SUPREME COURT of KOSOVO

Ap – Kž – 353/2009
14 June 2011
Prishtinë/Priština

IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo, in a panel composed of EULEX Judge Charles Smith as Presiding Judge, with EULEX Judges Gerrit-Marc Sprenger and Martti Harsia and Supreme Court Judges Marije Ademi and Emine Mustafa as panel members, assisted by EULEX Legal Officer Olivia Debaveye as the recording clerk,

In the criminal case against defendant **Gjelosh Krasniqi**, Kosovo Albanian, born on , in Village, municipality, father's name mother's name , residing in village, municipality, personal identification number , in detention from 27 May 2008 until 24 September 2008 and from 7 November 2008 to present, currently detained in Dubrava prison,

Convicted by the District Court of Pejë/Peć on 29 April 2009 for the criminal offence of **War Crimes against the Civilian Population,** contrary to Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia ("SFRY CC"), Articles 3 and 147 of the 4th Geneva Convention and Article 4 of the II additional Protocol of the Geneva Conventions as to the taking as hostage of PL and as to the unlawful property confiscation and pillaging of an AK-47 rifle and a 7.65 mm pistol from PL ., a M-48 rifle from TK , a M-48 rifle and a CZ 99.9 mm pistol from GQ and a 7.65 mm bronvik pistol from MP in the village of Doblibare, Gjakova/Đakovica municipality, on 24th March 1999,

Acting upon the appeal of the defendant filed through his Defence Counsel Haxhi Millaku on 19 August 2009 against the judgment of the District Court of Pejë/Peć in case no. P.nr. 67/09, dated 29 April 2009, whereby the court found the defendant guilty and sentenced him to 7 years of imprisonment.

After having held a session on 14 June 2011 open to public, in the presence of the State Prosecutor represented by EULEX Prosecutor Gabrielle Walentich, Defence Counsel Haxhi Millaku and the defendant himself, and after a deliberation and voting held on the same day 14 June 2011,

On 14 June 2011, pursuant to Article 392 of the Kosovo Code of Criminal Procedure (KCCP), pronounces in public and in the presence of the Defence Counsel Haxhi Millaku and the EULEX SPRK prosecutor, the following

JUDGMENT

The appeal filed on behalf of the defendant Gjesloh Krasniqi against the Judgment of the District Court of Pejë/Peć in case P.nr. 67/09, dated 29 April 2009, is hereby REJECTED as unfounded.

The Judgment of the District Court of Pejë/Peć is affirmed.

REASONING

I PROCEDURAL HISTORY

A ruling on initiation of investigations was filed by an international prosecutor on 13 March 2008 against the defendant. Following the issuance of arrest warrant on 19 May 2008, the defendant was arrested on 27 May 2008 and subsequently detained.

On 4 December 2008, the SPRK filed the indictment PP.nr 88/208 with the district court of Peja/Pec against Gjelosh Krasniqi for the criminal offence of War Crimes against Civilian Population contrary to Article 142 of the SFRY CC, Articles 3 and 147 of the 4th Geneva Conventions and Article 4 of the II Additional Protocol to the Geneva Conventions.

The indictment was confirmed by a ruling issued on 20 January 2009 following a hearing held on 19 January 2009 in the District Court of Pejë/Peć.

The main trial was held in the District Court of Pejë/Peć on 11, 12, 17, 18, 19, 31 March, 23, 24, 27 and 29 April 2009 in the presence of the defendant Gjelosh Krasniqi, his defence counsel Haxhi Millaku and the Special Prosecutor Robert Dean. The trial panel composed of two EULEX judges and one local judge heard the testimony of 18 witnesses and 27 documents were read as evidence. With a judgment announced on 29 April 2009, the District Court of Pejë/Peć found the defendant Gjelosh Krasniqi guilty of war crimes against the civilian population as to the taking as hostage of PL and as to the unlawful property confiscation and pillaging of an AK-47 rifle and a 7.65 mm pistol from PL , a M-48 rifle from TK . a M-48 rifle and a CZ 99.9 mm pistol from GQ and a 7.65 mm bronvik pistol from MP . He was sentenced to seven years of imprisonment.

The judgment was served to the defendant Gjelosh Krasniqi on 3 August 2009.

On 18 August 2009 the Defence Counsel Haxhi Millaku filed an appeal on behalf of the defendant against the verdict of the District Court of Pejë/Peć.

On 4 September 2009 the SPRK Prosecutor filed a response to the defendant's appeal and the opinion and motion of the Office of the State Prosecutor of the Republic of Kosovo (OSPK), represented by a EULEX Prosecutor, was received by the Supreme Court on 21 April 2010.

II THE APPEAL OF THE DEFENCE AND THE RESPONSE OF THE PROSECUTION

II.1. The appeal of the defence lawyer

The defence counsel Haxhi Millaku challenges the first instance judgment on the following grounds: a substantial violation of the criminal procedure, an erroneous and incomplete determination of the factual situation, a violation of the criminal law and a wrong decision as to the criminal sanction. He requests that the verdict of the District Court be annulled and the case returned for re-trial and a new decision OR that the verdict be modified in order to acquit the defendant or to impose a more lenient sentence on him.

The main points of the appeal can be summarised as follows:

II.1.1. The identification of the defendant by the witnesses

A number of witnesses (GL , PL , BL , EL ,) testified that PL was taken away by a person introducing himself as Gjelosh Krasniqi who is not the defendant present in the courtroom. There is a lack of identification and recognition of the defendant, so Gjelosh Krasniqi should not be convicted for the actions of another individual pretending he is Gjelosh Krasniqi.

The police investigator Hazbi Agjami testified that GL called him on a several occasions to provide information as to the whereabouts of Gjelosh Krasniqi but the defence counsel alleges that GL never once saw the defendant himself directly and never met him.

The credibility of GL .'s statement during the investigation is challenged as he said he heard the defendant saying on the critical night: "If Gega and Mema give permission, they will release him" whereby the witness Gega Lleshi testified that his brother Mema was killed on 28 January 1999 (i.e. before the critical night).

II.1.2. The unlawful property confiscation was not adequately assessed.

The defence lawyer states that the weapons were not taken from the in a way that would constitute robbery or illegal confiscation, but that the witnesses handed over the weapons to the soldiers when being asked "with free will, without any intimidation or threats".

II.1.3. The inadmissibility of the witness statements of BL and EL

During the investigation phase, the police officers interviewed BL and EL together in the same room and in their family house, so their statements are inadmissible and the trial panel should not have considered them.

II.1.4. The alibi presented by two defence witnesses was not assessed properly

The trial panel did not properly assess the alibi of the defendant presented by two witnesses Kole Krasniqi and Pashk Krasniqi who stated that the defendant was with them the whole time on the critical night celebrating the start of the NATO airstrikes in Nepole village and therefore he could not be at the same time in Doblibare village.

The defence stated that the defendant was a cook in KLA and not a soldier and he did not have a weapon.

II.1.5 Criminal sanction

Finally, the defence lawyer states that, as to the punishment, the trial panel only considered aggravating circumstances (such as previous convictions) but not the mitigating circumstances (sick family members and poor economical situation).

II.2. The response of the SPRK

The SPRK Prosecutor with his response dated 4 September 2009 states that the appeal is unfounded and should be rejected and requests the Supreme Court to affirm the judgment of the District Court of Pejë/Peć of 29 April 2009.

In particular, as to the grounds raised by the defence, the SPRK Prosecutor replies as follows:

II.2.1. As to the lack of identification of the defendant

During the investigation stage, a number of witnesses repeatedly stated that PL was taken away on the critical night by Gjelosh Krasniqi. Some of them added that he is from Nepole village, some stated that they knew him and were even friends with him. They all changed their version during the main trial session and stated that in fact a person introducing himself as Gjelosh Krasniqi took PL away that night. This had never been mentioned during the investigation stage. The change of versions from the son of PL , GL , occurred recently after the release from detention of the defendant in September 2008. The Prosecution also pointed out that the defence admits that a meeting took place between the Gjelosh Krasniqi and GL 's families as mediated by Pal Krasniqi. After that meeting which occurred in 2008, the attitude of the witness GL towards the investigative authorities significantly changed.

The Prosecution further asserts that GL knew very well who the defendant was as he reported to the police that he was from Nepole village that he had met him a few times

after the war and he provided a physical description of the defendant. He reported to the police investigator that he had seen him directly as well as that other people had seen him.

II.2.2. As to the improper evaluation of the alibi of the defendant

The Prosecution pointed out that the testimonies of the two defence witnesses who provided an alibi for the defendant for the critical night contain a number of contradictions. In particular as to the age of the KLA soldiers present that night, the presence of the defendant the next morning or the atmosphere in the village that night. Also the prosecutor underlined the "unlikeliness" that KLA soldiers would party all night and get drunk considering the very tense situation and the increased military activity in the surrounding area that night. The Prosecutor also refutes that the defendant was acting as a cook in the KLA, as proven by a number of KLA documents, which were admitted into evidence.

II.2.3 As to the qualification of forcible taking of firearms as unlawful property confiscation and pillaging

The Prosecutor pointed out that the defence does not challenge the facts that PL , TK , GQ and MP handed over their weapons. The prosecution alleges that the defendant and other KLA soldiers were walking in the village with Pashk Luli as a hostage which as a result forced the other villagers to surrender their weapons. They were afraid and did not provide these weapons with free will and without any threat. Finally they were civilians.

II.2.4.As to the police statements of BL and EL

The Prosecutor alleged that the fact that BL and EL were heard together by the police officer Hazbi Agjami was merely an irregularity but not a substantive violation of the criminal procedure and cannot be considered *per se* as inadmissible evidence.

II.3. The Opinion of the State Prosecutor dated 21 April 2010

The State Prosecutor in his opinion and motion argues that there are no grounds to challenge the appealed judgment and concurs with the SPRK Prosecutor's reply to reject the defendant's appeal as ungrounded.

III COURT FINDINGS

III.1. Admissibility of the appeal

The Supreme Court finds that the appeal filed on behalf of the defendant is timely filed and admissible. The appealed verdict was served to the defendant on 3 August 2009 and the appeal of the defence was filed with the District Court of Pejë/Peć on 18 August

2009, thus within the limit of 15 days as prescribed in Article 398 of the KCCP. The appeal was filed by the Defence Counsel, an authorized person.

The Supreme Court finds, however that the appeal is not founded. The Panel will now assess each of the arguments raised in the appeal of the defence counsel.

III.2. The identification and recognition of the defendant

The Supreme Court does not find that the court of first instance wrongly established the factual situation in respect of the issue of the identification of the defendant.

After having carefully reviewed the case files, and in particular the minutes of the main trial in which 18 witnesses gave testimony and the statements given by a number of witnesses during the investigation phase, the panel identified that a clear discrepancy exists between the version developed during the investigation phase, i.e. Gjelosh Krasniqi, a person whom the witnesses knew took away PL and the version presented in court by the witnesses, i.e. a person introducing himself as Gjelosh Krasniqi took away PL on the critical night.

While it is the role of the first instance court to assess and explain in the judgment which it considers this fact proven or not and on which grounds and to evaluate the credibility of conflicting evidence, the Supreme Court will review and consider whether this evaluation and weighting of evidence process has been done thoroughly in order to properly establish the factual situation.

The most striking example of the discrepancy between the pre-trial and main trial version was provided by the injured party, GL . who is the son of the victim. The injured party provided in total six statements: two to ICTY investigators dated 18 January 2003 and 2 March 2004 and four to UNMIK police dated 06 January 2008, 01 March 2008, 26 August 2008 and 07 October 2008. In court he testified that his father was taken away by a group of individuals in uniform, of which one of them presented himself as Gjelosh Krasniqi. He stated repeatedly during the course of his evidence given in the main trial that the person who took away his father on the critical night was not the same person as the defendant in this case. In none of his earlier six statements he mentioned this fact.

The first instance court intensively challenged the injured party during the main trial in the session held on 11 March 2009 and in particular on the following facts:
- that the injured party already knew the defendant when PL was taken away and that he met him after the war;
- that the injured party dropped the charges on 7 October 2008 against Gjelosh Krasniqi as his father wore the wrong uniform;
- that the defendant was driving a Mercedes 320;
- that he encountered the defendant in Gjakova/Đakovica after the war.

The Supreme Court also attributed considerable importance to the contradicting reasons presented by GL as to the withdrawal of the charges against Gjelosh Krasniqi in

October 2008 and in March 2009. Indeed, in October 2008, G L indicated that he wished to withdraw the charges against the defendant as his father wore the wrong uniform. However, in March 2009, he stressed out that the main reason why he did not want to incriminate Gjelosh Krasniqi anymore was because he had been released from detention by a judge (the defendant was released from detention between 24 September 2008 and 7 November 2008). This discrepancy casted tremendous doubt on the credibility of this witness, as his explanation is found to be completely illogical.

The Supreme Court considers that the presiding judge has on many occasions drawn the attention of the witness on his previous testimony and has asked the reasons why he is testifying differently, in accordance to Article 364 of the KCCP. The reasons provided by the injured party G L for the difference between the two versions is that the written statements do not match with the information that the witness provided during the interviews. The Supreme Court notes however that most of these statements were drafted in Albanian language and signed by the injured party.

Similar discrepancies were noted between the statements of the following witnesses:
- B L who referred to a person introducing himself as Gjelosh Krasniqi in his testimony in court on 12 March 2009 and to "Gjelosh Krasniqi from Nepole village" in his statement given on 16 March 2008,
- E L who referred to a person introducing himself as Gjelosh Krasniqi in his testimony in court on 17 March 2009 and to "Gjelosh Krasniqi from Nepole village" who he also met after the war in a gas station in Doblibare village.
- P L who referred to KLA soldiers whom he did not know in his testimony in court on 17 March 2009 and to Gjelosh Krasniqi and three other individuals in his testimony given on 16 January 2008.
- M P who referred to individuals in uniform of whom he could not recognise anybody in his testimony in court on 18 March 2009 and to Gjelosh Krasniqi whom he knew as they were friends in his statement on 11 April 2008.
- G Q who referred to soldiers with Albanian insignias in his testimony in court on 18 March 2009 and to Gjelosh Krasniqi in his statement given on 11 April 2008.

The Supreme Court is satisfied that these witnesses were all confronted at length during the main trial by the trial panel, which is reported in the judgment from pages 21 to 51. The reasons provided for the discrepancies were a translation issue or that the statement provided during the investigative phase were not drafted in accordance to what has been said during the interviews. The Supreme Court however duly noted that the statements were handwritten in Albanian language and signed by the witnesses.

As stated in the *Vladimir Ukaj, Robert Sylaj and Sabri Islami* judgment(Ap – Kz 428/2007 dated 28 May 2007),

"The Supreme Court of Kosovo must defer to the assessment by the trial panel of the credibility of the trial witnesses who appeared in person before them and who testified in person before them. It is not appropriate for the Supreme Court of Kosovo to override the

trial panel assessment of credibility of those witnesses unless there is a sound basis for doing so".

Accordingly, the Supreme Court in this particular case is convinced that the credibility of the abovementioned witnesses has been sufficiently challenged by the trial panel until it reached the conclusion that the version given during the investigative phase was the most credible version.

The provisions of the criminal procedure prescribe that the court shall state clearly and exhaustively which fact it considers proven or not proven, as well as the grounds for this. The court shall also, in particular, make an evaluation of the credibility of conflicting evidence. The Supreme Court finds that the assessment of evidence was done by the court of first instance in accordance with the legal requirements and in a careful, transparent and convincing manner. In conclusion, the Supreme Court finds no erroneous or incomplete determination of the factual situation in the appealed judgment.

III.3. The pillaging and unlawful property confiscation of weapons belonging to civilians

The defence counsel, while not challenging the fact that a number of weapons have been handed over to the soldiers on the critical night by the injured parties PL T K , G Q and M P the qualification as pillaging and unlawful property confiscation is not the proper legal qualification for this action as no element of force or threat was used to take away the weapons from the civilians. The defence counsel therefore alleges a violation of the criminal law.

The Supreme Court has considered whether the forcible taking away of weapons from civilians is a criminal offence amounting to War Crimes against the Civilian Population under the SFRY CC and under international instruments and whether an inapplicable law was applied.

First of all, the criminal law in force at the time of the commission of the criminal offence was the SFRY CC and its Article 142 refers to a list of acts that qualify as War Crimes against the Civilian Population, such as "property confiscation" and "pillaging".

Second of all, while analyzing the Geneva Conventions of 1949 and the additional protocols to the Geneva Conventions of 1977 (also an applicable law as Yugoslavia was party to the Geneva Conventions and the Additional Protocols), the Supreme Court notes that pursuant to **Article 4 par.2 item g** of the Additional Protocol II (on the protection of civilian persons) to the Geneva Conventions refers to the general prohibition of pillaging on civilians and **Article 33 of the 4th Geneva Convention** states that pillaging is prohibited.

The commentary on this article clarifies that the prohibition is absolute and guarantees all types of property. The only exception is for requisition of foods, medical supplies or civilian hospitals (article 55 and 57 of the Geneva Convention) or of military equipment of the adverse party, as generally accepted in international armed conflict.

According to the jurisprudence of the ICTY, "plunder" and "pillaging" are similar terms used to describe the "unlawful appropriation of public and private property during armed conflict" as stated in Celibici judgment dated 16 November 1998.

The pillaging is a breach of international humanitarian law IF the property has an important value and IF the pillaging has important consequences on the victims. Furthermore, the offence of plunder or pillaging exists when committed unlawfully and deliberately (*Hadzihasanovic and Kubura* judgment, 15 March 2006).

In this case, the weapons were taken from civilians (P L ., T K ., G Q and M P). The soldiers were walking around the village with P L held as a hostage when they requested the weapons from the villagers. One of the witnesses referred to the fact that he handed over his weapons even though he had a permit for them as he was afraid to be in trouble in case he would not do so.

Therefore, the Supreme Court considers the taking over of weapons was committed unlawfully and deliberately, as the exception to the qualification as pillaging, i.e. for foods, medical supplies and/or civilian hospital is not applicable in this case and that the soldiers explicitly asked the weapons from the civilians. Furthermore, the value of the weapons and the consequences of their confiscation on the civilians can be deducted from the fact that Kosovo was in the midst of a conflict and civilians were obviously holding on their weapons to defend themselves and their families: the value of the items and the consequences of them being pillaged and confiscated is assessed as important.

This is the reason why the Supreme Court does not consider that the taking over of the weapons from the civilians P L ., T K ., G Q and M P was wrongly qualified as unlawful property confiscation and pillaging which constitute a criminal offence according to the SFRY CC and the Geneva conventions, all applicable law at the time of commission of the criminal offences.

The Supreme Court is satisfied that the first instance court has not violated the criminal law in this respect.

III.4. The inadmissibility of the witness statements of B L and F L

The defence counsel alleges that the criminal procedure was violated due to the fact that two witnesses were interviewed during the investigation phase by a police officer in the same room one after another.

The Supreme Court noted that the police officer in question while in court recognised that he interviewed E and E L in the same room. The panel considered whether

this would render the statements of the witnesses inadmissible. Indeed, Article 164 of KCCP states that: "*A witness shall be examined separately and without the presence of other witnesses.*" The panel notes that during the main trial the witnesses were interviewed in the absence of one another.

Furthermore, the panel considered Article 153, par.1 of the KCCP which states that: "*Evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the present Code or other provisions of the law expressly so prescribe*". The abovementioned Article 164 does not expressly mention that the examination of two witnesses in one phase of the proceedings renders the evidence inadmissible.

Finally, the panel noted that the District Court justified the reasons[1] why it considered that the statements of B. and E. I were considered as admissible even though they were taken irregularly.

Therefore, the Supreme Court, also considering the authority of the court of first instance to freely assess all evidence submitted in order to determine its relevance or admissibility, pursuant to Article 152 of the KCCP does not find that the examination of two witnesses in the same room during the investigation phase constitute a substantial violation of the criminal procedure as foreseen under Article 403, paragraph 1, subparagraph 8.

III.5. The alibi of the two defence witnesses

The defence counsel alleged that the District Court did not properly assess the alibi presented by two defence witnesses Kole and Pashk Krasniqi and consequently erroneously determined the factual situation.

The Supreme Court after having carefully reviewed the evidence given in court by Kole and Pashk Krasniqi assessed that even though they both provided the same story, which is that on the critical night, Gjelosh Krasniqi was cooking dinner for the other KLA soldiers in Nepole village and therefore he could not be at the exact same time in Doblibare with other KLA soldiers as alleged by the Prosecutor, there are crucial discrepancies between the two stories which cannot be explained by the passing of the time.

For instance, the two witnesses provided different accounts as to the age of the KLA soldiers present that night, as to the atmosphere in the village, as to the presence of the defendant on the following day or not, as to the rules to respect for the soldiers.

The Supreme Court finds that on this particular point the District Court has sufficiently evaluated the credibility of the conflicting evidence as per Article 396 par. 7 of the KCCP by assessing each item of evidence separately and in relation to other items (Art. 387) in pages 88 and 89 of the judgment.

[1] See pages 90 and 91 of the Judgment of the District Court of Pejë/Peć dated 29 April 2010

As previously noted in this judgment on the assessment of the credibility of the statements of witnesses during the investigative phase and during the main trail phase on the identification of the defendant, it is the main role of the first instance court to assess the credibility of conflicting evidence.

The Supreme Court finds that the assessment of evidence was done by the court of first instance in accordance with the legal requirements and in a careful, transparent and convincing manner. In conclusion, the Supreme Court finds no erroneous or incomplete determination of the factual situation in the appealed judgment.

III.6 The sentencing

The defence alleged that the first instance court only took into account aggravating circumstances while imposing the sentencing such as the prior conviction of the defendant for murder as a minor and such as an ongoing criminal investigation in the US.

The Supreme Court carefully assessed the circumstances considered by the court of first instance as to the sentencing, in particular by reviewing page 95 of the verdict. The court of first instance considered as aggravating circumstances the fact that the defendant has already committed a murder when he was a juvenile and as mitigating circumstances the fact that the defendant was relatively young when he committed the offences. First of all, the first instance court does not refer to the indictment raised in the US against the defendant for robbery and possession of firearms in connection with crime of violence. This was not considered as an aggravating circumstances by the first instance court, and rightly so, considering the prevailing of the presumption of innocence. Second of all, the first instance court took into account a mitigating circumstance which is the young age of the defendant at the time of commission of the criminal offence, so the claim by the defence counsel that the panel did not consider any mitigating circumstances does not stand. Third of all, while reading the minutes and in particular the closing speech of the defence counsel, the Supreme Court did not find a reference by the Defence counsel of the fact that the defendant had sick family members. Therefore, the Supreme Court finds that the first instance court appropriately considered both the abovementioned mitigating and aggravating circumstances.

Finally, according to Article 142 of the SFRY CC, the criminal offence of *War Crimes against the Civilian Population* is punishable by imprisonment between five to 20 years. Therefore, the Supreme Court asserts that the term of imprisonment imposed by the court of first instance of seven years of imprisonment is appropriate taking into account the pertinent circumstances relating to the criminal offence and to the defendant.

III. 7. The ex officio assessment of any violations pursuant to Article 415 of the KCCP

The Supreme Court is also under an obligation pursuant to Article 415 of the KCCP to examine ex officio whether there exists a violation of the provisions of criminal

procedure under Article 403 paragraph 1 subparagraphs 1, 2, 6 and 8 through 12 of the KCC, whether the main trial was conducted in the absence of the accused, whether the main trial was conducted in the absence of defence counsel and whether the criminal law was violated to the detriment of the accused.

The Supreme Court has carefully considered in particular the enacting clause of the judgment of Peje/Pec issued on 29 April 2009 to evaluate if this could be considered as a substantial violation of the criminal procedure under Article 403, paragraph 1, subparagraph 12. The content of the enacting clauses has been discussed already on a number of occasions by the Supreme Court[2] in order to assess whether an enacting clause containing only limited details as to the facts and circumstances of the criminal offences in question should be considered as incomprehensible pursuant to Article 403, Paragraph 1, sub-paragraph 12.

The enacting clause of the judgment of the District Court of Pejë/Peć in case no. P.nr. 67/09, dated 29 April 2009 reads as follows:

"*The accused is FOUND GUILTY of* ***War Crimes against the Civilian Population,*** *contrary to Article 142 of the SFRY Criminal Code, the Articles 3 and 147 of the 4th Geneva Convention, the Article 4 of the II Additional Protocol to the Geneva Conventions, as to the taking as hostage of Pashk Luli and as to the unlawful property confiscation and pillaging of an AK-47 rifle and a 7.65 pistol from F L , an M-48 rifle from T K , an M-48 rifle and a CZ 99, 9 mm pistol, from C Ç , a 7.65 mm Bronvik pistol from M P in the village of Doblibarë / Doblibare, Gjakova/Dakovica Municipality, on the 24th of March 1999.*"

The Supreme Court considers that this enacting clause although it basically fulfills all requirements of Article 396 paragraphs 3 and 4 as read with Article 391 of the KCCP – ideally could contain more details on decisive facts which Article 396, paragraph 1 of the KCCP requires to be listed in full in the "*statement of grounds*" part of any judgment.

Indeed, the enacting clause mentions the name of the victims as well as the place and time of the commission of the criminal offences in addition to the criminal offences and the pertinent legal provisions. As stated previously by the Supreme Court, a judgment has to be considered as a unique document composed of three parts: an introduction, an enacting clause and statement of grounds pursuant to Article 396 paragraph 1 of the KCCP. Since the enacting clause is an integral (and the most decisive) part of the judgment, it has to be read and interpreted in connection with all the other parts of the judgment.

In adopting this position, the Supreme Court followed the position taken earlier in the *Latif Gashi et al.* case dated 26 January 2011 which stated:

[2] Judgment Ap-Kz 108/2010, Idriz Gashi, 25 November 2010, Judgment Ap-Kz 128/2010, F.B., 3 August 2010, Judgment Ap.-Kz. No. 89/2010, Latif Gashi et al., 26 January 2011

"In particular it can not be ratio legis of the respective provisions of the applicable criminal procedure law, which in the case at hand is the LCP, to have the facts quoted several times in the judgment, in particular in the introduction, in the enacting clause and maybe again in the statement of grounds part of the judgment, just for formalistic reasons or to include large and necessary parts of one part of the judgment also into another part of the same judgment, in the case at hand into the enacting clause. While the enacting clause at hand is clear and understandable, a judgment has to be considered as being a unique document composed of three parts as there are introduction, enacting, and statement of grounds (Article 357 paragraph 1 of the LCP). Since the enacting clause is an integral (and most decisive) part of the judgment it has to be read and interpreted in connection with all the other parts of the judgment."

The Supreme Court is of the opinion that the facts and circumstances which could have been mentioned in the enacting clause of the judgment of District Court of Pejë/Peć are however detailed in the statement of grounds, and in particular in pages 85 to 95. Therefore, the panel considers that in the case at hand the enacting clause is quite abstract even regarding its descriptive part, but that nevertheless this fact does not constitute a substantial violation of the criminal procedure under Article 403, Paragraph 1, sub-paragraph 12 of the KCCP. In particular, the enacting clause in the judgment of the District Court of Pejë/Peć is not incomprehensible or internally inconsistent or inconsistent with the grounds for the judgment. It is completely clear for which actions the defendant has been found guilty of, who are the victims and the location and time of the offences. Furthermore, the panel also took into consideration the fact that the defence counsel did not allege in its appeal that the enacting clause was not in compliance with Article 391, paragraph 1 of the KCCP.

The panel concluded that the enacting clause does not constitute a violation of the criminal procedure or a violation of the criminal law at the detriment of the accused and thus annulment of the verdict and and return of the case to the first instance court cannot be justified.

The Supreme Court has not identified ex officio any other violation under Article 415 paragraph 1 of the KCCP.

IV CONCLUSION

It is therefore decided as in the enacting clause.

Dated this 14 June 2011.
Ap.-Kž. No. 353/2009

Prepared in English, an authorized language.

Presiding Judge

Charles L. Smith III

Recording clerk

Olivia Debaveye

Member of the Panel

Gerrit-Marc Sprenger

Member of the Panel

Martti Harsia

Member of the Panel

Marije Ademi

Member of the Panel

Emine Mustafa