

DISTRICT COURT OF GJILAN/GNJILANE

P. Nr.171/2009

Date: 12th March 2012

IN THE NAME OF THE PEOPLE

The District Court of Gjilan/Gnjilane, through a panel composed of the EULEX Judge Vitor Hugo Pardal, as Presiding, the EULEX Judge Rositza Buzova and the Kosovo Judge Rasim Rasimi as panel members, assisted by Eriona Bitri Branding as recording clerk and Nexhmi Rexhepi as Interpreter, in the criminal case against:

KIMETE KRASNIQI, father's name Fetah, mother's name Aleme Malaj (maiden name Gashi), born on the 24th April 1980 at the village Negrovc, Drenas, female, student, single with no children, Kosovo Albanian and resident in Drenas, Kosovo,

charged with the criminal offence of **attempted murder** contrary to Article 30, paragraph 1 of the Criminal Law of Kosovo, in conjunction with Articles 19 and 22 of the Law of SFRY (still criminalized by Article 146 in conjunction with Articles 20 and 23 of the Criminal Code of Kosovo CCK),

After public main trial hearings held in the presence of the defendant Kimete Krasniqi and her Defence Counsel Mr. Destan Rukiqi, together with the Public Prosecutor Mr. Arben Kadriu from the District Prosecution Office of Gjilan/Gnjilane and the EULEX Prosecutor Ms. Elisa Moretti,

Following the closing statements at the hearing on 12th March 2012, presented by the Prosecutor Mr. Arben Kadriu from the District Prosecution Office of Gjilan/Gnjilane and the EULEX Prosecutor Ms. Elisa Moretti, for withdrawal of the charge against the defendant Kimete Krasniqi for the aforementioned criminal offence,

Pursuant to Article 389, paragraph 1 and Article 52 of Kosovo Code of Criminal Procedure, issues the following:

JUDGMENT

The criminal charge against the defendant Kimete Krasniqi for the criminal offence of attempted murder contrary to Article 30, paragraph 1, of the Criminal Law of Kosovo in conjunction with Articles 19 and 22 of the Law of SFRY, still criminalized by Article 146 in conjunction with Article 20 and 23 of the Criminal Code of Kosovo (CKK) is **REJECTED** because of the withdrawal from prosecution of the following charge:

On a day between 17 April 1998 and May 16, 1998 the accused, Kimete Krasniqi, in complicity with other persons, motivated by a vendetta or for personal gain and with the premeditation and planning, attempted to murder Hamez Hajra. The accused and her co-perpetrators planned and executed an ambush of the victim near to the junction of the road from Glogovac to Skenderaj with the road to Terstenik 2. The accused Kimete Krasniqi, made arrangements with the victim, a few days prior to the incident, for him to meet her with his vehicle at the above mentioned road junction. The victim arrived at the location at the agreed time and approached the accused who was waiting for him by the side of the road. As he did so a number of the "soldiers" dressed in UCK uniforms and using automatic weapons emerged from the bushes and shot at the vehicle. A number of bullets hit the vehicle but the victim managed to continue

driving towards Glogovac and escaped without bodily injury.

By these actions the defendant Kimete Kasniqi would have committed the criminal offence of attempted murder contrary to Article 30, paragraph 1, of the Criminal Law of Kosovo in conjunction with Articles 19 and 22 of the Law of SFRY (Article 146 in conjunction with Article 20 and 23 of the Criminal Code of Kosovo CCK), as legally qualified by Judgment AP-KZ 393/2006 of the Supreme Court of Kosovo, dated 20 May 2008.

The injured party is entitled to seek compensation of damages in civil litigation as per Article 112, paragraph 3, first sentence of the KCCP.

REASONING

Competence of the Court

The case falls under the territorial and subject matter jurisdiction of the District Court of Gjilan/Gnjilane to which it has been sent for retrial by the Supreme Court of Kosovo. The case further falls under the competence of EULEX judges in accordance with Article 15 of the Law on Jurisdiction (Law No 03/L-053).

Procedural background

The defendant Kimete Krasniqi has been tried in absentia and sentenced by the District Court of Gjilan/Gnjilane, UNMIK international judges, with a verdict issued in P.nr. 162/2003, dated 7 April 2005, for the criminal offence of: Attempted murder of Hamez Hajra motivated by personal gain, ruthless revenge, other basic motives or for vendetta, acting in complicity, contrary to Article 30(2) sub paragraphs 3 and 4 of the Kosovo Criminal Code and Articles 19 and 22 of the CCSFRY and

Unlawful possession of weapons contrary to Article 199 Paragraph 1 of the Kosovo Criminal Code and Section 8.2 of UNMIK Regulation 2001/17, and sentenced to an aggregate sentence of 6 years of imprisonment.

By Verdict AP-KZ 393/2006 of the Supreme Court of Kosovo, dated 20th May 2008, the charge was re-qualified into attempted murder, contrary to Article 30, paragraph 1 of the Criminal Law of Kosovo, in conjunction with Articles 19 and 22 of the Law of SFRY (still criminalized by Article 146 in conjunction with Articles 20 and 23 of the Criminal Code of Kosovo CCK) and the defendant Kimete Krasniqi was then sentenced to a term of 5 years of imprisonment.

The Request for protection of legality filed in the interest of the defendant Kimete Krasniqi on 18th September 2008 was partially granted and the case was returned for retrial to the District Court of Gjilan/Gnjilane as to the charge of attempted intentional murder. The Verdicts of District Court of Gjilan/Gnjilane and Supreme Court of Kosovo were annulled thus.

Applicable Procedural Law

The Indictment in this case has been filed to the District Court of Gjilan/Gnjilane on 3 July 2002, before the entry into force of the Provisional Criminal Procedure Code of Kosovo, now Kosovo Code of Criminal Procedure (KCCP) on 6th April 2004.

Article 550 KCCP provides "*Criminal proceedings at first instance in which the indictment, summary indictment or private charge was filed before the date of entry into force of the present Code but which have not been completed by this date shall be continued according to the provisions of the previous applicable law until: 1) The criminal proceedings are dismissed in a final form by a ruling; or: 2) The judgment rendered at the main trial becomes final.*"

Criminal proceedings at this first instance partial retrial were instituted by Verdict AP-KZ 393/2006 of the Supreme Court of Kosovo, dated 20 May 2008. For these reasons and pursuant to Article 550, 2) KCCP, the applicable procedural law is the Kosovo Code of Criminal Procedure.

Findings of the Court

The three-judge panel is competent and has subject and territorial jurisdiction to adjudicate the present case, pursuant the specific reference to this Court made by the Supreme Court of Kosovo sending the case for partial retrial, in conjunction with article 37.3 KCCP and with the currently applicable Law on Jurisdiction, as well as according to current roster, as defined through current applicable rules concerning appointment of local judges for mixed panels.

In the main trial session held on 12 March 2012, the Public Prosecution withdrew from prosecution against the defendant Kimete Krasniqi for the criminal offence she was charged for.

In this case the Court is bound by the provision of 389, paragraph 1 of Kosovo Code of Criminal Procedure which provides: *“The court shall render a judgment rejecting the charge, if: 1) The prosecutor withdraws the charge during the period from the opening until the conclusion of the main trial; 2) The injured party withdraws the motion; 3) The accused was previously convicted or acquitted of the same act under a final judgment or proceedings against him or her were terminated in a final form by a ruling; or 4) The period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution”*.

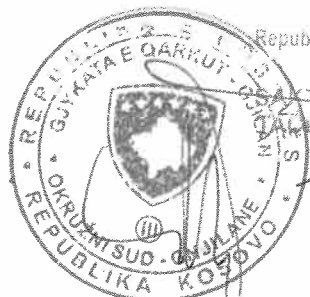
Since the Prosecutor withdrew from prosecution, the pending criminal charge of attempted murder contrary to Article 30, paragraph 1, of the Criminal Law of Kosovo in conjunction with Articles 19 and 22 of the Law of SFRY (Article 146 in conjunction with Article 20 and 23 of the Criminal Code of

Kosovo CCK), as legally qualified by Judgment AP-KZ 393/2006 of the Supreme Court of Kosovo, dated 20 May 2008, shall be rejected and since article 52 KCCP entitles the Prosecutor to do so.

For the above reasoning it has been decided as in the enacting clause of this judgment.

Legal remedy: This Judgment may be appealed before the Supreme Court of Kosovo through the District Court of Gjilan/Gnjilane within fifteen days of the day its copy has been served according to Article 398, paragraph 1 of KCCP.

GJILAN/GNJILANE, 12th March 2012



Vitor Hugo Pardal

Presiding Judge

Republika e Kosovës Republika Kosovo

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DALLGOSHTI OTPRAVKA POTVRDJUJE

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Rasim Rasimi

Panel member

Eriona Bitri Brading

Recording clerk

Nexhmi Rexhepi

Interpreter