

SUPREME COURT OF KOSOVO
PKL.-KZZ. No. 30/2011
19 April 2011

In The Name Of the People

THE SUPREME COURT OF KOSOVO, in a panel composed of
EULEX Judge Gerrit-Marc Sprenger as Presiding Juvenile Judge,
EULEX Judge Lars Dahlstedt,
Supreme Court Judge Marije Ademi,
Supreme Court Judge Shukri Sylejmani and
Supreme Court Judge Salih Toplica as members of the panel,

in the criminal case against

EB

the juvenile defendant

convicted in the first instance by judgment P. No. 164/2010 of the District Court of Prizren, dated 8 February 2011 for having committed in co-perpetration the criminal offence of **Aggravated Murder**, in violation of Article 147 paragraph 7 as read with Article 23 of the Criminal Code of Kosovo (henceforth: CCK); and **Unauthorized Ownership, Control, Possession and Use of Weapons** as per Article 328 paragraph 2 of the CCK and therefore sentenced to an aggregate punishment of nine (9) years of imprisonment;

HK

deciding upon the request for protection of legality filed on 16 March 2011 by defense counsel on behalf of the juvenile defendant against

the ruling of the District Court of Prizren P. No. 164/2010, dated 8 February 2011 and

the ruling of the Supreme Court of Kosovo Pn. No. 102/2011, dated 25 February 2011, confirming the above mentioned ruling of the District Court of Prizren on extension of detention on remand against the juvenile defendant,

issues the following

JUDGMENT

The request for protection of legality filed on 16 March 2011 on behalf of the juvenile defendant is partially granted. The ruling of the District Court of Prizren, P. No. 164/2010, dated 8 February 2011 in the form of the ruling of the Supreme Court of Kosovo Pn. No. 102/2011, dated 25 February 2011 is modified as follows:

Detention on remand against the juvenile [REDACTED] is terminated and replaced by the measure of house detention in his residence in the village of [REDACTED] until the judgment of the District Court of Prizren P. No. 164/2010, dated 8 February 2011 becomes final, but not longer than the expiry of the term of punishment in the judgment. HQ

As for the remaining part the request for protection of legality is rejected as ungrounded and the ruling is affirmed.

Reasoning

I. Procedural Background

(1) On 07 April 2010 the juvenile defendant [REDACTED] was arrested and put in detention on remand under the allegation of him having participated as a co-perpetrator in a criminal offense of Aggravated Murder as per Article 147 item 7 as read with Article 23 of the CCK and Unauthorized Ownership, Control, Possession and Use of Weapons as per Article 328 paragraph 2 of the CCK, committed on 16 May 2009 at about 18:00 hrs in the Toto Sport Betshop at Esat Haskuka Street in Prizren, were the victim [REDACTED] was shot into the back part of his head with a gun projectile from short range and later died in consequence of his injuries. EB

(2) On 6 September 2010 the District Public Prosecutor of Prizren filed an Indictment (PP nr.92/10) against [REDACTED] and a Proposal for Punishment (PPM no. 09/10) against the juvenile [REDACTED] for criminal offenses of Aggravated Murder in co-perpetration as per Article 147 paragraph 7 read with Article 23 of the CCK, and Unauthorized Ownership, Control, Possession and Use of Weapons as per Article 328 paragraph 2 of the CCK. LB

(3) On 25 October 2010, the juvenile panel of the District Court of Prizren granted the prosecutor's request for joinder of the proceedings, deciding to conduct a joint procedure and to render a single judgment under registration number P.nr.164/10. EB

(4) On 04 November 2010, the President of the Assembly of EULEX Judges based on Article 3.3 of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges (henceforth: LoJ) decided to take over the case and assigned it to EULEX Judges at the District Court of Prizren.

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(5) On 08 February 2011 the District Court of Prizren upon completion of the trial has found the juvenile [REDACTED] guilty for having committed the criminal offences of Aggravated Murder in co-perpetration, as per Article 147 paragraph 7 read with Article 23 of the CCK, and Unauthorized Ownership, Control, Possession and Use of Weapons as per Article 328 paragraph 2 of the CCK. Pursuant to Article 71 paragraphs 1 and 2 of the CCK, the Court imposed an aggregate punishment of nine (9) years imprisonment to the juvenile defendant.

(6) Also on 08 February 2011 the District Court of Prizren extended detention on remand against the juvenile defendant by separate ruling P. No.164/10, until the first instance judgment would become final.

HK

(7) On 16 February 2011, the Defense Counsel [REDACTED] on behalf of the juvenile defendant [REDACTED] filed an appeal against the ruling of the District Court of Prizren dated 08 February 2011 (P. No. 164/10), challenging the latter for essential violation of the procedure law, in particular of Article 281 paragraphs 1 and 2 of the Kosovo Code of Criminal Procedure (hence forth: KCCP). The defense proposed the court to impose other alternative measures as per Article 268 of the KCCP, but was opposed by opinion of the Office of the State Prosecutor of Kosovo (henceforth: OSPK), dated 25 February 2011.

EB

(8) On 25 February 2011 the Supreme Court of Kosovo issued ruling Pn.-Kr. No. 102/11, rejecting the appeal of the defense as ungrounded and affirming the ruling of the District Court.

(9) On 16 March 2011 the defense counsel on behalf of the juvenile defendant filed a request for protection of legality to the Supreme Court of Kosovo, directed against the ruling of the Supreme Court of Kosovo Pn.-Kr. No. 102/11, dated 25 February 2011 and the ruling of the District Court of Prizren P. No.164/2010, dated 08 February 2011, for essential violations of the criminal procedure.

(10) Dated 30 March 2011, the OSPK submitted an opinion to the Supreme Court of Kosovo, proposing to reject the request for protection of legality as unfounded.

II. Supreme Court Findings

1. **Admissibility of the Request for Protection of Legality**

(11) The Request for Protection of Legality is admissible. It was filed with the competent court pursuant to Article 451 paragraph 3 and 453 of the KCCP and within the deadline of Article 452 paragraph 3 of the KCCP.

2. **Procedures followed by the Supreme Court**

(12) The Supreme Court has decided in a session as described by Article 454 paragraph 1 of the KCCP. Parties have not been notified of the session, since according to Article

451 through 460 of the KCCP there is no obligation for the Supreme Court to notify the parties.

3. On the merits of the Request for Protection of Legality

(13) The Request for Protection of Legality is partially well founded.


The Defense Counsel has challenged the Supreme Court ruling as being unclear and in contradiction with its reasoning. According to his submission it does not match with the enacting clause of the District Court Ruling. Moreover, the Supreme Court rejecting the appeal of the defense against the District Court Ruling had violated Article 68 paragraph 2 of the Juvenile Justice Code (JJC), which limits the maximum duration for detention on remand for a juvenile to 12 months. Thus, a violation of Article 403 paragraph 1 item 12 of the KCCP is stressed.

The Supreme Court of Kosovo notes that the enacting clause of the ruling Pn.-Kr. 102/2011 of the Supreme Court of Kosovo is inconsistent with the grounds as far as it affirms the first instance ruling, which had extended detention on remand against the juvenile defendant "...until the judgment becomes final..." without determining a fixed end.

The court finds that Article 68 paragraph 2 of the Juvenile Justice Code, code no. 03/L-193, published in the Official Gazette of Kosovo, Year V/No. 78, 20 August 2010 (henceforth: JJC) imposes an absolute limit to the time a juvenile can be held in detention on remand. Therefore each ruling ordering or extending detention on remand upon a juvenile defendant has to respect the mentioned limit and has to contain a fixed and predictable date of end for the measure. The formulation used by the District Court does not fulfill this standard since the moment when the judgment becomes final cannot be predicted with certainty.

The Supreme Court of Kosovo was hence mistaken when arguing that the provision of Article 68 paragraph 2 JJC was without merit since the prescribed time limit for detention on remand had not expired yet. The formulation of the enacting clause in the first instance ruling necessarily would lead to a situation where the defendant will be kept in detention beyond the time limit imposed by the law.

(14) The court however finds that the extension of detention on remand up to the limit permitted by Article 68 paragraph 2 JJC was well founded and has therefore only partially granted the request for protection of legality.

In its respective reasoning the Supreme Court has pointed out that all requirements of Article 281 paragraph 1 sub-paragraphs 1 and 2, items (i) and (iii) of the KCCP are met for the defendant . As to the requirement of a grounded suspicion, the Supreme Court has made reference to the judgment of the District Court of Prizren (P.nr. 164/2010) dated 08 February 2011, through which the defendant was found guilty for having committed the criminal offenses of Aggravated Murder in co-perpetration, as per Article 147 paragraph 7 read with Article 23 of the CCK, and Unauthorized Ownership, Control, Possession and Use of Weapons as per Article 328 paragraph 2 of the CCK. The Supreme Court in this context also clearly has pointed out

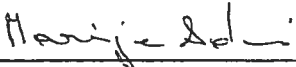
that in accordance with permanent adjudication of the Supreme Court as expressed in the case Pn.-Kr. 293/10 dated 04 June 2010, that a well-grounded suspicion is sufficient for the purposes of Article 281 of the KCCP and that no final prove of the defendant having committed the crimes s/he is accused for is needed at this point of the procedure.

The Supreme Court moreover clearly has pointed out that because of "... *the very fact that the defendant is found guilty at the first instance, the appealed ruling of extension of detention remains free from error as per grounded suspicion from Article 281 paragraph 1 of the KCCP*". Thus, the Supreme Court also has made clear that due to the conviction there is an undisputable danger of flight given for the defendant.

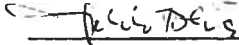
Consequently the court finds that the conditions of Article 278 paragraph 1 KCCP for imposing the alternative measure of house detention are met.

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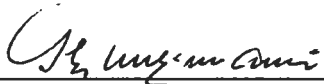
Members of the panel:



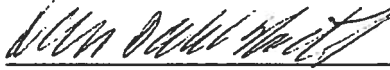
Marije Ademi
Supreme Court Judge



Salih Toplica
Supreme Court Judge

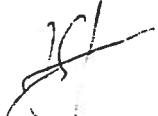


Shukri Sylejmani
Supreme Court Judge



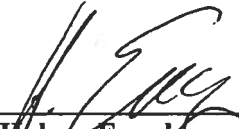
Lars Dahlstedt
EULEX Judge

Presiding Judge:



Gerrit-Marc Sprenger
EULEX Judge

Recording Officer:



Holger Engelmann
EULEX Legal Officer