

DISTRICT COURT OF MITROVICA/MITROVICĚ

K. no. 81/08

26 March 2009

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA/MITROVICĚ, in the panel composed of EULEX Judge Angela Kaptein as Presiding Judge, EULEX Judges Christine Lindemann-Proetel and Hajnalka Karpati as panel members, assisted by the Recording Officer Francesco Caruso, in the criminal case against the accused:

Miroljub NIKOLIĆ and Vladimir JOVANOVIĆ, both charged according to the Public Prosecutor Indictment KT. no. 378/07, filed with the District Court of Mitrovica/Mitrovicë on 11 June 2008 and orally amended by the EULEX Public Prosecutor during the Main Trial session on 4 March 2009, with the criminal offence of:

Grave cases of robbery, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) and article 23 of the Provisional Criminal Code of Kosovo (PCCK)

After having held the main trial hearings in public on 4, 5, 9, 11, 12, 25 and 26 March 2009, all in the presence of the accused Miroljub Nikolić, his Defense Counsel Rexhep Kaçaniku -unavailable on 4 March 2009 and replaced for that day and with the agreement of the accused by Mr. Miodrag Brkljać-, the accused Vladimir Jovanović, his Defence Counsel Ljubomir Pantović, the EULEX Public Prosecutor Emmanuelle Ducos, of the two injured parties, only Mr. Vucina Vucković appeared at the main trial, being present for the whole session on 4 March and during the morning session on 25 March 2009, after the panel's deliberation and voting held on 26 March 2009 based on Article 390 of PCCK, on 26 March 2009 pronounce in public and in the presence of the Accused, the Defense Counsels and the EULEX Public Prosecutor the following

VERDICT

The accused, **Miroljub Nikolić** aka "Kriger" and "Bekam", son of Radovan Nikolić and Slobodanka Djordjević, born on 31 March 1979, in Mitrovica/Mitrovicë, Mitrovica/Mitrovicë Municipality, Kosovo Serb, last permanent residence Sočanica settlement Savina stena, Leposavić Municipality, Kosovo, not married, finished high school, private worker, of average economic status, in detention continuously since 14 April 2008;

And the accused, **Vladimir Jovanović** aka Celofan, son of Milan Jovanović and Radomirka Milosavljević, born on 31 July 1982, in Novi Pazar, Serbia, Kosovo Serb, last

permanent residence Ibarska Slatina, Leposavić Municipality, Kosovo, married, father of one daughter, primary school education, unemployed, of poor economic status, in detention continuously since 14 December 2007

Are found

NOT GUILTY

Because it has not been proven beyond reasonable doubt that, as alleged in the indictment, the two accused, Miroљub Nikolić and Vladimir Jovanović, as part of a 4 persons armed group and wearing masks, on 18 October 2007 between 20:30 and 02:30 hours entered the house of the two elderly injured parties, Vucina and Draguna Vuckovic, and robbed, maltreated and threatened them.

Therefore the accused are acquitted for the criminal acts of:

Grave cases of robbery, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) and article 23 of the Provisional Criminal Code of Kosovo (PCCK)

Pursuant to article 103 PCCK, the costs of criminal proceedings under article 99 paragraph 2) subparagraph 1 to 5 PCCK, the necessary expenses of the defendant and the remuneration and necessary expenditures of the defence counsel shall be paid from the court budget.

REASONING

Although none of the authorized parties announced the filing of an appeal within eight days after the announcement of the verdict, the panel will explain its verdict by a statement of grounds.

A. PROCEDURAL BACKGROUND

1. The Indictment

On 11 June 2008 the District Prosecutor for Mitrovica/Mitrovicë Mr. Shyqyri Sylla, filed the indictment KT no. 378/07 with the Registry of the District Court of Mitrovica/Mitrovicë. The indictment alleged that the defendants and others, in co-perpetration, had committed the criminal act of: grave case of robbery, contrary to article 256, Paragraphs 1), read in conjunction with article 255 paragraph 1) of the Provisional Criminal Code of Kosovo (PCCK). According to the indictment, the criminal act was committed in the house of Vucina and Draguna Vuckovic in the village of Gnjezdane, Leposavic, in the night between 18 and 19 October 2007.

The Confirmation Hearing pursuant to Article 314 of PCCK was held on 5 September 2008 and a decision confirming the above mentioned indictment was issued on 05 September 2008, no appeal against the decision was filed by the parties.

2. The Amendments to the Indictment.

On 4 March 2009 during the first trial session, the EULEX Public Prosecutor Emmanuelle Ducos, orally amended the indictment to renounce to two of the witnesses originally proposed: Nikola and Igor Ratković, and to propose as additional evidence the documents listed under n. 29 and 45 of the police file, documents not yet listed in the indictment but already disclosed to the defence counsels.

COMPETENCE OF THE COURT

1) Procedure and Competence of Mitrovica/Mitrovicë District Court

The Provisional Criminal Procedure Code of Kosovo (PCPCK) entered into force on 6 April 2004. The indictment was filed on 11 June 2008, when the PCPCK was already effective. Therefore the transitional provision under Article 550 of PCPCK does not apply.

The Mitrovica/Mitrovicë District Court is the competent judicial body to hear this criminal proceeding.

Under article 23, 1-i) of the PCPCK, District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the PCPCK, territorial jurisdiction is vested in the court within whose territory a crime is alleged to have been committed, that in this case is the village of Gnjezdane, Leposavic, which is located within the territory over which the Mitrovica/Mitrovicë District court has jurisdiction.

Thus, the Mitrovica/Mitrovicë District Court is the competent judicial body to hear this criminal proceeding.

2) Composition of the Panel

Pursuant to section 16.2 of the Law on Jurisdiction, Case Selection, Case Allocation of EULEX Judges and Prosecutors in Kosovo no. 03/L-53 (Law on Jurisdiction), the President of the Assembly of EULEX Judges decides, according to the Law on Jurisdiction, which cases handed over from UNMIK to EULEX pursuant to section 16.1 of the law on Jurisdiction fall within the jurisdiction and competence of the EULEX Judges. On 6 February, the President of the Assembly of EULEX Judges, Maria Giuliana Civinini, issued the decision n. JC/EJU/OPEJ/0233/mgc/09, retaining under the authority of the EULEX Judges in the District Court of Mitrovica/Mitrovicë the criminal case K.no. 81/08 pursuant to section 16.2 and 3.3 m) of the Law on Jurisdiction.

Pursuant to section 2.1 and in furtherance to the abovementioned decision, the international judges appointed to the District Court of Mitrovica/Mitrovicë- EULEX Judge Angela Kaptein as Presiding Judge, EULEX Judges Christine Lindemann-Proetel and Hajnalka Karpati- have jurisdiction over this criminal matter.

None of the parties objected to the composition of the panel.

3) The Main Session

The main trial was open to the public, with sessions held on 4, 5, 9, 11, 12, 25 and 26 March 2009, when also the verdict was announced, all in the presence of the accused Miroљub Nikolić, his Defense Counsel Rexhep Kačaniku -unavailable on 4 March 2009 and replaced for that day and with the agreement of the accused by Mr. Miodrag Brkljać-, the accused Vladimir Jovanović, his Defence Counsel Ljubomir Pantović, the EULEX Public Prosecutor Emmanuelle Ducos and, of the two injured parties, only Mr. Vucina Vucković appeared at the main trial, being present for the whole session on 4 March and during the morning session on 25 March 2009.

In accordance with Article 15 of the PCPCK, and with the agreement of the parties, international interpreters translated court proceedings and all court documents relevant to the trial only into Serbian and English, as necessary.

SUMMARY AND EVALUATION OF THE EVIDENCE PRESENTED

During the course of the proceedings at the main trial, the following witnesses were heard:

- (1) Vuckovic Vucina - Injured Party, 04 March 2009;**
- (2) Ratkovic Sinisa – 05 March 2009;**
- (3) Ilic Stanica – 05 March 2009;**
- (4) Radovic Danica – 05 March 2009;**
- (5) Jankovic Mirko – 09 March 2009;**
- (6) Muminovic Enes – 09 March 2009;**
- (7) Spasojevic Marko – 09 March 2009;**
- (8) Nestorovic Dalibor -11March 2009**
- (9) Vuckovic Draguna – Injured Party, 12 March 2009;**

During the course of the proceedings at the main trial the statements of the following witnesses and reports of police officer's were read out:

- (1) Ismet Skrijelj – 05 March 2009**
- (2) Aleksander Vasic - 12 March 2009.**

Police Reports

The Police reports n. 4, 5, 6, 7, 20, 21, 39, 46, 47, 48, 56, were challenged by the defence counsel Mr. Kačaniku who, during the trial hearing on 5 March 2009 submitted that this police reports should be declared inadmissible because they result from investigations that were not ordered by the Public Prosecutor and because, on a substantial level, such reports contain officers' opinions upon which the court cannot base its decision.

The Public Prosecutor submits that the reports are the result of investigative actions validly conducted by police during the preliminary phase of the investigation and such investigative actions may be conducted by police *ex officio* and are therefore admissible.

The panel finds that the police reports challenged by the defence counsel Kačaniku should be considered admissible. According to the criminal procedure code police officers may, *ex officio*, conduct investigative acts for the purpose of gathering evidence and collect information which may be used in criminal proceedings (201 CPC). The CPC equally requires for the information gathered during investigation to be encompassed in one -or more- criminal reports (art. 207). For the purpose of the main trial, the criminal reports shall be considered among the documents which can be read pursuant to article 367 CPC.

As for the substantial part of the counsel objections, the law leaves to the Judges the freedom to determine the value to be attached to the single piece of evidence, and in the process of evaluating the evidence, judges are in the position to distinguish the objective findings from the subjective opinion of the reporting officers.

During the course of the proceedings of the main trial the following evidence was submitted by the International Public Prosecutor and entered into evidence:

- (1) Document n. 29 in the police file, registry of the controlled cars at the checkpoint on 18 October 2007, submitted on 09 March 2009;
- (2) Document n. 45 list of controlled vehicle at the KFOR checkpoint on 18 October 2007, submitted on 04 March 2009;
- (3) Statement of the suspect Jovanovic, submitted on 11 March 2009;
- (4) Criminal Record of the accused Nikolic submitted on 11 March 2009;
- (5) Police binder containing: police reports, statements, crime scene investigation, forensic reports and photographic evidence, collected pursuant to the criminal investigation n. 2007/BE/283.

Vuckovic Vucina testified on 04 March 2009, the first session of the main trial. He is one of the two injured parties and narrated how, on 18 October 2007 10-15 minutes after the end of the evening news, four masked men wearing rubber gloves entered into his house through the front door, approached the witness in his kitchen where he was seating with his wife Draguna, and two of them tied his hands with tape and immobilized him to the floor where witness received several kicks to his kidneys; eventually, witness was rolled over and his head was wrapped with tape when he finally lost consciousness. When witness regained consciousness he saw his wife was tied up as well and a third perpetrator had placed a pistol in her mouth. Witness reacted to the threats and was again beaten losing consciousness two more times.

The four men left finally with the valuables they found, namely: about 6500 euro and about 10.000 dinars, a mobile phone and a hunting rifle. Witness eventually set himself

free and reached his neighbour's house, who called the son Ivan who reported the incident to the police in Leposavic which reached the Vuckovic's house 1-1,5 hours later.

During the whole time, the perpetrators were wearing masks and witness heard only that one of them was referred to by another as "Rambo".

The panel notes that Witness could not describe, recognize or identify any of perpetrators.

Vuckovic Draguna testified on 12 March 2009; witness corroborated the account of the events given by her husband. Four young men wearing masks and leather gloves broke into their apartment on 18 October 2007 sometime after 20:00 hrs, three of them immobilized her husband and beat him unconscious while she was also being hit several times with a pistol and ordered to hand over all the money while threatened with a pistol into her mouth.

One of the perpetrators searched the victims' house while the mistreatment was ongoing when, eventually, they found 6550 euro and 11.000 dinars and the perpetrators left taking away the money and a mobile phone. Eventually, witness's husband managed to inform their neighbour of what had happened to them and finally the police arrived.

Witness testified that she learned after the incident that, her husband's cousin Slavisha Vuckovic, had seen 3 or 4 masked men in their property fey days before the incident, but he scared them away. Witness precised that Mr. Slavisha Vuckovic did not recognize any of them. Witness remembers noticing that the perpetrator wearing a t-shirt had yellow skin and that one of the perpetrators was referred to as "Rambo".

The panel notes that Witness could not further describe, identify or recognize any of the perpetrators.

Ratkovic Sinisa testified on 05 March 2009; in his statement given to police on 22 October 2007 in Leposavic police station, Witness stated that in the night of 18 October 2007 he tried to call Miroljub Nikolic several times to ask him for a lift home and when he finally managed to reach Nikolic on the phone, Nikolic told Witness he was not in Leposavic but in Pristina with old prostitutes.

In his statement to police, Witness also refers that Nikolic called him the day after, asking about "the rumour" that an old man had been beaten the night before and that it was alleged Nikolic could be involved in the beating because a car similar to his had been noticed in the area; Nikolic further remarked he was not the only one in the area owning that particular model of car.

Finally, in his statement to police, Witness refers that the accused Nikolic once told him that "there was a small job to get done, but there was a need for one more safe man" further specifying that the job was "just go to an house and get money, nothing special"; witness refused in a way that clearly indicates that according to him the allusion was made to an illegal job.

In his testimony at the main trial, Witness partially rejects some of the statements as transcribed by the police.

The panel finds that the factual recollection as presented in the statement given to police, even if contradicting the alibi of the accused Nikolic for the night of the 18th of October 2007, does not offer any incriminatory element implicating the accused Nikolic in the criminal act alleged in the indictment, nor it places him on the crime scene.

The allusion to a “small job”, which somehow recalls the modalities of the crime committed as the Vuckovic’s house, is too vague and general to be considered an indication of the planning of the criminal offence alleged in the indictment.

Ilic Stanica testified on 05 March 2009; in his statement this witness did not give any relevant element

Radovic Danica testified on 05 March 2009; at the main trial Witness confirmed the statement given in Leposavic police station on 29 October 2007 stating that on the night of the 18th of October 2007 sometime after 21:30, Witness saw a car with headlights off coming from the proximity of the victims’ house. Even though the night was bright, Witness found it strange that a car would proceed with the headlights off and observed the car proceeding, however, Witness could not notice the colour or any details of the car.

The panel finds that this testimony, together with the testimony given by the injured parties, provides a plausible time scope to the robbery, however, Witness could not offer any indication on the number and identity of the perpetrators or the description of their means of transport.

Jankovic Mirko testified on 09 March 2009; the Public Prosecutor requested for the testimony of the witness to be given in closed session and the accused to be excluded. The prosecutor motivates the request with the fear of Witness that something may happen to him because of his testimony, and refers to the statement given by Witness to police on 24 November 2007.

The panel, deciding on the prosecutor’s motion, rejects the request for closed session and with the agreement of the parties, grants taking testimony of Witness without both accused being present.

Witness commences his testimony by retreating his previous statement to the police on 24 November 2007 in Leposavic police station and stating that he does not need protective measures anymore as the content of his statement is already public domain. Witness explains the statement dated 24 November 2007 was fabricated by police.

In his statement given to police in Leposavic on 24 November 2007, Witness declared that on 18 October 2007 at around 23:15 hours, his friend Uros Lakusic called him on the phone and asked to be picked up on the road, after the village of Josanica, and to be

driven back to Witness place to recuperate the car Uros had left there on the same early evening.

Following Uros request, Witness drove his VW Golf 3, plate number KM-434-54, and passing Josanica, in an inhabited place Uros came out and flagged him down. Uros entered the car and occupied the front seat, while two other people whom Witness recognized by their voices as Miroljub Nikolic aka Kriger and Celofan (Vladimir Jovanovic), occupied the back seat of his car. Witness remembers noticing that one of the two, he thinks Celofan, was carrying a jacket in his hands like he was hiding something.

Witness started driving back in the direction of Josanica and when on the street encountered a police car and, Kriger told him "put on the accelerator and don't stop", until finally, 500 metres before the bridge on the Ibar river, Celofan said "stop here so we can go out, I don't want police to catch me", Witness stopped and the three men left the car and did not see them again on that night.

Witness stated he immediately understood something was wrong and the day after, when he learned about the robbery that had happened in Gnjezdane village, he confronted his friend Uros about what had happened the night before, but Uros told him "shut up, you did not see anything and you did not hear anything".

During the main trial, Witness retreated his statement to the police, and in particular denied any contact between him and the accused on the night of the robbery. Witness confirmed having left his house on his VW Golf 3 registered KM-434-54 on the night of the 18th of October 2007 after receiving a phone call from a friend, but only in order to inspect the road to Novi Pazar through Josanica, which he intended to use to transport from Novi Pazar the alcoholic beverage the friend had offered him on the phone, avoiding customs and police check points.

Witness confirms that his car was controlled on the way back from Josanica at the checkpoint held in the locality of "Strazare", between Leposavic and Josanica, but nothing illegal was found in his car. Witness explains to the Prosecutor that the reason why no alcohol was found in his car is that he had to turn his car back before reaching Novi Pazar because the low asset of his car did not allow him to proceed when the non-asphalted road had started. However, in the course of the same testimony, Witness stated that he had turned his car back because he had seen some headlights and he thought it could be a police car, but he was unable to explain why he was afraid of police since nothing illegal was in his car.

Witness denies having met the accused that night, but he confirms having met his friend Uros in the afternoon when he left his car in Witness' back yard, but denies having met him afterwards, even though Witness confirms several phone conversations between him and Uros until 1 am of 19 October 2007.

The panel is considering following as to the statements of this witness.

According to the statement given to police, Witness was called by one of the perpetrators after the robbery, and was involved in the escape as an accessory. In fact, Witness states that at the beginning he was told by the police that he was a suspect because he “*had violated a series of laws and that [he] would be arrested at the same time as they and as accomplice*”, and that he eventually became a witness with the promise of anonymity.

During his testimony at the main trial, Witness retreats his previous request for protective measures explaining that anonymity is now useless due to the fact that the content of his testimony is already public. Witness rejects the statement given to police, stating that such statement was a pure invention of police, however, confronted with his statement, witness confirms several facts as true, retreating only the part describing the meeting with Uros and the two accused.

His account of events in the police statement offers strong circumstantial evidence against the accused: the place where Uros and the two accused met him, is not far from Gnjezdane village where the robbery had happened and the behaviour of the two accused is clearly suspicious at the point that Witness himself, the day after when learning about the robbery in Gnjezdane, immediately thinks that the three were involved and confronts his friend Uros who, instead of denying the allegation, orders the witness to shut up and to erase the happenings of the night before from his memory.

Nevertheless, the panel finds that such evidence, even though it offers strong indications of a possible misbehaviour of both accused on the night of 18 March 2009, is only circumstantial and uncorroborated evidence which does not provide any direct link between the accused and the crime scene or the allegation of the indictment. There is no direct indication that the three men were, in fact, part of the armed group of four that broke into the Vuckovic’s house few hours before.

Therefore, let alone the dubious credibility of the witness Jankovic, the panel finds that Mr. Jankovic’ statement is insufficient to prove the participation of the accused and does not prove their participation to the crimes alleged in the indictment.

Muminovic Enes testified on 9 March 2009; in his statement given to the police on 26 October 2007 in Leposavic police station, Witness stated that on 18 October 2007 at around 23:00, together with three friends, he was driving an Opel Vektra dark red with no plates to pick up Sinisa Ratkovic aka “six”. Witness stated that on the way to meet Ratkovic he encountered two cars, one of which a golf III dark colour he knows belonging to “Mirko” from Ibarska Slatina. After picking up Ratkovic and on the way to Leposavic, Witness’ car was stopped by police and controlled. On that night, at around 00:00, Witness heard Sinisa Ratkovic talking to Kriger (Miroљub Nikolic) on the phone, and Kriger told Ratkovic he was not in Leposavic but in Pristina, spending time with “old whores”.

In his testimony at the main trial, Witness reiterated several times not to remember having stated what was written in the police statement.

The panel finds that even if the factual recollection as presented in the statement given to police is considered truthful, the evidence given by the witness corroborates the statement given by Sinisa Ratkovic to police and contradicts the alibi of the defendant Nikolic for the night of 18 October 2007, but yet does not offer any element describing the responsibility of the accused for the crimes alleged in the indictment.

Spasojevic Marko testified on 09 March 2009; in his statement given to police on 24 October 2007 in Lepasavic police station, witness stated that on 18 October 2007 he was working together with his father and Vladimir Jovanovic until 18:30 and that, on the day after, Witness and his father went to fetch Jovanovic at his house but Jovanovic was not at home.

In his testimony during the main trial, Witness stated that he does not remember if the accused Jovanovic was together with him and his father on 18 October 2007, but remembers that when he went together with his father to fetch Jovanovic on the 19th of October 2007, the accused was not at home.

The statement of witness does not contain any indication or evidence.

Nestorovic Dalibor testified on 11 March 2009; at the main trial Witness confirmed the statement given to police on 22 October 2007 in Lepasavic police station, stating that on 18 October 2007 at about 19:00 hours, while driving his vehicle on the Gnjezdane-Lepasavic road -in the direction of Lepasavic- he saw in the proximity of Josanica a car proceeding in the opposite direction at high speed. Witness could not see the driver because the car had darkened glasses.

Interested by the high speed of the car, Witness looked at the car after this had passed him and noticed that the car had no registration plates.

At the main trial Witness underlines that the event he describes happened in the night and really quickly and that the car was proceeding at high speed, therefore he finds it difficult to be sure about the colour and the model of the car; nevertheless, confronted with his previous statement, Witness confirms that he told police that the car he saw on 18 October 2007 could be a VW Vento of blue colour, alike the one owned by Nikolic, but that he was not sure about this.

The panel finds that even if Witness were certain of the identification as reported in the statement given to police, because of the lack of registration plate on the car, the impossibility to identify the occupant/s of the vehicle, and the lack of evidence that the car encountered by the witness that night was in fact the car used by the perpetrators to reach the crime scene, it would not offer any indication about the involvement of the two accused in the facts alleged in the indictment.

Read Out Statements:

Ismet Skrijelj, the statement of this witness was read out on 05 March 2009. In his statement given to Police on 6 November 2007 in Lepasavic police station, witness stated