

SUPREME COURT OF KOSOVO
PKL.-KZZ. No. 23/2011
27 December 2011
Prishtinë/Priština

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of
EULEX Judge Charles L. Smith III. as Presiding Judge,
EULEX Judge Martti Harsia and
Supreme Court Judge Salih Toplica as members of the panel,

in the presence of EULEX Legal Officer Holger Engelmann, acting in the capacity of the
recording clerk, in a session held on 27 December 2011,
in the criminal case against:

E H , father's name T , mother's maiden name V C born on X
X X X X X in the village of X X X , Prizren Municipality, residing at
X X X , Street X X X , Prishtinë/Priština Municipality, Kosovo,
Kosovo Albanian, married, father of X X X children, X X X , of average financial status,
ID no. X X X

Charged as per indictment PP. No. 1916/09, filed by the Municipal Public Prosecutor of
Prizren on 20 August with the criminal offense of **Accepting Bribes** pursuant to Article 343
paragraph 1 of the Provisional Criminal Code of Kosovo (henceforth PCKK);

Found guilty of the above mentioned criminal offense and sentenced to a term of
imprisonment of four (4) years and a fine of ten thousand (10,000) Euro by first instance
judgement of the Municipal Court of Prizren P. 351/10, dated 14 July 2010 and by second
instance judgment of the District Court of Prizren KP. 227/10, dated 22 October 2010,

Deciding upon the Request for Protection of Legality of Defence Counsel Y. on
behalf of the defendant E H against the judgment of the Municipal Court of Prizren
P. 351/10, dated 14 July 2010, as affirmed by the judgment of the District Court of Prizren
KP. 227/10, dated 22 October 2010,

Issues the following

JUDGMENT

The Request for Protection of Legality filed by the defense counsel of the defendant
E H against the judgment of the Municipal Court of Prizren, P. No. 351/2010,
dated 14 July 2010 and the judgment of the District Court of Prizren KP. No.
227/2010, dated 22 October 2010, is **REJECTED AS UNFOUNDED**.

REASONING

I. Procedural Background

By indictment PP. no. 1916/09, filed by the Municipal Prosecutor in Prizren on 20 August 2009 the defendant was charged with the criminal offense of Accepting Bribes in violation of Article 343 paragraph 1 of the PCCK.

The defendant was convicted by first instance judgment of the Municipal Court of Prizren, P. No. 351/2010, dated 14 July 2010, for the mentioned offense and sentenced to four (4) years imprisonment and a fine of 10,000 Euro.

Upon the defendant's appeal, filed on 17 September 2010 by his defense counsels, the District Court Prizren with judgment KP. No. 227/2010 on 22 October 2010 rejected the appeal and confirmed the judgment of the 1st instance court.

Against both judgments a Request for Protection of Legality was filed by Defense Counsel Y O on behalf of the defendant on 27 January 2011.

The Office of the State Prosecutor of Kosovo (OSPK) filed a reply on 22 April 2011, where it proposes to reject the request as unfounded..

II. Supreme Court Findings

The Request for Protection of Legality is admissible but unfounded.

1. Admissibility of the Request for Protection of Legality

The Request for Protection of Legality 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

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

The Request for Protection of Legality alleges violations of criminal law and essential violations of the provisions of criminal procedure and proposes to annul the previous judgments and return the case for retrial by the court of 1st instance.

The defendant claims that he had not received money, he had no intention to render an unlawful judgment, he had not made an attempt to render an unlawful judgment although he had been able to do so, the A family had conspired to set a trap for him (the defendant) and challenges that the audio and video recordings were fabricated, that the court's standard for assessing admissibility (Art. 170, 171 KCCP) was wrong and that they should have been verified by an expert before they were admitted as evidence. He also alleges that the statement of the witnesses B P and R A are based on rumors.

The motion asserts that 1st instance court had wrongly rejected the defendant's request of reading the judgment in the criminal case against the A brothers and examining the panel members.

All these arguments fall under the category 'erroneous or incomplete determination of facts', which, according to Article 456 of the KCCP cannot be challenged by a Request for Protection of Legality.

The defendant challenges the conduct of the 2nd instance proceedings and concludes that the court was prejudiced.

The court finds that this argument had to be raised before the conclusion of the mentioned proceedings. Within a Request for Protection of Legality such an argument cannot be brought up anymore.

The request also claims that the 1st instance judgment is contradictory in itself, specifically in regard to the amount of money received by the defendant, which allegedly remains unclear. According to the defendant, it is also incomprehensible in regard to why the defendant actually did not render the unlawful judgment in favor of the A brothers, even though he had the opportunity to do so.

The Supreme Court concludes that the questions above are irrelevant and cannot constitute violations of the criminal law. The judgment of the Municipal Court of Prizren is clear in regard to the fact that the defendant had received money in exchange for the promise to perform an official act.

The 1st instance judgment states that the defendant had received through A Z cash in the amount of at least 53,000 Euros and later further sums. It is not required to determine the exact amount of the benefits received in order to commit the criminal offense of Accepting Bribes pursuant to Article 343 paragraph 1 of the CCK. It is legitimate to leave open the exact amount of the further sums received. The court does not find any contradiction in regard to the amount of the money.

The challenged judgment is also sufficiently clear comprehensible in regard to the question of the performance of the official act. The provision of Article 343 of the CCK does not

SUPREME COURT OF KOSOVO

Minutes of deliberation

PKL.-KZZ. No. 23/2011

27 December 2011

require the official act to be performed. The criminal offense is committed when the perpetrator receives the money with the intention to do so.

The defendant suggests that the enacting clause of the 1st instance judgment is incomprehensible.

From the context the court concludes that he is actually challenging the enacting clause of the 2nd instance judgment. The enacting clause of the judgment is in fact missing a formulation affirming the judgment of the 1st instance.

The Supreme Court in its previous decisions has repeatedly reiterated the necessity to interpret judicial decisions in its entirety in such a way that they makes sense and that the enacting clause has to be read together with the reasoning.

In the case against L Xh ¹ the court wrote:

"...only if the enacting clause remains incomprehensible or inconsistent after having been read in connection with the statement of grounds, it can be declared unlawful..."

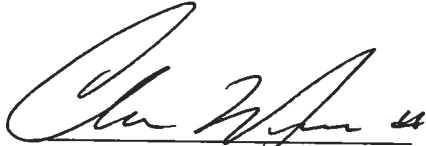
When read together with the reasoning it remains absolutely clear that the District Court of Prizren wanted to reject the appeal against the 1st instance judgment as ungrounded and affirm the judgment since it discussed in detail the merits of the case.

Consequently, the Supreme Court of Kosovo decides as in the enacting clause.

SUPREME COURT OF KOSOVO
PKL.-KZZ. No. 23/2011
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27 December 2011

¹ Supreme Court of Kosovo, PKL.-KZZ. No. 114/2009, Request for Protection of Legality in the criminal case against L Xh , dated 12 April 2010

Presiding Judge:



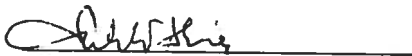
Charles L. Smith
EULEX Judge

Recording Officer:



Holger Engelmann
EULEX Legal Officer

Members of the panel:



Salih Toplica
Supreme Court Judge



Martti Harsia
EULEX Judge