SUPREME COURT OF KOSOVO
Ap - Kz 20/2012
4 September 2012

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Horst Proetel as Presiding Judge, Supreme Court Judges Emine Mustafa and Marije Ademi and EULEX Judges Martti Harsia and Gerrit-Marc Sprenger as panel members, assisted by Legal Officer Chiara Rojek acting in the capacity of recording clerk,

In the criminal case against
E K , father's name , mother's name , born on in village, Municipality of , where he currently resides, of Kosovo citizenship,

Charged as per in the Indictment PPS no.75/2010 filed by the Special Prosecution Office of the Republic of Kosovo (SPRK) on 30 March 2011, and partially confirmed on 29 April 2011 by Ruling KA no. 76/2011, with the criminal offence of War Crime against the civilian population contrary to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), currently criminalized under Articles 23 and 121 Paragraph 1 of the Criminal Code of Kosovo (CCK) read in conjunction with Article 3 Common to the four Geneva Conventions dated 12 August 1949 (the four Geneva Conventions) and of Article 13 Paragraph 2 of the Additional Protocol II to the 1949 Geneva Conventions dated 8 June 1977 (the Protocol II),
Convicted in first instance by Judgment P no. 134/11 of the District Court of Prizren dated 2 August 2011, for the criminal offence of War Crime against the civilian population in co-perpetration, contrary to Articles 22 and 142 of the CC SFRY, currently criminalized under Articles 23 and 121 Paragraph 1 of the CCK read in conjunction with Article 3 Common to the four Geneva Conventions and of Article 13 Paragraph 2 of the Protocol II and sentenced to five (5) years of imprisonment,

And **N H** , father's name , mother's name , born on in village, Municipality of , where he currently resides, of Kosovo citizenship, married,
Charged as per in the aforesaid Indictment with the criminal offence of Providing assistance to the perpetrators after the commission of criminal offences contrary to Article 305 Paragraph 2 of the CCK,
Convicted in first instance by the same Judgment for the criminal offence of Providing assistance to the perpetrators after the commission of criminal offences contrary to Article 305 Paragraph 2 of the CCK and sentenced to suspended six (6) months of imprisonment,

And others,

Acting upon the Appeals filed by Defence Counsel Ethem Rugova on behalf of Defendant E K on 8 November 2011, and filed by Defence Counsel Hajrip Krasniqi on behalf of Defendant N H on 3 November 2011 against the Judgment P no. 134/11 of the District Court of Prizren dated 2 August 2011, and considering the Opinion of the Office of the State Prosecutor of Kosovo (OSPK) filed on 28 March 2012,

After having held a public session on 4 September 2012 in the presence of Defendant E K , his Defence Counsel Ethem Rugova, Defendant N H , Prosecutor Judit Tatrai for the OSPK, and Lawyer Rastko Brajkovic as Representative of the Injured Parties, having deliberated and voted on the same day,

Pursuant to Articles 419 and following of the Kosovo Code of Criminal Procedure (KCCP), issues the following

RULING

1. The Appeals filed by Defence Counsel Ethem Rugova on behalf of Defendant E K and by Defence Counsel Hajrip Krasniqi on behalf of Defendant N H against the Judgment P no. 134/11 of the District Court of Prizren dated 2 August 2011 are **GRANTED** pursuant to Articles 420 Paragraph 1, Sub-paragraph 3 and 424 Paragraph 1 of the KCCP.
2. The Judgment P no. 134/11 of the District Court of Prizren dated 2 August 2011 is hereby **ANNULLED**, except the part related to the acquittal of H M which was not subject to this appeal proceeding.
3. The case against the Defendants E K , N H , M H , M H , N B and J K is sent back to the first instance for retrial, pursuant to Articles 419, 420 Paragraph 1, Sub-paragraph 3 and 424 Paragraph 1 of the KCCP.

REASONING

I. Procedural history of the case

On 30 March 2011, the SPRK filed the Indictment HEP no. 185/2010 - PPS no. 75/2010 charging F K and E M with the criminal offences of War Crimes against the Civilian Population contrary to Articles 22 and 142 of the CC SFRY, currently criminalized under Articles 23 and 121 Paragraph 1 of the CCK read in conjunction with Article 3 Common to the four Geneva Conventions and of Article 13 Paragraph 2 of Protocol II to the Conventions (two counts). Five other Defendants, M H , M H , N H , N B and J K , were charged with the criminal offence of Providing Assistance to the Perpetrators after the Commission of Criminal Offences contrary to Article 305 Paragraph 2 of the CCK.

On 29 April 2011, the Indictment was partially confirmed by Ruling KA no. 76/2011. The Confirmation Judge dismissed the second charge of War Crime against the Civilian Population against E K and H M .

The main trial was held in June, July and August 2011. On 2 August 2011, the District Court of Prizren issued the Judgment P. No. 134/11 by which F K was found guilty for War Crime against the Civilian Population in co-perpetration contrary to Articles 22 and 142 of the CC SFRY, currently criminalized under Articles 23 and 121 Paragraph 1 of the CCK read in conjunction with Article 3 Common to the four Geneva Conventions and Article 13 Paragraph 2 of the Protocol II; "because on the night of the 17th and in the early morning of 18th of July 1998, in his capacity as member of the Kosovo Liberation Army (KLA), and in co-perpetration with other so far unidentified KLA soldiers, applied measures of intimidation and terror against the Serbian civilian population of Opterushe/Opterusa by taking part in a deliberate armed attack against the Serbian households in the said village." He was sentenced to a term of five (5) years of imprisonment.

H M was acquitted of the charge pursuant to Article 390 item 3 of the KCCP.

N H and four other Defendants were found guilty of Providing Assistance to the Perpetrators after the Commission of Criminal Offences contrary to Article 305 Paragraph 2 of the CCK and sentenced to suspended six (6) months of imprisonment, as the District Court held that they assisted E K under investigation by giving false witness statements supporting F K 's alibi, more specifically when heard in the capacity of witness by EULEX War Crimes Investigation Unit officers.[1]
The Special Prosecutor, Defence Counsel Ethem Rugova for F K and Defence Counsel Hajrip Krasniqi for N H filed an appeal against the First Instance Judgment. On 23 August 2012, the Supreme Court Panel issued a Ruling Ap - Kz no. 20/2012 by which the Appeal of the Special Prosecutor was dismissed as impermissible.

II. Submissions of the parties

A. Appeal of the SPRK Prosecutor

The Special Prosecutor bases his Appeal on an erroneous determination of the factual situation in respect to H M and contests the decision on criminal sanctions imposed onto M H , M H , N H , N B and J K .

B. Appeal of Defence Counsel Ethem Rugova for Defendant F K

Defence Counsel Ethem Rugova bases his appeal on the grounds of substantial violation of the provisions of criminal procedure under Article 402 Paragraph 1 item 1 read with Article 403 Paragraphs 3, 8 and 12 of the KCCP, of violation of the criminal law under Article 402 Paragraph 1 item 2 read with Article 404 items 1 and 4 of the Code, of an erroneous and incomplete determination of factual situation under Article 402 Paragraph 1 item 3 of the Code, and on the decision on criminal sanctions under Article 402 Paragraph 1 item 4 read with Article 406 Paragraph 1 of the Code.

The Defence alleges that the Prosecutor acted in contradiction with Articles 221 and 222 of the KCCP, as a ruling on initiation of investigation was issued by the SPRK Prosecutor against S M , which was subsequently expanded against E K , although the Prosecutor did not proceed to the investigation against the suspect M .
The Defence refers to the criminal proceeding against S M before the District Court of Belgrade and the Supreme Court of Serbia in a War Crime case related to the events in Opterusha in July 1998, and also to the 'fabricated trial in Pozharevac of Serbia'. The Defence Counsel claims that the rights of the defence to propose witnesses was hampered as calling these witnesses would have placed them at risk of being charged by the Special Prosecutor. He also contends that the First Instance Court has not ruled on the Defence's motion for inadmissibility of evidence.
The Defence Counsel alleges a failure of the District Court to consider his motion for disqualification of the Special Prosecutor Maurizio Salustro.
In addition, it is claimed that the other Defendants were not assisted by a defence counsel, even though it is a case of mandatory defence under Article 73 of the KCCP, and that the trial was conducted in the absence of the Defendants. The First Instance Court, consequently,

[1] The District Court Panel ordered the release from detention on remand of E K and H M . In addition, each of the convicted persons shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph 1 of the KCCP with the exception of the costs of interpretation and translation. E K shall cover the additional costs of apprehension and escort. Property claims shall be dealt with in a separate civilian litigation.

acted in contradiction with Article 403 Paragraph 1 item 3 of the KCCP read with Articles 341 and 342 of the Code.
The Defence alleges a violation under Article 403 Paragraph 1 item 12 of the KCCP because the enacting clause is incomprehensive, lacks specificity and contains contradictions between its content and the reasoning of the Judgment.

The Defence contests the determination of the factual situation as the District Court Panel omitted to ascertain several circumstances, e.g. that E K was present in the village at the relevant time and that he had any knowledge of the attack.

The Defence alleges a violation under Article 406 Paragraph 1 of the KCCP since the First Instance Court has not considered the following mitigating circumstances: he is a family man of poor economic situation; he properly behaved during the investigation and he voluntarily appeared in court. Therefore, a more lenient punishment is proposed.

C. Appeal of the Defence Counsel Hajrip Krasniqi on behalf of N H

The Defence alleges substantial violation of the provisions of criminal procedure, erroneous and incomplete determination of the factual situation, violation of the criminal law and contests the decision on criminal sanctions. He requests the Supreme Court of Kosovo to amend the challenged Judgment, seeking acquittal of N H pursuant to Article 390 item 3 of the KCCP, or its annulment and return to the First Instance Court for retrial.

The Defence claims that the act committed by the Defendant is not a criminal offence unless the final judgment related to E K has been issued.
In the Defence's opinion, the First Instance Court committed a violation of Article 403 Paragraph 1 item 12 of the KCCP, given the enacting clause is unclear and incomprehensible, and the impugned Judgment contains an inconsistency between the reasoning and the content of the records in regard to the statements given during the investigation stage, and those given in the main trial.
The Defence submits that, consequence of a substantial violation of the provisions of criminal procedure and an erroneous determination of the factual situation, a violation of the criminal law occurred and the decision on criminal sanctions was unlawful.

D. Reply to the Appeals filed by Defence counsel Osman Zajmi for H M

Lawyer Osman Zajmi for H M proposes to the Supreme Court of Kosovo to dismiss as inadmissible the Prosecutor's Appeal pursuant to Article 422 of the KCCP.

E. Opinion and motion of the Office of the State Prosecutor of Kosovo (OSPK)

In her Opinion and Motion, the State Prosecutor proposes to the Supreme Court of Kosovo: to assess whether the First Instance Court has fulfilled its obligations arising from the principles of presumption of innocence, *in dubia pro reo* as well as *favor rei*, as to whether the facts and the criminal responsibility of F K have been established beyond reasonable doubt; to reject the Appeal filed on behalf of N H as ungrounded; to dismiss the Appeal of the SPRK Prosecutor as impermissible; to modify the sentencing part of the Judgment relating to M H H , N H , N B and J K in order to exclude the reference to the affiliation/attachment to KLA and the

friendship/respect for E K as motive taken into account to impose on the convicted persons a lower sentence, and to confirm the contested judgment in its remaining parts.

Opinion and Motion of the OSPK on the Appeal filed on behalf of E K

As to the contention related to the disqualification of the Public Prosecutor, the State Prosecutor observes that, according to Article 45 Paragraph 2 of the KCCP, the decision on the disqualification of a public prosecutor falls under the competence of the immediately superior public prosecutor, namely the Chief EULEX Prosecutor, and not the Court. Moreover, discontinuance of the proceedings is only foreseen for the grounds of disqualification set forth in Paragraphs 1 and 2 of Article 40 of KCCP.

As for the allegation on the illegality of the Ruling on expansion on investigation, the State Prosecutor submits that all the formal acts of the investigation stage were issued in compliance with the relevant provisions of the KCCP, and that the issuance of the Ruling on initiation of investigation against S M did not violate the principle of *ne bis in idem* confined by both Article 34 of the Constitution of Kosovo and Article 4 Paragraph 1 of KCCP to the trial stage.[2]

The State Prosecutor furthermore notes that the Defence Counsel does not specify which evidence he is referring to, when challenging the District Court's findings on the motion for evidence and the motion for inadmissibility of evidence. The OSPK concurs with the Court that the photo identifications of F K and H M are admissible evidence and that Article 255 of the KCCP is not applicable. The State Prosecutor also submits that both prosecutor's witnesses and defence's witnesses run the same risk of being charged.

In reply to the argument on the absence of representation of the Defendants during the main trial, the State Prosecutor preliminarily notes that this issue refers to the right of other Defendants, and not to E K 's. However, the OSPK observes that the presence of a defence counsel is not mandatory pursuant to Article 73 of the KCCP for the offence of Providing Assistance.

On the lack of proper legal qualification of the criminal offence in the enacting clause, the State Prosecutor observes that the first paragraph of Article 121 of the CCK only contains a general criminalization of acts that are specified in the 24 items listed under Paragraph 2 of the same Article. The State Prosecutor believes that this shortcoming is a mere formal omission which does not make it impossible for the convicted person to understand for which criminal offence he was found guilty. To this aim, the State Prosecutor refers to the jurisprudence of the Supreme Court of Kosovo.[3]

As to the ground of erroneous determination of the factual situation, the State Prosecutor refers to the principle of presumption of innocence enshrined in Article 6 of the European Convention of Human Rights (ECHR) and Article 3 Paragraph 1 of the KCCP, as well as the principle of *favor rei* mentioned in both the CCK and the KCCP. Any doubts in that regard have to be respected and taken into account in favour of the convicted person.[4]

The State Prosecutor asks the Supreme Court to assess whether the First Instance Court has fulfilled its obligations arising from the above mentioned principles, and thus whether the facts and the criminal responsibility of F K have been established beyond reasonable doubt. The OSPK lists the evidence available and the findings of the District

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[2] And also to Article 4, Paragraph 1 of Protocol No. 7 to the European Convention for Human Rights for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950 (ECHR) and the European Court of Human Rights (ECtHR) jurisprudence.;

[3] Reference to Supreme Court of Kosovo, Pkl-Kzz no. 114/09, Leme Xhema, Judgment on Request for Protection of Legality, 12 April 2010

[4] Reference to Supreme Court of Kosovo, Ap-Kz no. 128/10, F., Judgment on Appeal, 3 August 2010

Court in this respect, and submits that Article 23 of the CCK on complicity requiring a 'substantial' contribution should be applied as more favourable to the Accused.
In the State Prosecutor's opinion, the mere awareness of a planned attack and willingness to take part in it, do not suffice to hold E K criminally responsible. Finally, the State Prosecutor wonders about the probative value of single pieces of evidence, i.e. the statement of D B , to convict F I .

Opinion and Motion of the OSPK on the Appeal filed on behalf of N H

It is submitted that the Defence Counsel mistakes the notion of 'perpetrator' for that of 'convicted person' and that a possible acquittal of E K would not affect the criminal liability of the five defendants charged with Providing Assistance. The purpose of Article 305 paragraph 2 is to punish those who intentionally obstruct the course of justice by Providing Assistance to people whose criminal responsibility is under review. In the instant case, Naser Hoti and the other Defendants who were or should have been aware of the formal engagement of KLA to abide by those norms and principles, assisted E K by giving false statements supporting the suspect's alibi.

At last, the State Prosecutor puts forward that the motives of Defendants M I ., M H , N H , N E and J K should not have had impact on the calculation of the punishment as to impose a lesser sentence. The State Prosecutor suggests modifying the sentencing part of the judgment in order to exclude the references to these motives.

III. Findings of the Supreme Court of Kosovo

The Supreme Court finds the Appeals filed on behalf of both Defendants admissible pursuant to Article 398 Paragraph 1 of the KCCP.
The Supreme Court Panel holds that the Appeals are grounded pursuant to Articles 420 Paragraph 1, Sub-paragraph 3 and 424 Paragraph 1 of the KCCP.

A. Competence of 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. A public session was held on 4 September 2012.

B. Admissibility of the Appeals

The first instance verdict was announced on 2 August 2011.
Defense Counsel Ethem Rugova and Defendant E K received the challenged Judgment on 26 October. The Appeal of the Defence Counsel was registered in court on 8 November. Defense Counsel Hajrip Krasniqi filed an appeal for Defendant N H on 3 November 2011. The Defence Counsel received the Judgment on 25 October and N H has not mentioned any dates of receipt on the delivery slip.
The Supreme Court considers the Appeals timely filed by an authorized person, and thus admissible pursuant to Article 398 Paragraph 1 of the KCCP.

C. Merits of the Appeals

That the First Instance Court committed a substantial violation of the provisions of criminal procedure under Article 403 Paragraph 1 sub-paragraph 3 of the KCCP

The Supreme Court Panel finds this allegation without merit. The Defence raises two arguments in this respect: several Defendants did not have the assistance of a defence counsel during trial sessions; and the trial was conducted in the absence of several Defendants.

As to the first part of the allegation, the Supreme Court fully concurs with the State Prosecutor's opinion that this ground is specifically applicable to some Defendants other than E K Moreover, Mi H and the other Defendants were charged with the offence of Providing Assistance to the perpetrators after the commission of criminal offences for which a punishment by imprisonment of six months to five years is foreseen. Four cases of mandatory defence are envisaged under Article 73 Paragraph 1 of the KCCP. None of the requirements of mandatory defence are met in this instance, notably given the Defendants were not charged with a criminal offence "punishable by imprisonment of at least eight years" as provided in Article 73 Paragraph 1 item 3 of the KCCP. It also emerges from the trial records that the Defendants have not objected to the absence of a defence counsel to represent them.[5] This allegation is, therefore, unfounded.

In respect to the second allegation under this ground, it is noted that one of the Defendants, N H , was absent during the main trial session of 27th July 2011. This contravenes to the fundamental principle enshrined in the KCCP according to which the presence of the Defendant during the trial is of obligatory nature under the procedural law.[6] Under the ECtHR jurisprudence, the right to participate effectively to a hearing is implicitly guaranteed under Article 6 Paragraphs 1 and 3 c), d) and e) of the ECHR.[7] Exceptions to this general principle can be found throughout the KCCP e.g. announcement of the judgement in the absence of a party under Article 392 Paragraph 3 of the KCCP. The ECtHR held that a trial *in absentia* does not contravene *per se* to the standards of fair trial, however such proceeding shall comply with minimum procedural standards. In the ECtHR's view, the Accused may waive his right to be present at the hearing in an unequivocal manner.[8]

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[5] See *inter alia* for Defendant M h , District Court of Prizren, P no. 134/2011, minutes of main trial 29 June 2011, page 2; minutes of 30 June 2011, page 2; minutes of 7 July 2011, page 2

[6] See *inter alia* Article 321 Paragraph 1, Article 330 Paragraph 1, Article 403 Paragraph 1 item 3 of the KCCP

[7] See ECtHR, Colozza v. Italy, application no. 9024/80, Chamber Judgment, 12 February 1985, para 27: "27. Although this is not expressly mentioned in paragraph 1 of Article 6 (art. 6-1), the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 (art. 6-3-c, art. 6-3-d, art. 6-3-e) guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present."

[8] ECtHR, Poitrimol v France, application no. 14032/88, Chamber Judgment, 23 November 1993, para 31: "31. Proceedings held in an accused's absence are not in principle incompatible with the Convention if the person concerned can subsequently obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact (see, mutatis mutandis, the Colozza judgment previously cited, Series A no. 89, p. 14, para. 27, and p. 15, para. 29). It is open to question whether this latter requirement applies when the accused has waived his right to appear and to defend himself, but at all events such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance (see the Pfeifer and Plankl v. Austria judgment of 25 February 1992, Series A no. 227, pp. 16-17, para. 37)."

In the case at hand, N H asked the Trial Panel on 26 July 2011 not to attend the court hearing scheduled for the following day. The Panel gave the opportunity to the Defendant to give a closing speech. The District Court Panel then deliberated on this issue. After being asked by the Presiding Judge, "then you are aware that although you have the right you will not be giving your closing statement tomorrow and you will be entirely represented by our counsel tomorrow", the Defendant confirmed he was aware. On 27 July, N H who was 'excused' from participating to the session was represented by his Defence Counsel.[9]

By ruling as such, the First Instance Court indeed committed a violation of the provisions of criminal procedure under Article 403 Paragraph 1 sub-paragraph 3 of the KCCP. Nonetheless, the undersigned Panel notes that N H unequivocally and voluntarily waived his right to be present in a court session and had the assistance of his Defence Counsel during his absence. He was given the opportunity to submit a closing speech. Consequently, the defence rights of the Defendant H were respected during the main trial. This is also stressed by the fact that Lawyer Hajrip Krasniqi did not submit any allegations on this point in his appeal. In the Supreme Court's view, a procedural breach attributable to one Defendant due to his own doing cannot invalidate the whole criminal proceeding in a case, notably in respect to the other Defendant, E K . Therefore, the Supreme Court Panel, whilst considering this contention grounded, holds that such violation does not justify the annulment of the challenged Judgment and the remittal of the case to the first instance level.

That the First Instance Court committed a substantial violation of the provisions of criminal procedure under Article 403 Paragraph 1 sub-paragraph 12 of the KCCP

The Supreme Court Panel agrees with the Defence's submissions that the enacting clause of the challenged Judgment is incomprehensible in regard to the act committed by Defendant E K and the legal qualification of this act.

First and foremost, in respect to the act itself, E K was convicted for the commission of the act of Application of Measures of Intimidation and Terror under Article 142 of the CC SFRY "because on the night of the 17th and in the early morning of 18th of July 1998, in his capacity as member of the Kosovo Liberation Army (KLA), and in co-perpetration with other so far unidentified KLA soldiers, applied measures of intimidation and terror against the Serbian civilian population of Opterushe/Opterusa by taking part in a deliberate armed attack against the Serbian households in said village." The Supreme Court Panel notes that, even reading the description of the facts contained in the enacting clause together with the statement of grounds of the contested Judgment (pages 8-32), does not render the enacting clause clear and comprehensible. In the Supreme Court's opinion, the mere reference to "taking part in armed attack against the Serbian households in said village" does not sufficiently provide a clear statement of the facts and circumstances indicating the act committed by the Defendant.

Furthermore, according to the enacting clause of the impugned Judgment, Defendant E K was found guilty for War Crimes against the Civilian Population, in co-perpetration, "pursuant to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under Articles 23 and 121 (1) of the Criminal

[9] See District Court of Prizren, P no. 134/2011, minutes of main trial 26 July 2011 page 15; minutes of 27 July 2011, page 2

Code of Kosovo (CCK) read in conjunction with Article 3 Common to the four Geneva Conventions of 12.08.1949 and of Article 13.2 of Protocol II of 08.06.1977, Additional to the 1949 Geneva Conventions (Additional Protocol II)". It appears when reading through the CCK provisions, that Article 121 Paragraph 1 of the Code only constitutes a generic provision criminalizing the commission and providing ranges of punishment. The acts that amount "a serious violation of the laws and customs applicable in armed conflicts not of an international character" are specified under Paragraph 2, listing 24 items. The Supreme Court of Kosovo notes, that the enacting clause contains the precise provisions of the law applicable at the time of the commission, i.e. the articles of the CC SFRY. However, regarding the current applicable law, solely Article 121 Paragraph 1 of the CCK is mentioned. The undersigned Panel is of the opinion that a clear reference to the legal designation of the current applicable provisions proscribing the said conduct is likewise of utmost importance for the readability and comprehension of the enacting clause. As a matter of fact, one of these mandatory elements of the enacting clause is "the legal designation of the acts and the provisions of the criminal law applied in passing the judgement" under Article 391 of the KCCP. The First Instance Court failed to comply with this provision in the instance.

Therefore, the Supreme Court, referring to its jurisprudence cited by the State Prosecutor,[10] concludes that a substantial violation of the provisions of criminal procedure under Article 403 Paragraph 1 sub-paragraph 12 read with Article 391 of the KCCP was committed by the First Instance Court, thus leading to the annulment of the Judgment and the remittal of the case to the first instance level.

The Supreme Court Panel need not to examine the other grounds of appeal as an essential violation of the procedural law has already been established.
Considering the above, it has been decided as in the enacting clause.

Presiding Judge:
EULEX Judge Horst Proetel

Panel member:
Supreme Court Judge Emine Mustafa

Panel member:
Supreme Court Judge Marije Ademi

Panel member:
EULEX Judge Martti Harsia

Panel member:
EULEX Judge Gerrit-Marc Sprenger

Recording Clerk:
Legal officer Chiara Rojek

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[10] Supreme Court of Kosovo, Pkl-Kzz no. 114/09, Leme Xhema, Judgment on Request for Protection of Legality, 12 April 2010, page 6: "f) based on the general principle that an act is to be interpreted in a way in which it has a meaning and not in the way in which it has no meaning, the enacting clause and the statements of grounds have to be read together (the law prescribes that they have to be consistent with each other); only if the enacting clause remains incomprehensible or inconsistent after having been read in connection with the statement of grounds, can it be declared unlawful."