

DISTRICT COURT OF MITROVICA

P nr. 31/09

27 May 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Hajnalka Veronika Karpati and Nikolay Entchev as panel members, with the participation of EULEX Legal Officer Tara Khan as Recording Officer, in the criminal case against;

R.R. and A.V., charged according to Indictment PP nr. 231/09 of District Public Prosecutor Nijazi Rexha dated 11 September 2009 and filed with the District Court on 14 September 2009 with **Trafficking in Persons** in violation of Article 139, para (1) of the Criminal Code of Kosovo (CCK) in conjunction with Article 23 of the CCK;

After having held the main trial hearing on 24, 25, 26 and 27 May 2010, all in the presence of the Accused **R.R. and A.V.**, their Defence Counsel Rexhep Kacaniku and Fatmire Braha, EULEX Public Prosecutor Neeta Amin, and Burhan Maxhuni as Legal representative of Injured Party Xh.Z.;

After the trial panel's deliberations and voting held on 27 May 2010, pursuant to Article 392 para (1) of the Criminal Procedure Code of Kosovo (CPCK), pronounced in public and in the presence of the Accused, Defence Counsel, EULEX Public Prosecutor Amin and Legal Representative Maxhuni, the following

VERDICT

The accused **R.R.**, nickname "**R.**", son of Sh. R. and Sh. B. , born on _____ in _____, Kosovo, Kosovo-A. _____, tradesman, married with _____ children, in detention from until _____ ;

And

The Accused **A.V.**, nickname "**E.**", daughter of I. V. and Z. S. , born on _____ in _____, Republic of A. , citizen of A. , waitress, divorced with _____ children, no previous conviction, in detention from _____

Are

FOUND NOT GUILTY

- Because it was not proven that from [redacted] of [redacted] until [redacted], **R.R.** and **A.V.** jointly recruited Sh.J. to work at [redacted] by accompanying **A.V.** and sitting down with male customers, socializing with them and ordering expensive drinks in order to increase the café's material profits. It was also not proven that **R.R.** recruited Xh.Z. by deception, offering her employment as a waitress in [redacted] and then finding customers to be sexually exploited for material gain.

THEREFORE, the Accused **R.R.** and **A.V.** are

Acquitted

Of committing the criminal offence of **Trafficking in Persons** in violation of Article 139 para (1) of the CCK in conjunction with Article 23 of the CCK.

The passport of **A.V.** shall be returned pursuant to Article 251 of the CPCK.

Pursuant to Article 103 para (1) of the CPCK, the costs of criminal proceedings under Article 99 para (2) subparas (1) through (5) of the CPCK, the necessary expenses of the Accused and the remuneration and necessary expenditures of their defence counsel, as well as the costs of interpretation and translation, shall be paid from budgetary resources.

REASONING

A. Procedural Background

District Public Prosecutor Njazi Rexha filed Indictment PP nr. 231/09 dated 11 September 2009 with the District Court of Mitrovica on 14 September 2009. The Indictment charges **R.R.** and **A.V.** with the criminal offence of Trafficking in Persons in violation of Article 139 para (1), as read with Article 23, of the Criminal Code of Kosovo (CCK). The Indictment was confirmed on 29 December 2009 in decision KA nr. 75/09.

EULEX Public Prosecutor Neeta Amin took over the case and filed a request for EULEX judges to hear the case. EULEX judges took over the case on 15 February 2010.

The Main Trial was held on 24, 25, 26 and 27 May 2010. The closing arguments of EULEX Prosecutor Neeta Amin, Representative of the Injured Party Burhan Maxhuni, Defence Counsel Rexhep Kacaniku (for **R.R.**), and Defence Counsel Fatmire Braha (for **A.V.**) were heard on 27 May 2010. The Verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23 Item 1) i) of the CPCK, 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 CPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused were charged with the criminal offence of Trafficking in Persons pursuant to Article 139 para (1) of the CCK, which is punishable by a sentence of imprisonment of two to twelve years. Furthermore, the Indictment alleges that the two Accused committed the criminal acts in _____, which lies within the Mitrovica District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 15 February 2010 the President of the Assembly of EULEX Judges issued a decision for EULEX to take over this case based on Articles 3.3 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors (“Law on Jurisdiction”) and assigned it to EULEX judges in the Mitrovica District Court.

Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case.

The panel was composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX judges Hajnalka Veronika Karpati and Nikolay Entchev as panel members. None of the parties objected to the composition of the panel.

C. Evidence Presented

During the course of the main trial the following witnesses were heard:

- (1) Sh.J. (Injured Party) on 25 May 2010
- (2) N.K. on 25 May 2010
- (3) F.B. on 26 May 2010
- (4) Police Officer L.H. on 26 May 2010

On 26 May 2010, the following documents were read into the record:

- (5) Statement of Injured Party Xh.Z. dated _____ .
- (6) Statement of Injured Party Xh.Z. dated _____ .
- (7) Statement of Injured Party Xh.Z. dated _____ .

During the main trial session on 26 May 2010, both **R.R.** and **A.V.** gave statements and answered questions.

1. Testimony of Injured Party Sh.J.

Sh.J. testified that she met **R.R.** and **A.V.** when V. rented a room in the same house where J. also rented a room. A. introduced herself to J. as “E.”. **A.V.** told J. that she was from Albania, that she worked for **R.** as a waitress in his café called _____, and that she was also in a relationship with **R.**.

V. told J. that she was sad and lonely and needed a female friend. V. invited J. to visit her at _____ on several occasions. J. visited _____ on two or three occasions. J. testified that when she was at the café, it was **A.V.**'s idea and suggestion that J. sit with male customers who were regular customers of the café and order drinks with them. J. sat with male customers several times who she did not know and they bought drinks for her.¹ J. would be introduced to the male customers as a friend and a visitor.² There were times that J. did not want to sit with male customers at the café, but either **A.V.** or **R.R.** told her not to be afraid and to sit with them because they were regular customers and the drinks were free.³

On one occasion at the café, J. overheard **A.V.** and **R.R.** say that they would have higher earnings if J. sat with customers. On that same occasion, **A.V.** and **R.R.** asked J. whether she would be interested in working at the _____ as a waitress. Both **A.V.** and **R.R.** told J. that in if she worked there, their earnings would be higher if she sat with the customers having drinks.⁴ They told her that if she worked at the café, she would receive 150 euros per month and free accommodation in the apartment above _____ which **R.** owned. J. told her parents about the job offer and her father phoned **R.** to tell him to stay away from J..

Sh.J. testified that she never worked at the _____, that she did not receive any payment for sitting with male customers at the café, and that she did not receive any money from either **R.R.** or **A.V.**. Sh.J. also testified that she did not know Xh.Z., N.K. or F.B..

2. Statements of Injured Party Xh.Z.

Injured Party Xh.Z. did not appear in Court for any of the hearings despite being duly summoned. According to the Public Prosecutor and the Kosovo Police, Z. was no longer living in her family's house and efforts to locate her were unsuccessful. Due to her disappearance, the Court read into the Record her three previous statements made to police and the Prosecutor, pursuant to Article 368 para (1) subpara (1).

On _____ Xh.Z. stated the following to police:

¹ Minutes of the Main Trial Hearing, 25 May 2010, p. 16.

² Minutes of the Main Trial Hearing, 25 May 2010, p. 9.

³ Minutes of the Main Trial Hearing, 25 May 2010, p. 13-14 & 21.

⁴ Minutes of the Main Trial Hearing, 25 May 2010, p. 13 & 20.

Xh.Z. had been working as a waitress in _____ owned by **R.R.** since _____ for 6 euros/day. She agreed with **R.** that she would have sexual intercourse with men he brought to her. The man would pay 20 euros for sex, 10 euros would go to Z. and 10 euros to **R.** On _____ at approximately _____ hrs, a man spoke to **R.**, and they agreed that he would have sex with Z. for money. Z. went with the man to his flat located near the _____ and had sex for an hour, for which she received 10 euros and **R.** received 10 euros. The following day, another man met with **R.** for the same reason, but Z. refused to have sex with this man. On _____, Z. was in _____ at _____ hrs when an argument began with two customers, A.B. and his son F.B.. Z. had refused to have sex with A.B., and as a result F. grabbed her by the arm and tried to hit her with a beer bottle. **R.** intervened to protect Z., and Z. went into the kitchen while a fight broke out between the men in the café. Afterwards she went to the flat located above the café until the police came and took her to the station.

On _____ *Xh.Z. stated the following to police:*

Xh.Z. had been dating N.K. for three years. The week before giving the statement, Z. and K. went to _____ together. Z. agreed with **R.R.** to work as a waitress for 6 euros/day and free accommodation. They also agreed that she would have sex with customers, and she and **R.** would split the money in half. N.K. did not know about this agreement. Z. had sex with a customer named A. from _____ in a flat near the _____. They had sex for one hour and then returned to the café. A. paid **R.** for the sex, who gave 10 euros to Z. and stated “Keep this money for having sex with A.” On _____, A. and F.B. came to and Z. sat at a table with them. A.B. told Z. that she had no choice but to have sex with him. She refused and A. began shouting and cursing at her. She left their table and went to sit with **R.** and his girlfriend E. (**A.V.**). F.B. then tried to hit Z. with a beer bottle and **R.** intervened. A fight broke out between the men. Z. went to the flat above the café and stayed there with V. until the police arrived.

On _____ *Xh.Z. stated the following to the Public Prosecutor:*

Xh.Z. stated that she spent 4-5 days in _____ with her friend **A.V.**. During that time, she spent time both in the café and in the flat above it, having friendly talks with **V.** and **R.R.**. Neither **V.** nor **R.** has ever offered Z. a job at the _____. Z. never had sex with customers, she never had sex with a person named A. from _____, and **R.** has never given her money after having sex with customers. Z. was not truthful in the two prior statements given to the police because she was under pressure to quote police officer L.H..

3. Testimony of F.B.

F.B. testified that he visited _____ often, two or three times a week, and **A.V.**, whom B. knew as “**E.**”, worked there as a waitress. He was at _____ on the night of _____. The owner **R.R.** and **A.V.** were present. F.B. saw his father A.B., his neighbour Sh. M., and Xh.Z. sitting together at a table having drinks. F.B. stated that Xh.Z. was under the influence of alcohol and served him some drinks, however he did not know whether she

worked there as a waitress. Z. sat with him at a table for approximately ten minutes, chatted with him and had a drink. That same evening, F.B. and a customer named B. got into an argument because they were under the influence of alcohol and they collided chairs. At the time of the argument, Xh.Z. was sitting at a table with B. and I..

F. B. testified that he did not know Sh.J. or a person named A..

4. Testimony of N.K.

N.K. testified that he first met Xh.Z. three or four years ago when she was a customer at his sweetshop and they later became lovers. Occasionally K. and Z. would go to for drinks. N.K. testified that A.V. asked Xh.Z. to stay with her in the accommodation over because V. was afraid to sleep there alone. Z. stayed with V. only on one occasion, but stayed for a period of 2-3 days. According to K., Xh.Z. was very grateful to A.V. because she had helped her and had given her personal clothes and food. Xh.Z. never worked at , she was only a customer there.

N.K. testified that he did not know a person named A. and had only seen Sh.J. once before.

5. Testimony of L.H.

L.H. is a police officer working in investigations of human trafficking. She interviewed Injured Party Xh.Z. on together with her colleague, F. Rr. . Burhan Maxhuni, attorney for Z., was present during the interview. The police did not apply any pressure on Z., and she gave her statement willingly. Neither Xh.Z. nor Burhan Maxhuni voiced any complaints about the interview, or claimed that it was conducted unfairly or wrongly. After the interview was complete, the police read the statement back to Z., and Z. signed it without any pressure. In H.'s opinion, Xh.Z. seemed like a real victim during the interview.

Officer H. was later informed by the Prosecutor that the Defence Counsel, together with the wife of R.R., had gone to Xh.Z.'s house and asked her to change her statement.

6. Testimony of the Two Accused

Testimony of R.R.

R.R. met A.V. in . He invited her to work as a waitress at for 10 euros/week, one meal a day, and free accommodation. She agreed and moved into the flat above the café. At some point they began dating.

R.R. knows N.K. and his girlfriend Xh.Z.. K. and Z. came to on to have some drinks. Z. stayed with A.V. for a few days because V. was feeling alone and scared. On , Xh.Z. was drinking at the with F.B. and A.B.. They consumed a lot of

alcohol and A.B. stated that Xh.Z. was his friend. **R.** overheard A.B. say to Xh.Z., “Do you remember when I cut your high heels and pushed your head under the water and you gargled?” A. told R. that Z. had been “his woman” for a long time.

With regard to Sh.J.’s testimony, **R.** denied that **A.V.** brought Sh.J. to work for him, that he ever stated that his earnings would be higher if Sh.J. sat with the customers, that he ever instructed J. to sit with his customers, or that he ever gave any money to J..

With regard to the two statements Xh.Z. gave to the police, **R.R.** categorically denied that Z. ever worked for him as a waitress at _____, that he ever told Z. to offer sexual services to anyone, that he ever sold Z. to anyone, or that he had ever given Z. any money. **R.** also denied knowing any person by the name A..

R. testified that while he was in detention on remand, his wife asked Xh.Z. whether **R.** had sold her, and Z. replied “No”. Z. then told his wife that she had accused **R.** because she “was upset and was beaten up in _____”. Afterwards, Z. voluntarily withdrew her previous statements to police.

Testimony of A.V.

A.V. testified that she was working as a waitress in _____ when she met **R.R.**. She went to work as a waitress for him in _____ because the pay was better. She and **R.** began dating. **V.** worked as a waitress in _____ for approximately one year for 10 euros/day. Then she left and went to _____ for one month, where **R.** paid the rent on her flat and she met Sh.J.. After one month, **V.** returned to _____.

With regard to Sh.J., **V.** testified that J. came to visit her in _____ for two or three days on her own volition. **V.** denied telling J. that she was afraid to stay at her flat alone. When J. came to stay with her, she sat at the tables in _____ and drank with her friends, not strangers. **V.** denied that she and **R.** told J. that she should also work at the café, or that she and **R.** discussed the fact that if J. sat with men at tables, the earning would be higher. **V.** also denied that she recruited J. to have sex with male customers.

With regard to Xh.Z., **V.** testified that she only knew Z. for a few days. **V.** knew her as N.K.’s girlfriend.

V. stated that she was not involved in the events which occurred in _____ on _____. On that night, she saw Xh.Z. drinking alcohol in _____. **V.** was upstairs in the flat watching tv when the incident occurred and the police came to the _____.

V. denied knowing any person named A..

D. Evaluation of Presented Evidence

1. Credibility of Witnesses

The Court found the testimony of witness Sh.J. to be credible and consistent, and as such accepts the general content of her evidence. The Court found the testimony of N.K. also to be credible, however as he was not a witness to any of the criminal allegations and had limited information regarding the actions of Xh.Z. or Sh.J. in connection with _____, his testimony did not add anything additional to the case.

The Court also found as credible the testimony of Police Officer L.H.. Officer H. was clear and forthright in her testimony regarding the lawful conduct of the two police interviews of Xh.Z.. H.'s account is corroborated and supported by the facts that: The statement of the _____ interview contains a signed declaration by Z. that it is truthful and accurate, and was not given under any pressure or influence; The interview on _____ was conducted in the presence of attorney Burhan Maxhuni as the legal representative of Xh.Z.; and the statement of the _____ interview contains a signed declaration by Z. that the statement was read aloud to her and she did not have any objections. For these reasons, the Court has no reason to doubt the lawfulness of the interviews, and that the written statements are an accurate representation of what the witness stated before the police.

However, the truthfulness of the actual statements made by Xh.Z. can not be established by the Court. There is obvious direct contradiction between the statements to police and the statement on _____ to the Public Prosecutor. In addition, there are even some discrepancies between the two statements given to the police in _____. Had Xh.Z. appeared before the Court, her testimony could have cast some credibility on one or the other version of the statements. However, as she failed to appear, it was impossible for the Court to assess the credibility of the witness, and the Court could not arrive at any conclusion as to the truthfulness of any of the three statements made by Z.. Therefore, the aspects of the statement which are contradictory must be viewed in the light most favourable to the Accused.

2. Factual Findings

Upon the evidence presented during the course of the main trial, the Court can only consider the following facts as proven:

A.V. was working as a waitress in _____, which was owned by **R.R.** **V.** lived in the flat located above the _____. **V.** met Sh.J. when she left _____ and rented a room in the same house in _____. Afterwards, **V.** returned to _____ and J. came to visit her there for a few days.

The Court believes that there was some discussion between **A.V.** and/or **R.R.** with Sh.J. regarding J. working as a waitress in the café, however the Court is not convinced that there was a formal job offer. Furthermore, even if the two Accused had asked J. whether she wanted to work at the café as a waitress, as there is no evidence that either of the

Accused tried to recruit J. to work in any other capacity than as a waitress, this fact would have had no bearing on the outcome of the verdict.

The Court also finds that it does not have any bearing on the case or the verdict whether **A.V.** asked Sh.J. to visit her because she was afraid or whether J. visited **V.** on her own volition, and does not make any finding on this point.

While at _____, J. sat at the tables and socialized with some customers, who would order and pay for drinks. The Accused were aware of the fact that male customers would spend more money on drinks at the _____ when socializing with J..

The Court believes that the two Accused did acknowledge that the earnings of the _____ were higher when Sh.J. sat with customers. Nevertheless, such a remark does not amount to a criminal offence, as it is clear from J.'s testimony that she had the ability to turn down the job offer to work at the café and she was never forced to sit and socialize with the customers. During Sh.J.'s testimony, Judge Hajnalka Veronika Karpati questioned J. in detail whether there was any force or threat of force applied against J. in the context of working at the _____ or sitting with customers at the _____, and the answer was that J. was never forced to do so.

On the evening of _____, an altercation broke out in _____ which involved F.B.. As a result, the police came to the _____ and arrested **A.V.**.

No further factual details could be established about this incident. The reasons for the altercation, including whether it stemmed from a refusal by Xh.Z. to have sex with A.B., can not be established due to the contradictions between the testimonies of F.B. and **R.R.** and the various statements of Xh.Z. (which are conflicting in and of themselves and lack credibility for the reasons explained above).

E. The Law / legal Qualification

The alleged criminal acts were committed in _____. The Criminal Code of Kosovo entered into force on 06 January 2009, and is therefore the applicable law. Pursuant to Article 2, para (1) of the CCK, the law in effect at the time of commission of the criminal offence shall be applied to the perpetrator.

The Accused are charged with Article 139 para (1) of the CCK: Trafficking in Persons. Trafficking in Persons is defined in para (8) as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

With regard to Injured Party Sh.J.

The evidence presented at trial, summarized above, establish only that Sh.J. voluntarily went to _____ where she sat at tables with male customers, socialized with them and ordered drinks. As explained above, there is no evidence that J. was forced or coerced to perform any of these acts. She also did not receive any payment from either of the Accused. Furthermore, the extent of the acts of **R.R.** and **A.V.** appears to be their discussion or remark that **R.** made higher profits from drinks when J. was socializing with the male customers.

With regard to Injured Party Xh.Z.

Due to the failure of Xh.Z. to appear before the Court and the lack of credibility of her conflicting statements to police and Prosecutor, and because no other corroborating or clarifying evidence presented to the Court with regard to the sexual allegations initially made by Z., the following allegations have not been proven:

- That either Accused forced or otherwise coerced Xh.Z. to have sexual intercourse with any person.
- That either Accused received money from any person who had engaged in sexual intercourse with Xh.Z..
- That either Accused gave money to Xh.Z. for having sexual intercourse with any person.

Thus, there has been no establishment of any of the *actus reus* required for commission of the criminal act of Trafficking in Persons, or for any lesser criminal offence which would possibly be applicable under the CCK.

For these reasons, the Trial Panel acquitted A.V. and R.R. of the charge of Trafficking in Persons in accordance with Article 390(3) of the Criminal Procedure Code of Kosovo.

F. Costs

Due to the acquittal of both Accused, pursuant to Article 103 para (1) of the CPCK, the costs of criminal proceedings under Article 99 Paragraph (2) Subpara 1 through 5 of the CPCK, the necessary expenses of the Accused, and the remuneration and necessary expenditures of both defence counsel, as well as the costs of interpretation and translation will be paid from budgetary resources.

District Court of Mitrovica
K. nr. 32/09⁵

Prepared in English, an authorized language.

⁵ This is a typographical error. The correct case number is P. nr. 31/09.

Recording Officer

Presiding Judge

Tara Khan

Charles L. Smith, III

Legal remedy:

Authorized persons may file an appeal in written form against this verdict to the Supreme Court of Kosovo through the District Court of Mitrovica within fifteen (15) days from the date the copy of the judgment has been received, pursuant to Article 398 para (1) of the CPCK.