

DISTRICT COURT OF MITROVICA
K nr. 13/2010
19 August 2010

IN THE NAME OF THE PEOPLE

THE DISTRICT COURT OF MITROVICA, in the trial panel composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Nikolay Entchev and Agnieszka Klonowiecka-Milart as panel members, with the participation of Tara Khan EULEX Legal Officer as Recording Officer, in the criminal case against;

D.D., charged according to Indictment PP nr. 90/08, and as amended during the main trial on 19 August 2010, with the criminal offence of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Article 230, Paragraph (1) of the Provisional Criminal Code of Kosovo (“PCCK”);

After having held the main trial hearing open to the public on 19 August 2010 in the presence of the Accused **D.D.**, his Defence Counsel Xhelal Hasani, and EULEX Public Prosecutor Neeta Amin, after the trial panel’s deliberation and voting held on 19 August 2010, on the same day pursuant to Article 392 Paragraph (1) of the Provisional Criminal Procedure Code of Kosovo (“PCPCK”), pronounced in public and in the presence of the Accused, his Defence Counsel, and the EULEX Public Prosecutor, the following

JUDGMENT

The accused **D.D.**, nickname **D.**, son of R. D. and V. N., born _____ in _____, currently residing at _____ nr. _____ in _____, single with no children, currently unemployed with no income;

is

FOUND GUILTY

Because the Accused cultivated cannabis, a dangerous and psychotropic drug as defined in Article 107 Paragraph 29 of the PCCK, inside the residence of and on the property of his uncle, R.D., in the amount of a dried weight of 9.15 kilograms, with the intent to sell, distribute, or offer the cannabis for sale to others.

By doing so, **D.D.** committed and is criminally liable for the criminal act of **Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances** in violation of Article 230, Paragraph (1) of the PCCK.

Therefore, D.D. is

SENTENCED

- to 2 /two/ years of imprisonment for the criminal act of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances.
- The execution of this sentence is suspended for a verification period of two years pursuant to Article 43 of the PCCK.

The cannabis plants are hereby confiscated pursuant to Article 230 Paragraph (5) of the Provisional Criminal Code of Kosovo.

The accused **D.D.** shall reimburse the costs of criminal proceedings pursuant to Article 102 Paragraph (1) of the PCCK with the exception of the costs of interpretation and translation. A separate ruling on the amount of the costs shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCCK.

Reasoning

A. Procedural Background

Indictment PP nr. 90/08 filed with the District Court of Mitrovica by Public Prosecutor Shyqyri Sylja on 09 January 2009, charged both **D.D.** and **R.D.** with **Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances** in violation of Article 230, Paragraph (4) Subparagraph (1) as read with Paragraph (1) of the CCK. EULEX Prosecutors took over the case on 16 June 2009.

EULEX Judges took over the case on 14 October 2009 and the Indictment was confirmed by EULEX Judge Klaus Jung on 02 March 2010.

The Main Trial commenced on 18 August 2010 before the panel of EULEX Judges. The Accused **D.D.** did not appear despite having been duly summoned. All other parties appeared. An Order for Arrest was issued against **D.D.** and the trial was adjourned to the following day.

D.D. was arrested by Kosovo Police and brought before the Presiding Judge on _____, at which time the Main Trial was scheduled to continue.

On 19 August 2010, **R.D.** did not appear before the Court due to the fact that he had not been properly served the summons by the Kosovo Police. In order to avoid further unnecessary delay, the Trial Panel issued a ruling severing the criminal proceedings against each defendant and continued the hearing as against **D.D.**. EULEX Prosecutor Neeta Amin amended the charge against **D.D.** to Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances in violation of *Paragraph (1)* of Article 230. **D.D.** pled guilty to the charge. The Trial Panel accepted the guilty plea and the verdict was orally rendered the same day.

B. Competence of the Court

Under Article 23 Item 1) i) of the Provisional Criminal Procedure Code of Kosovo (PCPCK), District Courts are competent to hear criminal cases involving charges for which the law allows the imposition of a penal sentence of at least five years. Pursuant to Article 27 Paragraph (1) of the PCPCK, territorial jurisdiction is proper with the court in the district where a crime is alleged to have been committed.

The Accused is charged with the criminal offence of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances under Article 230 Paragraph (1), which allows for the imposition of a sentence of one to ten years. The Indictment alleged that the Accused committed the criminal act in _____, which lies within Mitrovica District.

Therefore, the District Court of Mitrovica is the competent judicial body to hear this criminal proceeding.

On 14 October 2009, following a hearing, the President of the Assembly of EULEX Judges issued a decision for EULEX judges to take over the case pursuant to Articles 3.3 and 3.5 of the Law on Jurisdiction¹ and assigned it to EULEX judges in the Mitrovica District Court. Therefore, EULEX Judges assigned to the District Court of Mitrovica are competent to try this criminal case. The panel was composed of EULEX Judge Charles L. Smith, III as Presiding Judge, and EULEX Judges Nikolay Entchev and Agnieszka Klonowiecka-Milart as panel members.

C. Evidence

No witnesses were called to testify due to the guilty plea of the Accused at the confirmation stage, pursuant to Article 327 Paragraph (2) of the PCPCK. Upon

¹ Law nr. 03/L-053, Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo.

acceptance of the guilty plea of **D.D.** on 19 August 2010, the trial panel heard a closing statement by Defence Counsel Xhelal Hasani. The EULEX Prosecutor opted not to make a closing. The Accused stood by the statement of his Defence Counsel.

The case file contained police reports which indicate that on _____, Kosovo Police discovered five cannabis plants, 30 to 50 cm in height, inside the premises of **R.D.**² An additional 65 cannabis plants were found outside on his property, varying in height from 50 to 170 cm. Samples of the plants were analyzed by the Central Criminology Laboratory or the Kosovo Police Service and verified to be Cannabis containing tetrahydrocannabinol (THC).³

On 19 August 2010, **D.D.** pled guilty to the charge of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances. He specifically stated that he grew the cannabis on the property of his uncle, **R.D.**, that he did not have authorization to grow it, and that he did so with the intention of delivering it, in part, to another person.

After vigorous questioning by the Presiding Judge, the Trial Panel was satisfied that the guilty plea was entered knowingly and voluntarily, after sufficient consultation with his Defence Counsel, in accordance with Article 359 Paragraph (2) as read with Article 315 Paragraph (1) of the PCPCK.⁴ The Trial Panel is also satisfied that the guilty plea is supported by the facts of the case as stated above, pursuant to Article 315 Paragraph (1) Subparagraph (3).

D. Legal Qualification

Applicable Law

The substantive law applicable in the case is the Criminal Code which was in force at the time when the criminal offence was perpetrated. The criminal act was committed in August of 2008. The criminal code in effect at that time was the Provisional Criminal Code of Kosovo (PCCK) which entered into effect on 06 April 2004.

Article 2 Paragraph (1) of the PCCK provides that in the event of a change in the applicable law prior to the final verdict, the law more favorable to the perpetrator shall be applied. The Criminal Code of Kosovo (CCK) which entered into effect on 06 January 2009 is not more favorable to the Accused in this particular case, and therefore the PCCK is the applicable substantive law.

With regard to the applicable procedural law, due to the special circumstances in _____ and the _____ municipalities of the _____ district, the Trial Panel refers to the Provision

² See Criminal Report against **D. R.** and **D. D.**, Investigating Officer S. J., case nr. 2008/BE/218, 19 August 2008; Officer's Report by Officer A. B., 18 August 2008; Photographs of plants contained in case file.

³ Criminology Examination Report, Central Criminology Laboratory, Expert S. H., 05 February 2009.

⁴ See Minutes of the Main Trial Hearing, 19 August 2010, p. 4-5.

Criminal Procedure Code of Kosovo (PCPCK) which entered into force on 06 April 2004. This was the criminal code in effect at the time of the commission of the offence. The Court notes that the applied paragraphs of the PCPCK are fully identical with the Kosovo Code of Criminal Procedure (KCCP) which entered into force on 06 January 2009.

Criminal Offence

The Accused is charged with Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances as codified in Article 230, Paragraph (1) of the PCCK, which states:

Whoever, without authorisation, cultivates, produces, processes, extracts or prepares substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances with the intent to sell, distribute or offer them for sale shall be punished by a fine and by imprisonment of one to ten years.

“Dangerous drugs and psychotropic substances” is defined in Article 107 Paragraph (29) of the PCCK as the substances which are listed in the Official Gazette of the Socialist Federal Republic of Yugoslavia nrs. 70/78, 14/81, 39/82, 28/85, 10/87, 53/88, and 2/89. The Decision on the Establishing of the List of Narcotics published in the Official Gazette nr. 70/78 lists “Cannabis (Indian Hemp)” as a narcotic (item nr. 69).

It was confirmed from the Police Reports, the lab analysis and **D.D.**’s admissions during the Main Trial that **D.D.** did cultivate a narcotic and psychotropic substance – cannabis containing THC – without any authorization to do so. **D.D.** further admitted that his intent in cultivating the cannabis was in order to distribute it to others. Therefore, the legal elements of the criminal offence have been satisfied.

E. Sentencing

In determining the duration of punishment, the Court must evaluate all mitigating and aggravating factors, pursuant to Article 64 Paragraph (1) of the PCCK.

The Court considered as mitigating circumstances the fact that the Accused immediately admitted his criminal offence and pled guilty, that he has no prior criminal conviction and is not currently accused of any other criminal offence, and his poor economic and employment situation. There were no aggravating circumstances in this case.

For the criminal offence of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances in violation of Article 230, Paragraph (1) of the PCCK the law foresees a punishment of imprisonment of one to ten years. The Court imposed a sentence of two years of imprisonment for this criminal act.

In accordance with Article 43 of the PCCK, execution of this sentence is suspended for a verification period of two years provided that **D.D.** does not commit another criminal offence during this verification period. Should **D.D.** commit another criminal offence during the verification period, the Court shall order that the sentence of two years imprisonment be executed. In that event, the time which **D.D.** served in - shall be credited to the imposed punishment of imprisonment.

F. Confiscated Items

The cannabis plants are confiscated pursuant to Article 60 Paragraph (1) of the PCCK.

G. Costs

As D.D. was found guilty of Unauthorized Production and Processing of Dangerous Narcotic Drugs and Psychotropic Substances, he must reimburse part of the costs of the criminal proceedings pursuant to Article 102 Paragraphs (1) of the PCCK with the exception of the costs of interpretation and translation. However, since the criminal proceedings are against two defendants, **D.D.** must only reimburse the portion of the costs related to the criminal proceedings against him pursuant to Article 102 Paragraph (3) of the PCCK. The criminal proceedings against **R.D.** have not yet been completed. A separate ruling on the amount of the costs to be reimbursed by **D.D.** shall be rendered by the court when such data is obtained pursuant to Article 100 Paragraph (2) of the PCCK.

**District Court of Mitrovica
K. nr. 13/2010**

Prepared in English, an authorized language.

Tara Khan
Recording Officer

Charles L. Smith, III
Presiding Judge