

DISTRICT COURT OF PRIZREN

P 09/10

July 6, 2011

IN THE NAME OF THE PEOPLE

The District Court of Prizren in a three-judge panel composed of EULEX judge Dean B. Pineles as presiding judge and EULEX judge Witold Jakimko and local juvenile judge Ajsere Skenderi as panel members, in a criminal case against:

Minor A

The defendant is suspected of having committed the following criminal offences in co-perpetration with another defendant

Juvenile B

1. Inciting national, racial, religious or ethnic hatred, discord or intolerance in violation of Article 115 paragraph 1 of the Provisional Criminal Code of Kosovo (PCCK) read in conjunction with Article 23 of the PCCK.
2. Causing general danger resulting in sizable property loss in violation of Article 291 paragraph 1 of the PCCK read in conjunction with Article 23 of the PCCK.
3. Causing general danger resulting in sizable property loss in violation of Article 291 paragraph 1 of the PCCK read in conjunction with Article 23 of the PCCK.

After having held main trial on July 6, 2011 the court issues the following:



JUDGMENT

Pursuant to Article 389, paragraph 4 of the KCCP, the court hereby rejects the charges against [redacted] on the basis that further prosecution is barred by the provisions of Article 9, paragraphs 1 and 2 of the Juvenile Justice Code (JJC).

Because prosecution is barred, the injured party has no further rights to pursue prosecution.

[redacted] is also relieved of any obligation to pay the costs of the criminal proceedings under Article 391 (1) 6).

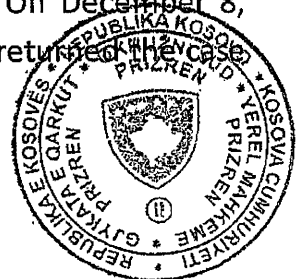
REASONING

The international public prosecutor filed an indictment dated March 21, 2006 for the above mentioned charges. These charges arose out of the civil disturbances on March 17-18, 2004. At the time of the alleged crimes, [redacted] was 15 years old [redacted] was 18 at the time.

The indictment against [redacted] was confirmed on April 28, 2006, and against [redacted] on November 6, 2006. The juvenile panel of the district court of Prizren joined the criminal proceeding against [redacted] with that against [redacted].

The main trial at the District Court of Prizren started on November 27, 2006 and concluded on June 15, 2007 with the announcement of the Judgment by which [redacted] and [redacted] were found guilty of the criminal offences. [redacted] was sentenced to an aggregated punishment of four years; [redacted] was sentenced to the educational correctional institution at Lipjan for a period of two years.

Their defense counsels filed an appeal against the judgment. On December 8, 2009 the Supreme Court of Kosovo annulled the Judgment and returned the case



for retrial and decision to the District Court of Prizren. At the time of this decision, ^A was 21 years old.

A preliminary hearing was held in the District Court of Prizren on December 2010. However, because of a change of EULEX judges another preliminary hearing was conducted on May 18, 2011. Present were the EULEX prosecutor, the defense counsel for both defendants, and counsel for the injured party.

At this pre-trial conference the court discussed the provision of Article 9, paragraph 1 of the JJC, which, if applicable, bars prosecution against ^A

Article 9, paragraph 1 reads as follows:

- 1. Court proceedings cannot be conducted against an adult who has reached the age of twenty-one (21) years for a criminal offense committed as a minor under the age of (16) years.*

The present version of the JJC, including Article 9, went into effect in mid-2010. Article 9 is identical to Article 8 of the previous version of the JJC that went into effect on April 20, 2004, shortly *after* the events in question on March 17-18, 2004.

Nevertheless, the court is of the opinion that Article 9 is applicable, both legally and factually, for the following reasons.

First, Article 156 of the JJC provides that if preparatory proceedings were initiated before April 6, 2004, then they were to be continued and finished according to the provisions of the previous applicable law—the juvenile provisions of the Criminal Code of the SFRY, particularly Article 81.¹ Since preparatory proceedings were not initiated until October 28, 2004, the Criminal Code of the SFRY does not apply.

¹ Article 81 (1) states that “An adult who is aged 21 or over cannot be tried for a criminal act he committed as a junior juvenile,” which is a person between 14 and 16 under Article 73 (1).



Also, Article 161 of the present JCC states that the Code shall supersede the previous version enacted in 2004 as well as “any provision of the applicable law which is inconsistent with it.” Thus, to the extent that previous law under Article 81 is inconsistent with the present Article 9, then Article 9 shall prevail.

Moreover, to the extent that Article 9 may be more favorable to the perpetrator than previous applicable law under Article 81, then Article 9 must be accorded primacy because of the principle stated in Article 2 of the Criminal Code of Kosovo (incorporated by reference in Article 5 of the JJC) which provides that, in the event of a change in the law, “the law more favorable to a perpetrator shall apply.”

Having determined that Article 9 of the JCC applies, the court will now address the present factual situation. [REDACTED] is now an adult as defined in Article 2, paragraph 1, subparagraph 1.7 of the JCC—a person who has reached the age of eighteen (18) years—and he was a minor under the age of 16 at the time of the alleged offenses. Thus, unless an exception applies to this general prohibition, further court proceedings cannot be “conducted” or carried out against him.

Paragraph 2 of Article 9 of the JJC does contain an exception, but in the court’s view it is inapplicable to the present situation. It reads, in pertinent part, as follows:

2. *Court proceedings can be conducted against a young adult for a criminal offense committed as a minor under the age of sixteen (16) years only if the criminal offense is punishable by imprisonment of more than five (5) years.*

A “young adult” is defined in Article 2, paragraph 1, subparagraph 1.5 as a person between the ages of eighteen (18) years and twenty-one (21) years. [REDACTED] A [REDACTED], being 23 years of age, is no longer a young adult, so this exception does not apply. (Indeed, [REDACTED] was no longer a young adult at the time of the Supreme Court’s decision on 8 December 2009.)



Article 10 of the JJC also provides that criminal proceedings can be conducted, and punishment imposed, for an adult who has reached the age of 23, but only in circumstances where the criminal offense was committed by a "minor who has reached the age of sixteen (16) years." Here, while [redacted] is now 23, he was not yet sixteen at the time of the alleged offenses. Thus, this provision does not apply.

In light of this factual situation, the court will now proceed under Article 34 of the KCCP which provides that:

(1) Until the conclusion of the main trial, the court which has jurisdiction...may, for important reasons or for reasons of efficiency, order the severance of proceedings...conducted against several defendants and thereupon proceed separately...

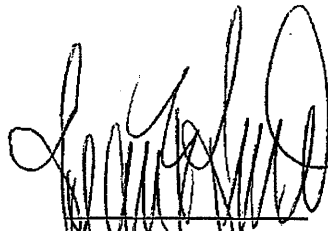
In the courts opinion, the reasons discussed above are certainly important, and justify the severance of [redacted] case from that of the co-perpetrator.

Also, under Article 389, paragraph 4, the court is obligated to render a Judgment rejecting the charges if "...there are...circumstances which bar prosecution" as in this case.

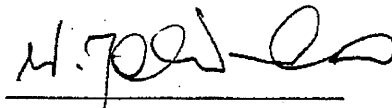
This Judgment barring further court proceedings affects the injured party in the same way as the prosecutor. That is to say, the injured party is precluded from pursuing criminal proceedings independently, unlike the situations contemplated in Article 62 of the KCCP. However, this Judgment shall have no effect on [redacted] case which shall proceed to a main trial. Because of the severance, [redacted] case shall be given a new reference number.

Accordingly, the court decides as in the enacting clause.





Dean B. Rineles
Presiding Judge



Witold Jakimko
Panel member



Ajsere Skenderi
Panel member



Vlora Johnston
Court recorder

LEGAL REMEDY Authorized persons may file an appeal against this judgment within fifteen days of the day the copy of it has been served to them. The appeal must be addressed to the Supreme Court of Kosovo through the District Court of Prizren.