

Supreme Court of Kosovo  
PZD-KZU No. 77/10  
Prishtinë/Priština  
28 September 2010

The Panel of the Supreme Court of Kosovo, composed by:

**PRESIDING JUDGE**

Gerrit-Marc Sprenger, EULEX Judge

**MEMBERS OF THE PANEL**

Lars Dahlstedt, EULEX Judge  
Emine Mustafa, Supreme Court Judge  
Nesrin Lushta, Supreme Court Judge  
Marije Ademi, Supreme Court Judge

**RECORDING CLERK**

Andrea Chmieliński Bigazzi  
EULEX Legal Officer

In the criminal case against [REDACTED] municipality of Viti/Vitina, Kosovo Albanian male, educated at secondary school (completed), married, father of 3 children, sentenced by Swiss tribunal for Narcotics related offences (Article 19, paragraph 1 of the Swiss Narcotics Act) and Firearm Possession committed in Switzerland. Finally convicted by the Supreme Court of Luzern Canton, Switzerland, to 7 years imprisonment on 13 July 1999, after having been in detention since 01 March 1997. Escaped from Swiss detention centre on 03 April 2000. Arrested in Pristina, Kosovo, on 12 April 2007, and kept in detention since then. Ordered to serve the Swiss sentence mentioned above in Kosovo, with decision of the District Court of Gjilan/Gnjilane dated 11 June 2007 (PP No. 76/07). Currently serving imprisonment sentence at the detention centre of Dubrava, Istog/Istok municipality in Kosovo.

Deciding on the request for extraordinary mitigation of punishment (Article 448 of the KCCP) of the defendant [REDACTED] filed through his Defence Counsel [REDACTED] based on which the defendant requests to amend the final verdict of the District Court of Gjilan/Gnjilane dated 11 June 2007 (PP No. 76/07) and be released to undergo [REDACTED] while being at home. In particular, due to [REDACTED] determined by an alleged [REDACTED] (*ex parte* [REDACTED] certificates included in the petition), the defendant submits his request since his alleged [REDACTED] would determine a circumstance which did not exist when the judgment was rendered and which obviously would have led to a less severe punishment; also stating that the [REDACTED] of the defendant [REDACTED]

Issues the following

**RULING**

The request filed by defence counsel [REDACTED] on behalf of the defendant [REDACTED] to extraordinarily mitigate his punishment is hereby **REJECTED**.

## REASONING

### Procedural Background

The defendant has been finally convicted by the Supreme Court of Luzern Canton, Switzerland, to 7 years imprisonment on 13 July 1999, after having been in detention since 01 March 1997. Escaped from Swiss detention centre on 03 April 2000.

On 14 March 2007, the Federal Office of Examination Magistracy of Switzerland issued an order of arrest against the defendant in relation to also other crimes he was accused of, additional to the sentence he was serving. [REDACTED] was arrested in Pristina, Kosovo, on 12 April 2007, and kept in detention since then. On 10 July 2007, the Swiss authorities filed a request that the final punishment of the Luzern Canton Supreme Court dated 13 July 1999 be executed in Kosovo pursuant to Article 510, paragraph 1 of the KCCP.

The request was granted and the defendant was ordered to serve the Swiss sentence mentioned above in Kosovo, with decision of the District Court of Gjilan/Gnjilane dated 11 June 2007 (PP No. 76/07). [REDACTED] is currently serving imprisonment sentence at the detention centre of Dubrava, Istog/Istok municipality in Kosovo.

On 14 May 2010, the defendant [REDACTED] filed through his Defence Counsel [REDACTED] a request for extraordinary mitigation of punishment (Article 448 of the KCCP) with the Registry of the District Court of Gjilan/Gnjilane. The defendant requests to amend the final verdict of the District Court of Gjilan/Gnjilane dated 11 June 2007 (PP No. 76/07), and to be released to undergo [REDACTED] while being at home. In particular, due to [REDACTED] determined by an alleged [REDACTED] (ex parte [REDACTED] included in the petition), the defendant submits his request since his alleged [REDACTED] would determine a circumstance which did not exist when the judgment was rendered and which obviously would have led to a less severe punishment; also stating that the [REDACTED]

The Office of the District Public Prosecutor of Gjilan/Gnjilane proposed, on 15 June 2010, the District Court of Gjilan/Gnjilane to reject the request of the defendant as ungrounded since there is lack of [REDACTED] certification from the Forensic Institute of Prishtinë/Priština which should support the [REDACTED] reports.

The District Court of Gjilan/Gnjilane in its Recommendation dated 17 June 2010 (PP No. 76/07) delivered according to Article 450 of the KCCP, recommends granting the petition of the defendant "*in a quantum which should be defined close – or even coincident – with the full remaining period still to be served*".

The Office of the State Prosecutor in its Submission and Motion dated 02 August 2010 (KZJD No. 77/10) delivered according to Article 450 of the KCCP, moves to reject the defendant submission or "*alternatively to have a satisfactory medical determination made by a professional institution in accordance with Article 176 of the KCCP, before the Supreme Court renders its decision*".

The Conditional Release Panel lastly refused the defendant request for release on 4 August 2010 (CRP. Nr. 364/08).

## Court findings

This Court considers that so far, the [REDACTED] certificates produced by the defendant and his defence counsel are only *ex parte* certificates and not fully satisfactory on the details of the alleged ongoing [REDACTED] with its appropriate [REDACTED]. The report of the Head of the [REDACTED] dated 21 April 2010, only says that "[REDACTED]". This brief line is not considered as providing minimum and satisfactory level of information to this Court to decide. In fact, it does not say which kind of [REDACTED] in relation to the [REDACTED] determine. It does not say if and to which degree the defendant needs [REDACTED] and if this [REDACTED] can be provided from the [REDACTED]. It does not finally clarify the kind of "help" that the defendant would need and on the other side the kind of "help" that the prison can not provide to the defendant. In sum, the official [REDACTED] authorities of the Kosovo Correctional Service on one side, and the *ex parte* certification submitted by the defendant on the other side, do not provide this Court with sufficient indication that [REDACTED] of the defendant should ground consideration of the request for extraordinary mitigation of punishment.


Additionally, it has to be taken into consideration that according to Article 450, paragraph 4 of the KCCP the Supreme Court is not in the condition to collect further documentation which is, on the contrary, under the competences of the 1<sup>st</sup> Instance Court. Consequently, the proposal of the OSPK Prosecutor to acquire additional [REDACTED] certification on the conditions of the defendant can not be considered.


In consideration of what was said before, this Court believes that it is not proved by the request of the defendant that there are legal grounds to grant the request as mandated under Article 450, paragraph 6 of the KCCP. In fact, even taking in due consideration the Recommendation of the District Court of Gjilan/Gnjilane dated 17 June 2010, it can be argued that the "circumstances" referred to under Article 448 of the KCCP to be read in connection with the mitigating circumstances and elements as referred to under Article 64 and following of the Criminal Code of Kosovo, refer to the "circumstances" existing at the moment of the commission of the crime as determined, considered, and evaluated at the moment of the rendering of the judgment in relation to the commission of the crime. Conclusively, new "circumstances" such as modification in the [REDACTED] condition of the defendant while serving the final judgment imposed on him/her, are regulated by other rules applicable in Kosovo. In the instant case, reference can be made to Article 100 of the Law on Execution of Penal Sanctions.


This Court recalls that this rejection does not prevent the defendant to file a more corroborated and grounded request.


Thus, it is ordered as in the enacting clause.

**Members of the panel:**


  
\_\_\_\_\_  
**Lars Dahlstedt**  
**EULEX Judge**

  
\_\_\_\_\_  
**Nesrin Lushta**  
**Supreme Court Judge**

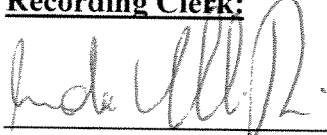
  
\_\_\_\_\_  
**Emine Mustafa**  
**Supreme Court Judge**

  
\_\_\_\_\_  
**Marije Ademi**  
**Supreme Court Judge**

**Presiding Judge:**

  
\_\_\_\_\_  
**Gerrit-Marc Sprenger**  
**EULEX Judge**

**Recording Clerk:**

  
\_\_\_\_\_  
**Andrea Chmieliński Bigazzi**  
**EULEX Legal Officer**

**Legal Remedy**

No appeal is possible against this Ruling.