary to serve all purposes of punishment mentioned in Article 64 (1) of the CCK.

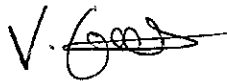
This panel decided that conditions for rendering suspended sentence are observed. This criminal proceedings would be, taking into account past conduct of the defendant and his behavior after commission of thereof criminal act, an official reprimand that persuade the defendant that law must be respected. Additional measure as to that, is fine at the amount of 200 € paid in 10 monthly installments. The penalty of imprisonment was suspended for a period of three years probation which runs from the sentence entering into force. This period is necessary and sufficient to achieve the purpose of the penalty against the offender , and in

particular , to prevent his relapse into crime.

Defining the fine and deciding that it should be paid in monthly installments, the court took into consideration the income of the offender, his personal, family and material conditions and earning potential.

V. Costs of criminal proceedings:

The defendant has to bear the costs of criminal proceedings pursuant to Article 99 and 102 of the CCK. The amount of 100 € shall be paid as a lump sum.



Court recorder  
Valentina Gashi



**LEGAL REMEDY:**

The parties have the right to appeal this judgment within fifteen (15) days of the day the copy of the judgment has been served pursuant to Article 398 Paragraph 1 of the Kosovo Criminal Procedure Code (KCPC) to the District Court of Kosovo through the Municipal Court of Prishtinë/Priština.