

PKL-KZZ 27/2010
06 August 2010

IN THE NAME OF THE PEOPLE

SUPREME COURT OF KOSOVO in the panel composed of

Maria Giuliana Civinini EULEX Supreme Court Judge and Presiding Judge

Norbert Koster EULEX Supreme Court Judge – panel member

Nesrin Lushta Supreme Court Judge - panel member

Emine Kaqiku Supreme Court Judge - panel member

Marie Ademi Supreme Court Judge – panel member

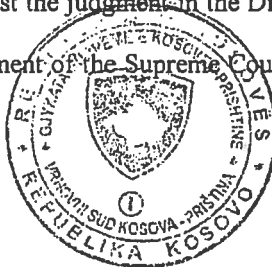
assisted by Maria Rosa del Valle Lopez as court recorder in the criminal case against the defendant:

G.G.

[REDACTED]

For the criminal offence of War Crimes against civilian population, in violation of Socialist Federal Republic of Yugoslavia Criminal Code (SFRY CC) article 142, ref. article 19 as for item b, ref. UNMIK Regulation 2000/59, as read with the rules of international law effective at the time of war, armed conflict, or occupation, namely the Geneva Convention Relative to the Protection of Civilians in the Time of War, articles 3 and 147 and in violation of Protocol II to the Geneva Conventions, article 4.

Acting upon the request for protection of legality dated 10.30.2010 and filed by the legal representation of the defendant [REDACTED] against the judgment in the District Court of Prishtinë/Priština P. No. P. 23/08 dated 03/03/2009 and the judgment of the Supreme Court of Kosovo AP-K 191/2009 dated 08/12/2009, issues the following



JUDGEMENT

To **REJECT** the request for protection of legality of the defense counsel of defendant filed against the judgment in the District Court of Prishtinë/Priština P. No. P. 23/08 dated 03/03/2009 and the judgment of the Supreme Court of Kosovo AP-K 191/2009 dated 08/12/2009.

REASONING

1. Procedural history

On 3 March 2009 the District Court of Prishtinë/Priština found [REDACTED] guilty of the criminal offence of War Crimes against civilian population, in violation of Socialist Federal Republic of Yugoslavia Criminal Code (SFRY CC) article 142, ref. article 19 as for item b, ref. UNMIK Regulation 2000/59, as read with the rules of international law effective at the time of war, armed conflict, or occupation, namely the Geneva Convention Relative to the Protection of Civilians in the Time of War, articles 3 and 147 and in violation of Protocol II to the Geneva Conventions, article 4 and sentenced the defendant to 17 (seventeen) years of imprisonment. G.G.

The defense counsels [REDACTED] and [REDACTED] filed an appeal in favor of the defendant respectively on 28 April 2009 and 7 May 2009. F.B. T.G.

On 8 December 2009 the Supreme Court partially granted the appeal and modified the judgment rendered by the District Court of Prishtinë/Priština in particular by reducing the punishment imposed to 15 (fifteen) years, crediting the time spent in detention and modifying certain formal aspects of the judgment.

T.G.

The defense counsel for the defendant, [REDACTED] filed a request for protection of legality dated 10.30.2010 against the judgment in the District Court of Prishtinë/Priština P. No. P. 23/08 dated 03/03/2009 and the judgment of the Supreme Court AP-K 191/2009 of 08/12/2009.

On 19 April 2010 the State Prosecutor filed a motion proposing the request for protection of legality against the verdicts to be rejected as ungrounded.

The present ruling resolves the above mentioned request for protection of legality filed by the defense counsel of the defendant.

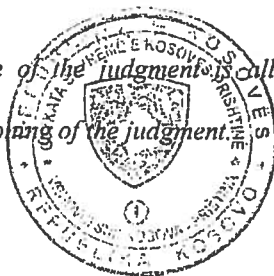
2. Reasoning

The request for protection of legality filed by the defense counsel alleges the violation of articles 403.1.12 and 403.1.8 KCCP and raises three issues; (1) the enacting clause of the judgment is incomprehensible, contradictory with its content and the reasoning of the judgment, (2) there is an inconsistency regarding several factual issues and (3) the defense counsel repeats the allegations raised in the appeal.

According to the defense counsel the violations are of essential nature and inevitably lead to the quashing of the judgment of the District Court of Prishtinë/Priština and the retrial of the case at the District Court level.

In the following sections we will analyze the above-mentioned questions raised in the request for protection of legality.

2.1. *The enacting clause of the judgment is allegedly incomprehensible, contradictory with its content and the reasoning of the judgment.*



The defense counsel alleges that some grounds on decisive facts contain considerable contradictions in relation to what was presented in the reasoning of the judgment and that the legally acceptable grounds regarding the decisive facts are not present in the reasoning.

In the next section the Supreme Court analyzes each of the facts presented by the defense counsel as contradictory and incomprehensible and, from that analysis, it will be clear that the enacting clause of both the first and second instance judgments is fully comprehensible, consistent and founded and there is no discrepancy between the enacting clause and the reasoning.

2.2. *Alleged inconsistency regarding several factual issues.*

All allegations contained in the request for protection of legality have been already raised by the defense counsel in the appeal and almost all of them have already been answered by the second instance ruling in a very clear and understandable way as we proceed to explain:

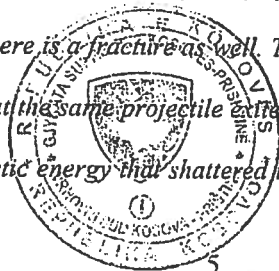
1.0

▪ *The time of the commission of the murder of [REDACTED] has not been defined:* in this respect, the judgment of the second instance clearly establishes in page 3 of the English version that “[t]he Supreme Court in its analysis of the appealed verdict finds that the first instance court established precise and accurate the factual situation in accordance with the legal methods of fact finding based on the assessment of the evidence presented before the Court as described in the Court’s motivation. Contrary to the appeals the first instance Court established indeed all the circumstances of the criminal acts inter alia: (...) *the approximate time, the darkness at the time of the crime*”. Besides, the judgment of the District Court of Prishtinë/Priština, in page 16 last paragraph of the English version indicates “*Factual findings and assessment of the evidence: (...) [a]t or around 20.30 family [REDACTED] a Fiat Croma, approached the check-point (...)*”. The time has been perfectly established in both judgments. And, in any case, the defense counsel doesn’t even indicate why this fact should be relevant in this proceeding as it has been clearly proved that the defendant intentionally

1.0.
shot and killed [REDACTED]

1.0.
I.O. The judgment indicates that [REDACTED] was shot in the back and all evidence shows that he was shot in this neck: again, the first instance ruling is extremely clear when it establishes the trajectory of the bullet shot by the defendant, including the entrance/exit of the bullet from the body of the deceased [REDACTED] (page 16 last paragraph of the English version): '6.6' shot with his gun the bullet went through the back rear window of the car. The window broke and the bullet scratched the back of the right shoulder of [REDACTED], since he was turning slightly to the left to see what was going on. Most probably some fragments of glass from the window hit the mother and she got a wound in her lip. The bullet then entered the very upper part of the passenger seat of [REDACTED], I.O. exited a bit lower on the other side of the seat and entered the chest (shoulder/neck) of [REDACTED], I.O. then exited through his front part of the chest a bit lower before it hit [REDACTED] head on the left S. side. He was sitting on [REDACTED] laps. The bullet entered into [REDACTED] skull and got stuck under the S. bones." It is difficult to be more precise and clear in the determination of the trajectory of the bullet.

A.R. Moreover, the judgment of the first instance in the "Summary of evidence presented" transcribes the declaration of [REDACTED] Forensic Anthropologist (now EULEX Head of office of Missing Persons) during the main trial on 4 February 2009 (page 6 of the English version); Mr [REDACTED] R. with the help of a skeleton-model and photographs, explained that "[a]t the autopsy they were able to determine the point of entry of the gun shots, which was from behind. This was possible because of the way bone reacts to pressure such as high velocity impact defines how that bone will break. In the affected area, the bones are curved and when point pressure is applied to this particular area it will mean there is more damage on the exiting than the entry point. So in terms of the entry, they can approximate the trajectory by placing the trajectory of the projectile between the two ribs that were affected. At the chest bone there is a fracture as well. This fracture was caused by the same event, the same trajectory, meaning that the same projectile entered approximately somewhere outside the bones. It was the release of the kinetic energy that shattered the bone. The forensic suspects the bullet went



through a soft area of cartilage, a non-bone area. So indeed they determine this was through-and-through perforating wound which entered through the back, at a slight angle to the left, exiting to the right side just above center. The point this bullet entered, could be said it was the neck or the chest, close to the vessels related to the throat (...).” The decision challenged is extremely clear and well founded also in this point. And, again, the defense counsel doesn’t even indicate why this fact should be relevant in this proceeding as it has been clearly proved that the defendant intentionally shot and killed [REDACTED] I.O.

▪ The judgment uses the plural “of these shootings” while the reasoning concluded that it is believable that there was only one shot: regarding this issue, the Supreme Court finds the opinion of the State Prosecutor well founded; the Albanian version of the judgment of first instance indicates (page 1 last paragraph): “(...) dhe për pasojë të këtyre të SHTËNAVE [REDACTED] vdiq”, where the word “shtënave” is plural form of shooting. Nevertheless the English version of the judgment (page 1 last paragraph) indicates “(...) and as a result of **THIS SHOOTING** [REDACTED] died;” where the words “this shooting” are clearly singular and refers to just one shot (the plural form in English language would be “theses shootings”). Given that the original judgment is in English language and the Albanian judgment is just a translation, the English version prevails. So, there is no doubt that there is a technical mistake in the translation of the document and therefore there is no contradiction between the enacting clause and the reasoning of the judgment. I.O.

▪ Intentional attempted murder of [REDACTED] S.O. is unjustified given that he was hit by the same bullet-projectile that killed [REDACTED] I.O.; this issue was raised in the appeal by the defense counsel and has already been answered by the Supreme Court in the appeal (pg 5 of the English version): “[t]he Supreme Court by assessing the evidence legally presented to the first instance court, observes that the intention to kill is proven by the fact that without warning, the defendant shot with his AK47 (war-weapon) into the car, well aware that the car was full of people (including a child of 6 years old

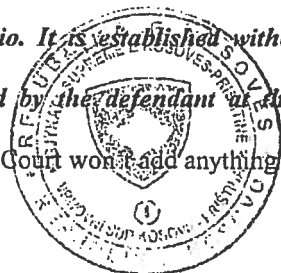
sitting on the lap of the deceased) and by doing so he knew perfectly, having seen the people in the car a minute before, he would kill and injure driver and/or passengers." The point has been already resolved, is perfectly grounded, well founded and understandable; the Supreme Court doesn't consider necessary to add anything else.

H. O.

▪ **[REDACTED]** was injured by a small piece of glass of the back window and not by the bullet shot by the defendant: it has been proved in this proceeding that the bullet shot by the defendant broke the back glass of the car, and the glass caused injuries to **[REDACTED]** (page 16 of the English version of the judgment of first instance): "**[REDACTED]** shot with his gun and the bullet went through the back, rear window of the car. The window broke and (...) Most probably some fragments of the glass from the window hit the mother and she got a wound in her lip"; in this sense, the defendant is criminally liable for each and every one of the consequences arising out of his shot. It includes of course the injuries caused to Halime Obrija by the glass of the rear window that the defendant broke when he shot.

S. O.

▪ The scratch in the shoulder of **[REDACTED]** was caused by a grenade thrown by Serbian Forces and is not related to the facts: again, the judgment of the second instance already addresses this issue and provides a well founded response that clarifies any possible doubt. The judgment of second instance indicates in page 3 last paragraph of the English version that "(...) the court of first instance has reconstructed precisely the movement and actions of all persons involved in this drama meaning: before, during and after the shot was fired and the exact consequences of the shooting. The fact that **[REDACTED]** was in a later event wounded (by a grenade) does not, if proven, constitute an evidence a contrario. It is established without any doubt that **[REDACTED]** was wounded through the shot fired by the defendant at the car". Given the clarity of the second instance judgment, the Supreme Court won't add anything else.



2.3. *Repetition of the allegations raised in the appeal.*

The defense counsel of the defendant indicates in the request for protection of legality that the judgment of second instance doesn't examine at all the allegations raised in the appeal and, therefore, he reproduces them in the request for protection of legality.

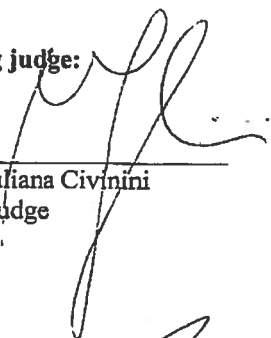
The request for protection of legality doesn't raise any new allegation; all of them have already been raised in the appeal. As we have analyzed in the section above, almost all of them have been addressed, answered and explained to the defendant in the first and second instance judgments.

The only allegation of the appeal that hasn't been repeated in the request for protection of legality, is that the defense counsel considers that the murder should have been qualified as negligence instead of intentional. But, again, the judgment of the second instance clearly resolves this issue when states that *"[t]he Supreme Court does not abide by the conclusion in the appeals by which it is stated that the defendant had no intention to kill, no motivation and/or that he acted by negligence. The Supreme Court by assessing the evidence legally presented to the first instance court, observes that the intention to kill is proven by the fact that without warning, the defendant shot with his AK47 (war-weapon) into the car (...) The defense, stating that it was an accident, that the defendant wanted to shoot in the air, does not stand due to the above mentioned facts, the conditions of the road and the geographical indications. The trajectory of the bullet (high to low) shows clearly that the defendant aimed at the back window of the car, for sure knowing that the bullet would penetrate within the passengers' area within the car."* Nothing else will be added by the Supreme Court.

In conclusion, the request for protection of legality filed by the defense counsel is repetitive, ungrounded and has to be rejected.

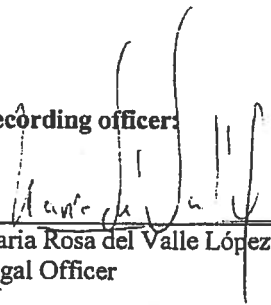
SUPREME COURT OF KOSOVO
On 6 August 2010, Pkl.-Kzz. No. 27/2010

Presiding judge:



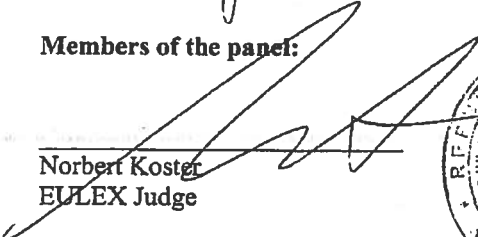
Maria Giufiana Civinini
EULEX Judge

Recording officer:



Maria Rosa del Valle López
Legal Officer

Members of the panel:



Norbert Kostor
EULEX Judge






Emine Kaqiku
SC Judge



Nesrin Lushta
SC Judge



Marie Ademi
SC Judge