SUPREME COURT OF KOSOVO

6th December 2011
Ap – Kz 221/2011

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Dr. Horst Proetel as Presiding Judge, Supreme court judges Nesrin Lushta and Salih Toplica and EULEX judges Francesco Florit and Charles L. Smith III as panel members, assisted by Legal Officer Chiara Rojek as recording clerk,

In the case against the Defendant Valon Miftari, son of Osman and Shkurte Sadrijaj, born on 27th March 1980 in the village of Duzhnje, Gjakovë/Đakovica Municipality, literate, single, former Kosovo Police Officer ID no. 4338, average economic status, held in detention on remand from 8th until 24th November 2003 and currently under house detention in his residence in Duzhnje village, Gjakovë/Đakovica Municipality,

Charged as per in the amended Indictment PP no 598/03 filed on 24th May 2010 with Aggravated Murder contrary to Article 147 Paragraph 11, read in conjunction with Article 8 Paragraph 3 of the Criminal Code of Kosovo (CCK),

Acquitted in first instance upon re-trial by judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010 for the criminal offence of Murder contrary to Article 30 Paragraph 1 of the Criminal Law of Kosovo (CLK) as to the killing of Sadik Zeneli (count 1); and convicted for the criminal offence of Murder contrary to Article 30 Paragraph 1 of the CLK read in conjunction with Article 9 Paragraph 3 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY) as to the killing of Sefedin Zeneli (count 2), and sentenced to a punishment of eight (8) of imprisonment pursuant to Article 30 Paragraph 1 of the CLK read with Articles 9 Paragraph 3 and 43 Paragraph 1 item 1 of the CC SFRY,

Acting upon the Appeal filed by Defence counsel Fazli Balaj on the behalf of the Defendant Valon Miftari on 27th April 2011 and the Appeal filed by Lawyer Sokol Dobruna Representative of the Injured Parties Xhafer and Myrteza Zeneli on 4th May 2011 against the judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, and considering the Reply to the Appeal of the Representative of the Injured party filed on 16th May 2011; and the Opinion of the Office of the State Prosecutor of Kosovo (OSPK) to the Appeals filed on 5th August 2011,

After having held a public session on 6th December 2011 in the presence of the Prosecutor Gabriele Walentich representing the OSPK, Defendant Valon Miftari, his defence counsel Fazli Balaj, the Injured party Xhafer Zeneli and his Representative Lawyer Sokol Dobruna, having deliberated and voted on the same day, pursuant to Articles 420, 424 and 426 of the Kosovo Code of Criminal Procedure (KCCP), issues the following

JUDGMENT

The Appeal filed by Defence counsel Fazli Balaj in the interest of Defendant Valon Miftari on 27th April 2011 against the judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010 is GRANTED.

The judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010 is modified as follows:
The Defendant Valon Miftari, personal data above, is hereby ACQUITTED for the criminal offence of Murder contrary to Article 30 Paragraph 1 of the CLK/Article 147 Paragraph 11 of the CCK read in conjunction with Article 9 Paragraph 3 of the CC SFRY/Article 8 of the CCK as to the killing of Sefedin Zeneli (count 2).
The punishment of eight (8) of imprisonment imposed onto Valon Miftari by judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010 is annulled.

The Appeal filed by Lawyer Sokol Dobruna Representative on the behalf of the Injured Parties Xhafer and Myrteza Zeneli on 4th May 2011 against the judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010 is REJECTED.

The costs of the criminal proceeding in second instance shall be paid from the budgetary resources pursuant to Articles 99, 100 and 103 of the KCCP.

REASONING

I. Procedural history

On 8th November 2003, in the evening in the village of Duzhnje, Gjakovë/Đakovica municipality, Sadik Zeneli and Sefedin Zeneli were shot dead.

The District Public prosecutor of Pejë/Peć filed an Indictment P no. 598/2003 on 22nd October 2004, charging the Defendant with Murder of the moment (provoked homicide) contrary to Article 33 of the CLK or alternatively with murder committed in a state of mental distress contrary to Article 148 of the Provisional Criminal Code of Kosovo (PCCK), for the killing of Sadik and Sefedin Zeneli. On 22nd November 2004 the indictment was confirmed in its entirety by the District court of Pejë/Peć.

The main trial sessions were held in April, May and June 2006. During the course of the main trial, the prosecutor filed an amended indictment, charging the Defendant with several murders contrary to Article 30 Paragraphs 1, 2 and 3 of the CLK equivalent to Article 147 Paragraph 11 of the PCCK. On 12th June 2006, the District court of Pejë/Peć by judgment P no. 398/04, found the Defendant guilty of committing two murders contrary to Article 30 Paragraphs 1, 2 and 3 of the CLK sentenced to thirteen (13) years for each murder. An aggregated sentence of fifteen (15) years of imprisonment was imposed pursuant to Article 48 Paragraph 2 item iii of the CC SFRY.

On 5th August 2008, acting upon the Appeals filed by the Defence counsels in November 2006, the Supreme Court of Kosovo, by judgment AP no. 583/06, partially approved the appeal and rejected the remainders. The Defendant was thus found guilty of two murders contrary to Article 30 Paragraphs 1, 2 and 3 of the CLK and the Supreme Court imposed a single punishment of fifteen (15) years of imprisonment onto Valon Miftari.

On 13th November 2008, the Defendant filed a Request for Protection of Legality against the judgment P no. 398/2004 of the District court of Pejë/Peć dated 12th June 2006 and the judgment AP no. 583/06 of the Supreme Court of Kosovo dated 5th August 2008. On 11th December 2009, the Supreme Court of Kosovo issued the judgment Pkl-Kzz no. 23/09. The Supreme Court granted the Request for Protection of Legality and annulled both challenged judgments. The case was sent back for retrial.

During the course of the re-trial in May 2010, the prosecutor amended the indictment for Aggravated Murder exceeding the limits of the necessary Defence contrary to Article 147 Paragraph 11 read in conjunction with Article 8 Paragraph 3 of the CCK. On 27th May 2010, a trial panel of Pejë/Peć District court, by judgment P no. 3/2010, acquitted the Defendant for the criminal offence of Murder contrary to Article 30 Paragraphs 1 and 3 of the CLK, as for the killing of Sadik Zeneli, since necessary defence excludes his criminal liability pursuant to Article 390 Paragraph 1 item 2 of the KCCP. The first instance court however found Valon Miftari guilty for Murder contrary to Article 30 Paragraph 1 of the CLK in conjunction with Article 9 Paragraph 3 of the CC SFRY, as the Defendant acted in excess of necessary defence. The Accused was sentenced to eight (8) years of imprisonment pursuant to Article 30 Paragraph 1 of the CLK in conjunction with Article 9 Paragraph 3 and Article 43 Paragraph 1 Item 1 of the CC SFRY. On the same day, the trial panel of Pejë/Peć District court also issued a Ruling P no. 3/2010 imposing house detention onto the Defendant until the judgment becomes final pursuant to Article 278 Paragraph 1, Article 281 Paragraph 1 and Article 393 Paragraph 1 of the KCCP. The travel document of Valon Miftari was confiscated pursuant to Article 278 Paragraph 9 of the KCCP.

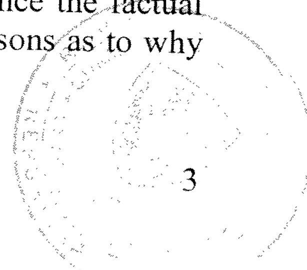
II. Submissions of the parties

A. Appeal filed by Defence counsel Fazli Balaj on the behalf of the Defendant Valon Miftari and Reply to the Appeal of the Representative of the Injured party

Defence counsel filed the Appeal against the judgment P no. 3/10 of Pejë/Peć District court on the following grounds. He proposes to the Supreme court of Kosovo to annul the challenged judgment and to return the case to the first instance court for retrial, or alternatively to 'waive the charges against the accused'.

A.1. Substantial violation of the provisions of criminal procedure under Article 403 Paragraph 1 item 12 of the KCCP

In the Defence's view, the impugned judgment is unclear and elusive since the factual description contained in the enacting clause is vague. In addition, the reasons as to why



the Defendant exceeded the limits of the necessary defence are not mentioned. The first instance court divided the criminal event in two parts whereas both murders occurred at the same place and time, under the same circumstances. There is also a discrepancy between the grounds of the judgment and the content of the evidence presented.

The Defence also claims that the challenged judgment is unlawful as the District court did not act in accordance with the instructions of the Supreme Court of Kosovo in its judgment Pkl-Kzz no. 23/2009. The higher instance suggested to carefully peruse the statement of Witness Blerim Balijaj. In addition, the first instance court did not carry out a re-enactment of the crime scene and the reasons not to proceed to as such are ungrounded. The Defence counsel finally alleges a discrepancy between the conditions of light at the crime scene and the District court's findings.

A.2. Erroneous and incomplete determination of the factual situation under Article 405 of the KCCP

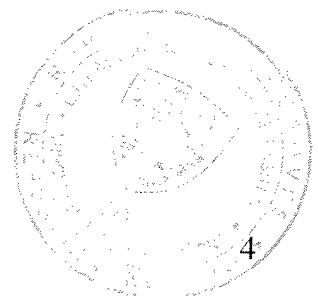
Defence counsel avers an incomplete determination of the factual situation as the District court concluded that the second murder against Sefedin Zeneli was committed in excess of necessary defence. Again, the first instance court did not act upon the Supreme Court's instructions and mainly based its judgment on Blerim Balijaj's testimony. He contends several findings of the District court as to the following facts: the victims were stronger than Valon Miftari; Blerim Balijaj allegedly eye-witnessed the events in the dusk, from the back seat of the car which speeded up to 100 km. The Defence doubts the credibility of Blerim Balijaj and proposes to call a Traffic expert in order to assess the accuracy of his statements.

A.3. Violation of the criminal law under Article 404 of the KCCP

The Defence claims that circumstances pertaining to the necessary defence exist in the instance. He puts forward the following elements:
- Valon Miftari, as police officer active in Anti-organized crime, stated that he was followed, watched and threatened by Sadik Zeneli and other persons because the police was investigating the murder of Hajdar Ahmeti and the Defendant provided intelligence on Sadik Zeneli. Valon Miftari was under protection. Earlier on, two police officers working on organized crime cases got murdered in Gjakovë/Đakovica region.
- The attack against Valon Miftari was organized by the victims and did not cease. He tried to defend himself by using his hands, as shown by the injuries on his body parts. He warned both victims that he was a police officer and he had a gun. He used his gun at the final stage as his life was endangered, while Sefedin Zeneli was punching him from behind.

In the Defence's view, the first instance court did not comply with the Supreme Court's findings because Article 8 of the CCK as the most favorable law to the Accused should have been applied.

A.4. Decision on sentencing under Article 406 of the KCCP



The Defence counsel avers that given the challenged judgment contains violations of the provisions of criminal procedure and of the criminal law, as well as an erroneous and incomplete determination of the factual situation, the legal provisions on the punishment were consequently breached. This led to a completely unfair punishment.

A.5. Admissibility of the Appeal by the Representative of the Injured party

The Defence counsel submits that the Appeal of the Injured parties' Representative should be dismissed as inadmissible as it does not fall under the scope of Article 399 Paragraph 3 of the KCCP. As for the killing of Sadik Zeneli, an appeal "with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body" is not admissible since Valon Miftari was acquitted. In respect to the killing of Sefedin Zeneli, the Appeal only deals with the determination of the factual situation and the legal qualification of the criminal offence, grounds that are not permitted under this provision.

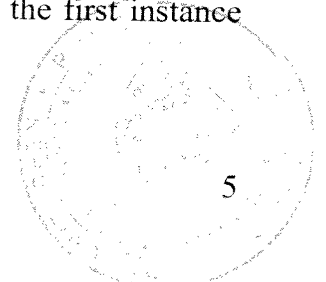
B. Appeal filed by Lawyer Sokol Dobruna Representative of the Injured Parties

The Representative of the Injured parties filed the Appeal on the grounds of exemption of liability in relation to the killing of Sadik Zeneli and the decision on sentencing in relation to the murder of Sefedin Zeneli. He claims that the legal designation as for the killing of Sadik Zeneli should be modified for Premeditated Murder under Article 30 of the CLK, based on the following facts supported by pieces of evidence:

- Sadik Zeneli was in conflict with Valon Miftari's father, and therefore the motive of the killing may have been retribution. Furthermore, Sadik Zeneli contributed to the hiring of Valon Miftari as police officer.
- Sefedin Zeneli wanted to see what Sadik Zeneli and Valon Miftari were doing outside. Both victims were barehanded, even though Valon Miftari was allegedly endangered by them. Sadik Zeneli was about to move away when Valon Miftari stopped him. Valon Miftari came out ready, wearing sport clothing and carrying a loaded gun full of 30 bullets.
- A witness saw four persons coming out of the shop and then started fighting. The first instance court failed to look for this fourth person.
- The Accused was trained in karate and used these skills to wrestle away to get his gun back and to kill Sadik Zeneli.

As to the murder of Sefedin Zeneli, the Representative of the Injured Parties submits the following: A witness testified that Sefedin Zeneli was yelling when Sadik Zeneli got killed and he moved towards Valon Miftari who promptly shot him; Sefedin Zeneli was barehanded at the time. The first instance court wrongly concluded to the existence of circumstances justifying the necessary defence, although Valon Miftari previously killed Sadik Zeneli. Moreover the District court failed to correctly assess the psychological state of Sefedin Zeneli (killed at a 16 cm distance).

Finally, in the Representative's view, the first instance court based its judgment on weak evidence and should have convicted the Defendant for Misuse of police authorization. He contends the appraisal of Valon Miftari's psychological state made by the first instance court.



C. Reply of the OSPK

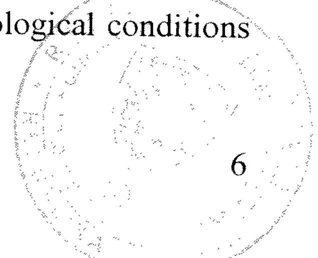
The OSPK proposes to the Supreme Court of Kosovo to annul the challenged judgment and to return the case for re-trial before the same trial panel or another one. The prosecution submits that the contested verdict contains substantial violations of the provisions of the criminal procedure, erroneous and incomplete determination of the factual situation as well as a violation of the criminal law.

C.1. Substantial violation of the provisions of criminal procedure under Article 403 of the KCCP and erroneous and incomplete determination of the factual situation under Article 405 of the KCCP

The first instance court was requested to examine Witness Blerim Balijaj with special care and to carefully assess his credibility. The first instance however limited itself to reiterate the findings in the previous judgments by overlooking potential discrepancies between Balijaj's account and the other pieces of evidence. The challenged judgment does not contain explanations on the following issues:

In respect to the lightening at the crime scene, the State prosecutor disagrees with this assessment made by the first instance court that it was possible for Blerim Balijaj to see what he testified about. The poor light conditions are confirmed by other witnesses.
The lack of proper assessment by the re-trial panel of the nature of the fight consequently affects the correct evaluation on whether Valon Miftari acted in a state of necessary defence. Some witnesses attested a grabbing and pushing among four persons, whereas Blerim Balijaj described the quarrel as violent although he conceded during the main trial that he did not see the assault of Sefedin Zeneli against Valon Miftari.
The State prosecutor claims that the first instance court did not take any specific position about the car speed despite the discrepancies of the witness statements on this point. A speed of about 60 and 80 km/h was recounted by Blerim Balijaj, while other witnesses recalled that they were going very fast may be 110 km/h, 100 km, or 80 km.
The State Prosecutor notes that the presence of a fourth person in the crime scene has been stated by several witnesses, namely Haki Hasani and Blerim Balijaj. However, the first instance court only acknowledged the presence of this individual as an only *en passant* and made no effort to locate and identify this person.
The Prosecution is of the opinion that the accounts of witness Blerim Balijaj are far from being consistent. There are discrepancies between his own statements given at different stages of the proceeding, and contradictions between his statements and the other witnesses' statements. Consequently the State Prosecutor submits that the first instance court did not abide by its duty under Article 459 Paragraph 2 of the KCCP to scrutinize the statements of Blerim Balijaj.

The OSPK also observes that the Supreme Court only recommends the re-trial panel to carry out a reconstruction of the events in order to assess Blerim Balijaj's statements. Thus the State Prosecutor submits that this does not amount a violation of Article 459 Paragraph 2 of the KCCP. It is noted that in April 2010 the trial panel ordered a site inspection and reconstruction, and later on cancelled it as the meteorological conditions



on the day of the critical event could not be reproduced. In addition, it appears that the state Prosecutor never withdrew the request for site inspection and reconstruction, although this fact is mentioned in the verdict. The OSPK is of the opinion that a site inspection and a reconstruction would have been of crucial importance for the clarification of contradictions found in Blerim Balijaj's statements.

C.2. Violation of the criminal law under Article 404 of the KCCP and erroneous and incomplete determination of the factual situation under Article 405 of the KCCP

The OSPK alleges that there is no legal impediment to give a separated evaluation to separate events or facts as long as the court provides a clear explanation on the conclusion reached. However, in the instant case the first instance court provided an explanation which is invalidated by the uncertain appraisal of the factual situation and not consistent with the evidence administered at trial.
In relation to the killing of Sadik Zeneli, the State Prosecutor points out the following: a) the vital parts of Sadik's body targeted by Valon Miftari; b) the trajectory of the bullets; c) the lack of significant injuries on Valon Miftari's body; d) the presence of a fourth person fighting with Sefedin Zeneli; e) according to the ballistic report, the weapon of the Accused could not have been fired automatically; f) Valon Miftari was described by Blerim Balijaj as taking actively part to the fighting; g) at the moment when Sadik tried to grab Valon Miftari's gun it was unloaded; h) the mental condition of Valon Miftari at the time of the killing.
As for the killing of Sefedin Zeneli, the OSPK refers to: a) the testimony of Blerim Balijaj according to which Valon Miftari immediately shot at Sefedin Zeneli after the first one; b) the expertise of the Defendant's mental state according to which the experts were not able to see any difference of emotional state during the commission of the offence because it took place within a very short time period; c) the appraisal of Valon Miftari's mental state made by the trial panel is self-contradictory.

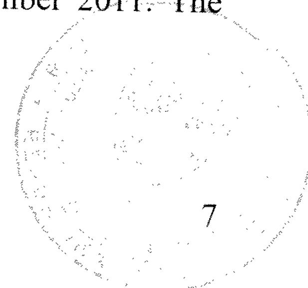
C. 3. Other issues raised by the Defence counsel and by the Representative of the injured party

The OSPK deems not necessary to address the issues related to the most favorable law to the Accused and the inadequacy of the punishment imposed to the Defendant.

III. Findings of the Supreme Court of Kosovo

A. Competence and proceeding before the Supreme Court of Kosovo

The Supreme Court of Kosovo is competent to decide on the Appeals pursuant to Articles 26 Paragraph 1 and 398 and following of the KCCP. The Supreme Court panel has been constituted in accordance with Article 3 Paragraph 7 of the Law No. 03/L-53 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. The Supreme Court panel held a public session on 6th December 2011. The parties were duly notified and attended the session.



B. Admissibility of the Appeals filed by Defence counsel Fazli Balaj and Lawyer Sokol Dobruna Representative of the Injured party

The challenged judgment was announced on 27th May 2010. Valon Miftari received the judgment on 15th April, and his Defence counsel on 14th April 2011 as attested by the acknowledgment of receipts. The contested judgment was delivered to the Injured parties and their Representative on 15th April. The appeal of the Defence counsel was filed through post mail on 20th April and received by the court on 27th April. The Appeal of the Injured party's representative was sent by post and received by the District court on 4th May 2011. It is impossible to ascertain when this Appeal was sent as the post stamp is illegible. The Defence counsel subsequently filed a Reply to the Representative's Appeal on 16th May 2011. The Opinion of the OSPK was received by the Supreme Court on 5th August 2011.

It is noted that the Injured parties and/or their representative failed to announce the Appeal within eight days as prescribed by Article 400 Paragraph 1 of the KCCP, whilst the Defence counsel announced his intention to appeal during the trial session on 27th May 2010. Nonetheless, since the Defendant was sentenced to imprisonment, the general exception of Article 400 Paragraph 4 of the KCCP applies in the instance and the injured parties were exempted to announce their appeal.

Both appeals shall be considered as timely filed according to Article 398 of the KCCP. Article 398 Paragraph 3 prescribes that the injured party is entitled to file an appeal "only with respect to the court's decision on the punitive sanctions for criminal offences committed against life or body [...]". The Appeal of the injured party relates to the grounds of exemption from criminal liability, the legal designation of the criminal act and the inadequate punishment. Lawyer Sokol Dobruna also conceded during the court session that the Appeal exceeded the scope of Article 398 of the KCCP. The Supreme Court whilst declaring the appeal admissible, will limit its evaluation of the grounds of appeal on the "punitive sanctions'.

C. Merits of the Appeals

The Supreme Court of Kosovo holds that the Appeal of the Defence counsel is granted. The challenged verdict is based on an erroneous determination of the factual situation contrary to Article 405 Paragraph 2 of the KCCP. The Appeal of the Injured Party related to the punitive sanctions is rejected as ungrounded. The contested judgment has to be amended as above, and the Defendant Valon Miftari acquitted as to the killing of Sefedin Zeneli pursuant to Article 424 Paragraph 4 of the KCCP.

The contested judgment also contains violations of the criminal law under Article 404 Paragraphs 1 and 2 of the KCCP, in connection with Article 8, Paragraph 1 of the CCK. As violations of Articles 404 and 405 of the KCCP have already been established, the Supreme Court of Kosovo deems not necessary to address the other grounds of appeal.

Due to an erroneous determination of the factual situation, the District Court concluded that the Defendant acted in necessary defense, but exceeded its limits. Considering the established facts the first instance court based its judgment on, the correct determination of the "most favorable law" would have led to the acquittal of the Defendant. Contrary to

the findings in the challenged judgment, Article 8 Paragraph 2 of the CCK, and not Article 9 Paragraph 3 of CC SFRY should have been applied. The District Court thus did not comply with the legal opinion of the Supreme Court in its judgment dated 11th December 2009.

Though Article 429 Paragraph 3 of the KCCP does not constitute an expressive order to follow the legal opinion of the Second Instance Court, it would have been European standard at least to argue with this judgment in an adequate manner. This did not happen although the Supreme Court concluded twice that Article 8 of the CCK has to be applied as the most favorable provision[1]. Without even discussing the arguments of the District Court, it was obvious that applying Article 9 of the CC SFRY in lieu of Article 8 of the CCK harmed the Defendant. It is not disputable that a comparison of provisions aiming to elaborate which is the most favorable in the sense of Article 2 Paragraph 2 of the CCK, has to be done not *in abstracto*, but in regard to their concrete application to the case".[2] But the first instance court finally failed in the rightful determination of this norm. Indeed, it considered merely some of the preconditions of the justification "necessary defense" under Article 9 of the CC SFRY and omitted the most crucial point, that the act of defense is "**absolutely necessary**". That is exactly the crux of the matter leading to the conviction instead of the acquittal of the Defendant.

The first instance court rightfully reasons that there has been an **unlawful attack** of the later victim, Sefedin Zeneli, that this has been **immediate** the Defendant tried to avert. By this, his killing had to be justified unless it would not have been "**proportionate**" in the sense of Article 8 of the current Code. The first instance court conceded "that Valon was more exhausted than Sefedin, as moments before he was fighting against two attackers". It considered as well that "as Sefedin saw his uncle dead he would also want to see Valon dead, i.e. he would want to revenge. Valon was angry of the attack, he also felt great fear, but it did not preclude his ability to understand and to make decisions."[3] Later is added: "even very scared for his life."

Nevertheless the District Court concluded that the Defendant could have resisted killing the aggressor. It argued that after killing of Sadik Zeneli the Defendant only had to face one aggressor "could have shot him in another, not vital, part of his body, preventing his death, or he could fight, or escape" and the argumentation is concluded: "he [the defendant] could resist his assault without killing him".[4]

This evaluation does not stand. Considering only the quoted arguments describing the situation the Defendant was facing proves that the reaction of the Defendant was not disproportionate to the aggression. It is conceded that it has not been "**absolutely necessary**" (the unfavorable requirement of Article 9 of the CC SFRY) to shoot, but at least it was understandable and acceptable to react by such means of defense. The District Court did not reason on any concrete alternative measures that could have been used in

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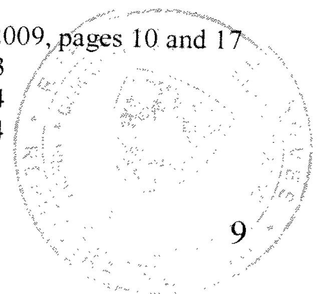
[1] Judgment Pkl-Kzz no. 23/09 of the Supreme court of Kosovo dated 11th December 2009, pages 10 and 17

[2] Judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, page 23

[3] Judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, page 24

[4] Judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, page 24



order to avoid the deathful shots. The arguments of the first instance court are merely assertions made without assessing the concrete situation and depicting the actual way-outs of the Defendant. The explanations on how the Defendant could have avoided the vital parts of his opponent are missing from the challenged judgment, though "the shot was done from a very close distance". It is not plausible that the Defendant should have been able to escape or avert the aggression by other means to terminate the unlawful attack. This applies the most as the contested judgment referred to the statement of the "crown witness" Blerim Balijaj has stated: "Sefedin joined Sadik. The two men were hitting Valon. According to the witness Valon **was trying to escape,** but the two men did not allow him, he was grabbed by them."[5]

The Defendant did not shoot frivolously. He had warned both assailants that he might use his official weapon. He did so in shooting the first aggressor in the presence of the second one. The latter nevertheless approached the Defendant urging him to react.

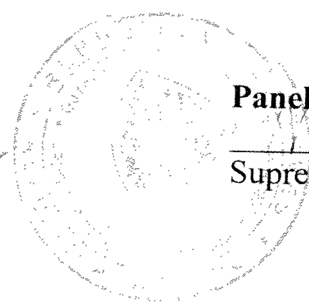
The existence of an actual serious attack justifying the shooting of the assailants is illustrated by the fact that the aggressive action would not have been divided into two stages, but seen as **one act.** This perspective demonstrates that there was a real risk of life for the Defendant. It is stated in the challenged judgment of the District Court: "Taking into consideration the fact that Sefedin was taller than Valon, heavier than him, it is slightly possible that Valon managed to get up with Sadik and then to shoot at Sefedin, who still was over him."[6] The reasoning continues some sentences further: "**The panel accepted that Valon shot Sefedin in the face in the last moment before Sefedin reached him".** The judgment reads in continuation of this: "The logical conclusion is that Sefedin was approaching Valon, after his uncle felt shot, in an attacking manner. Valon shot once to Sefedin and hit his arm. **Sefedin did not stop, approached Valon and from a very short distance Valon shot him in the head"**.

Considering as well that the Defendant knew that the whole attack has been caused by his investigative measures as to the murder of another policeman he had good reasons to assume a serious life-threatening situation. Balancing all the above mentioned aspects, the Supreme Court at least cannot exclude that such attack justified even the usage of a weapon in order to avert the aggression.

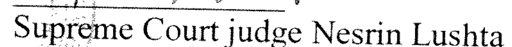
The enacting clause reflects the whole decision of the Supreme Court on the Appeals of the Defendant and the Injured parties, including on the costs of the proceedings.

Presiding Judge:

EULEX Judge Dr. Horst Proetel



Panel member:



Supreme Court judge Nesrin Lushta

[5] Judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, page 13
[6] Judgment P no. 03/10 of the District Court of Pejë/Peć dated 27th May 2010, page 22

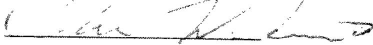
Panel member:

Supreme Court judge Salih Toplica

Panel member:

EULEX judge Francesco Florit

Panel member:



EULEX judge Charles L. Smith III

Recording Clerk:

Chiara Rojek

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