

SUPREME COURT OF KOSOVO

Pkl. – Kzz. No. 03/2011

10 May 2011

Prishtinë/Priština

IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo, in a panel composed of EULEX Judge Lars Dahlstedt as Presiding Judge and EULEX Judge Gerrit-Marc Sprenger and Supreme Court Judges Nesrin Lushta, Marije Ademi and Salih Toplica as panel members.

Assisted by EULEX Legal Officer Sampsa Hakala as the recording officer,

In the criminal proceedings against B [REDACTED] Z [REDACTED], [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Convicted by the verdict of the Supreme Court of Kosovo in case Ap.-Kž.No. 365/2009, dated 20 July 2010 for the criminal offence of Murder committed in complicity for personal gain pursuant to Article 30 Paragraph 2 item 3 of the Criminal Code of Kosovo of 1977 (CLK) in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY) and sentenced to twenty (20) years of imprisonment.

Deciding upon the request for protection of legality Pkl. – Kzz. 03/2011, filed on 5 October 2010 by the defendant B [REDACTED] Z [REDACTED] against the judgment of the District Court of

Pejë/Peć, P.nr 268/2008, dated 1 July 2009, and the judgment of the Supreme Court of Kosovo Ap.-Kž. No.365/2009, dated 20 July 2010.

After having sent a copy of the request to the Office of the State Prosecutor of Kosovo (OSPK),

After a session, held on 10 May 2011,

Acting pursuant to Articles 454 and 456 of the Kosovo Code of Criminal Procedure (KCCP) renders this

JUDGMENT

The request for protection of legality, filed on 5 October 2010 by the defendant B [REDACTED] Z [REDACTED] against the judgment of the District Court of Pejë/Peć P.nr 268/2008, dated 1 July 2009 and the judgment of the Supreme Court of Kosovo Ap.-Kž. No.365/2009, dated 20 July 2010 is **REJECTED** as unfounded.

REASONING

I Procedural history

The charge against B [REDACTED] Z [REDACTED] is related to the killing of E [REDACTED] B [REDACTED] a taxi driver from Pejë/Peć, on an unknown day sometime at the end of June 1999.

On 29 July 2008 the criminal investigation against B [REDACTED] Z [REDACTED] and another defendant was initiated. With indictment PP. no. 259/2008, dated 17 October 2008 and filed by the District Public Prosecutor in Pejë/Peć, B [REDACTED] Z [REDACTED] and a co-defendant were eventually charged with the criminal act of Murder committed in complicity for personal gain pursuant to Article 30 Paragraph 2 item 3 of the CLK.

On 8 April 2009 the President of the Assembly of EULEX Judges decided to assign the case to a panel composed of two EULEX Judges and one local Judge.

The main trial in the District Court of Pejë/Peć was held between 15 June and 1 July 2009. On 1 July 2009 both defendants were found guilty of the criminal offence of Murder of E. B. committed in complicity for personal gain. B. Z. was sentenced to twenty (20) years of imprisonment. He was also condemned to the payment of a sum of ten thousand (10.000,00) Euro to the injured party, Sh. B. as initial compensation.

Defence Counsel A. A. as representative of B. Z. filed an appeal against the first instance verdict. The appeal was rejected by the Supreme Court of Kosovo with the judgment dated 20 July 2010 (Ap. – Kz. 365/2009).

The judgment of the Supreme Court of Kosovo was served to the defendant on 10 September 2010. On 5 October 2010 the defendant B. Z. filed a request for protection of legality against the judgment of the District Court of Pejë/Peć, P.nr 268/2008, dated 1 July 2009 and the judgment of the Supreme Court of Kosovo Ap.-Kž. No.365/2009, dated 20 July 2010.

Pursuant to Article 454 Paragraph 2 of the KCCP, the request was sent to the OSPK for an opinion. On 21 of January the OSPK returned the case file to the Supreme Court without filing an opinion or motion.

II Issues raised in the Request

In the request for protection of legality B. Z. alleges that in the contested verdicts (AP.nr. 268/2008 Ap. – Kz. 365/2009 respectively) of the District Court of Pejë/Peć and the Supreme Court of Kosovo the factual situation was determined in an incomplete and erroneous way, whereas B. Z. persists that he is not guilty of the murder of E.

B[REDACTED]. According to the request, crucial facts were not considered and presented evidence was not assessed properly. In the request for the protection of legality the defendant argues that the courts of first and second instance erred in the way it evaluated and asserted the contents of witness statements. In particular, the defendant challenges the credibility of the statement of witness T[REDACTED] H[REDACTED]

III Findings of the Supreme Court

Pursuant to Article 454 and Article 26 paragraph 3 of the KCCP the Supreme Court of Kosovo has competence to adjudicate on the request for protection of legality. The Panel was constituted in accordance with Article 3.7 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo no. 03/L-53.

The Supreme Court finds that the request for protection of legality is filed within the prescribed period of time and by a person authorized thereto.

However, the Supreme Court determines that the request for protection of legality is unfounded. According to Article 451 Paragraph 2 of the KCCP: "*A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.*"

As seen above, the request for protection of legality filed by the defendant exclusively disputes the factual situation as determined in the challenged verdicts of the District Court of Pejë/Peć (AP.nr. 268/2008) and the Supreme Court of Kosovo (Ap. – Kz. 365/2009). The Supreme Court finds that pursuant to Article 451 paragraph 2 of the KCCP such a request for protection of legality, for erroneous or incomplete determination of the factual situation cannot be filed. If a request is filed on such grounds, The Supreme Court shall pursuant to Article 456 of the KCCP reject it as unfounded.

However, the Supreme Court will go on to assess whether the statement of grounds relating to the material facts were presented in the contested judgments according to the rules of criminal procedure, which prescribe that courts shall state clearly and exhaustively which facts it considers proven or not proven, as well as the grounds for this (Article 387 paragraph 2 and 396 paragraph 7 of the KCCP). Courts shall also, in particular, make an evaluation of the credibility of conflicting evidence. The failure to meet the demands of these provisions may result in a substantial violation of the provisions of the criminal procedure if such omission by the court has influenced or might have influenced the rendering of a lawful and proper judgment.

In the case at hand the Supreme Court finds that the assessment of evidence was done by the courts of first and second instance in accordance with the legal requirements and in a careful, transparent and convincing manner. Both incriminating and exculpatory pieces of evidence were assessed and no material evidence was excluded from the main trial. The Courts have clearly stated what it considered proven and what factual allegations remained unproven. This leads the Supreme Court to conclude that no violation of law can be established in this part of the request for protection of legality.

The injured party, Sh [REDACTED] B [REDACTED], didn't file an appeal against the judgment of the District Court of Pejë/Peć dated 1 July 2009, P.nr 268/2008, and was not mentioned in the judgment of the Supreme Court, dated 20 July 2010, Ap.-Kž. No.365/2009. By omission the request for protection of legality has not been sent to the injured party for a reply (Article 454, paragraph 2 of the KCCP). However, in the case at hand and especially with reference to the grounds mentioned by the defendant in the request for protection of legality a reply from the injured party would have been without merits.

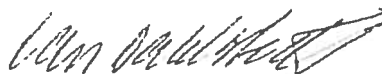
For the above mentioned reasons it has been decided as in the enacting clause.

Dated this 10 May 2011.

Pkl. – Kzz. No. 03/2011

Prepared in English, an authorized language.

Presiding Judge



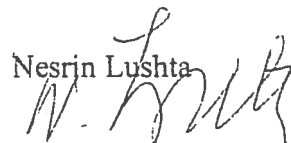
Lars Dahlstedt

Member of the Panel



Gerrit Marc Sprenger

Member of the Panel



Nesrin Lushta

Member of the Panel



Marije Ademi

Member of the Panel



Salih Toplica