

SUPREME COURT OF KOSOVO
Pkl-Kzz. No. 74/2009
6 July 2009
Prishtinë/Priština

IN THE NAME OF THE PEOPLE

The Supreme Court of Kosovo, in the panel composed of Guy Van Craen, EULEX Judge, as presiding and reporting judge, Gianfranco Gallo, EULEX Judge, Agim Krasniqi, Tahir Rrecaj and Gjuran Dema, Supreme Court Judges, as panel members;

Assisted by Judit Eva Tatrai, EULEX Legal Officer, recording officer, Naser Sylja and Mentor Osmani, EULEX Interpreters;

In the criminal case against *V. A.* *et alia*, charged with the criminal offence of Kidnapping in co-perpetration, contrary to Article 23 and Article 159 paragraph (2) of the Criminal Code of Kosovo (CCK);

Deciding on the Request for Protection of Legality of defendant *V. A.*, filed through his Defence Counsel *N. L.* against the Ruling of the trial panel of the District Court of Prishtinë/Priština, P. No. 570/07, dated 27 May 2009, on imposing detention on remand against the accused, and against the Ruling of the Supreme Court of Kosovo, Pn.-Kr. No. 226/2009, dated 4 June 2009, on rejecting the appeal of the defendant filed against the previously mentioned Ruling;

Having reviewed the court records, the request for protection of legality and the opinion of the Office of the Public Prosecutor, and having analysed the relevant laws;

Pursuant to Article 456 of the Kosovo Code of Criminal Procedure (KCCP), issues the following

JUDGMENT

The Request for Protection of Legality filed in the interest of *V. A.* on 8 June 2009, against the Ruling of the trial panel of the District Court of Prishtinë/Priština, P. No. 570/07, dated 27 May 2009, on imposing detention on remand against the defendant, and against the Ruling of the Supreme Court of Kosovo, Pn.-Kr. No. 226/2009, dated 4 June 2009, on rejecting the appeal of the defendant filed against the previously mentioned Ruling is **REJECTED as unfounded.**

REASONING

Procedural background:

In the verdict of the District Court of Prishtinë/Priština, P. No. 57/2007, dated 27 May 2009, the trial panel convicted *V. A.* for the criminal offence of Kidnapping in co-perpetration with three co-accused, contrary to Article 23 and 159 paragraph (2) of the CCK, and sentenced him to three (3) years of imprisonment. In a separate Ruling, the trial panel imposed detention on remand against *V. A.* based on Article 281 paragraph (1) subparagraph 2) item i), because circumstances indicate that there is a danger of flight.

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The appeal filed by the defendant against this Ruling was rejected as unfounded by the Supreme Court of Kosovo, in the Ruling Pn.-Kr.- No. 226/2009, dated 4 June 2009.

On 8 June 2009, **V. A.** filed a request for protection of legality through his defence counsel, **N. L.** against the above-mentioned two rulings.

The request for protection of legality of defendant **V. A. :**

The request for protection of legality of the defendant refers to essential violation of the provisions of the criminal procedure code. More specifically, it argues that when ordering detention on remand against **V. A.**, the trial panel violated the procedure law because it did not support the decision with valid arguments as to the circumstances that indicate that **V. A.** would fly Kosovo in order to avoid serving the sentence imposed against him. The request also adds that the weight of the sentence – three years of imprisonment – does not provide sufficient grounds for ordering this measure against the defendant who always duly responded to summons throughout the criminal proceedings and has family ties and a decent job in Kosovo. The ruling also lacks reasoning as to the insufficiency of security measures other than the detention on remand. Finally, the request repeats that the measure was imposed against the defendant without asking the opinion of the public prosecutor. According to the request, the same violations can be identified in the ruling of the Supreme Court which rejected the appeal of the defendant against the ruling of the trial panel.

The Office of the Public Prosecutor, in her opinion filed on 12 June 2009, argued that defendant **V. A.**'s request for protection of legality is without merits and proposed its rejection accordingly.

The decision of the Supreme Court of Kosovo:

The panel of the Supreme Court of Kosovo observes that, contrary to the request for protection of legality of the defendant, the trial panel, when imposing detention against **V. A.** without hearing the opinion of the public prosecutor, did not violate the provision of Article 393 paragraph (4) of the KCCP to that extent that would influence the lawfulness of its Ruling.

Regarding the circumstances of the case that indicate the risk of flight of defendant **V. A.**, the Supreme Court of Kosovo adds that apart from the supporting arguments determined in the previous rulings, the *modus operandi* of the criminal offence **V. A.** was convicted for, the porous attribute of the Kosovo borders and the length of imprisonment **V. A.** has to face should the verdict become final point towards the conclusion that should the defendant be set free he would flee Kosovo in order to avoid the execution of the punishment.

Due to these reasons the Supreme Court also finds that a more lenient measure would not be sufficient to eliminate the danger of flight of the defendant.

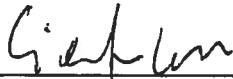
Given the above reasons, it is decided as in the Enacting Clause of the present Judgment.

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Members of the panel:

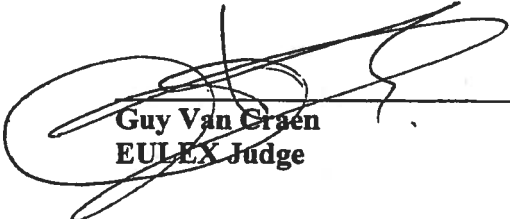


Gianfranco Gallo
EULEX Judge

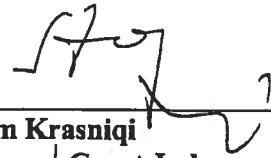


Tahir Rrecaj
Supreme Court Judge

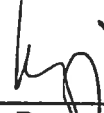
Presiding Judge:



Guy Van Craen
EULEX Judge



Agim Krasniqi
Supreme Court Judge



Gjuran Dema
Supreme Court Judge

Recording officer:



Judit Eva Tatrai
EULEX Legal Officer