

SUPREME COURT OF KOSOVO

Api – Kži – 6/2012

16 January 2013

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Martti Harsia as Presiding Judge, with EULEX Judges Elka Filcheva-Ermenkova and Charles Smith III, and Supreme Court Judges Avdi Dinaj and Gyltene Sylejmani as panel members, assisted by EULEX Legal Officer Noora Aarnio as the recording clerk,

In the criminal case against defendants B [REDACTED] H [REDACTED] and S [REDACTED] O [REDACTED]

both convicted by the District Court of Prishtinë/Pristina for the criminal offences of **Aggravated Murder** in co-perpetration [Article 147 paragraphs 4, 9 and 11 as read with Article 23 of the Criminal Code of Kosovo (CCK)], **Grievous Bodily Harm** in co-perpetration [Article 154 paragraph 1 item 1 as read with Article 23 of the CCK], and **Causing General Danger** in co-perpetration [Article 291 paragraphs 1 and 5 as read with Article 23 of the Criminal Code of Kosovo (CCK)], and both sentenced to an aggregate sentence of long-term imprisonment of 25 years, which Judgment was modified by the Supreme Court of Kosovo.

Acting upon the appeals of the defendants through their Defence Counsel M [REDACTED] H [REDACTED] on 24 July 2012, and the Defence Counsel A [REDACTED] P [REDACTED] on 25 July 2012, against the Judgment of the Supreme Court in case no. Ap-Kz.nr. 246/2010, dated 25 May 2012.

After having held a session on 18 December 2012 and 15 January 2013, open to public, in the presence of the State Prosecutor Judit EvaTatrai, defendant S [REDACTED] O [REDACTED] and the Defence Counsel M [REDACTED] H [REDACTED] and M [REDACTED] D [REDACTED] replacing A [REDACTED] [REDACTED] and after a deliberation and voting held on the same day,

On 15 January 2013 pronounces the following

JUDGMENT

- 1) B [REDACTED] H [REDACTED] nickname [REDACTED], name of father [REDACTED] name of mother and maiden name of mother [REDACTED] date of birth [REDACTED] place of birth [REDACTED], Kosovo Albanian, last residence in the village of [REDACTED], single, High School education, formerly Kosovo Police officer, average economic situation, continuously in custody since 21 January 2008;

- 2) S [REDACTED] Q [REDACTED] no nickname, name of father M [REDACTED] name of mother and maiden name of mother [REDACTED] date of birth [REDACTED], place of birth [REDACTED], Kosovo Albanian, last residence [REDACTED] married, father of three children, High School education, formerly Kosovo Police officer, average economic status, continuously in custody since 21 January 2008;

The appeals filed by Defence Counsels M [REDACTED] H [REDACTED] and A [REDACTED] on behalf of the defendants against the judgment of the Supreme Court in case no. Ap-Kz.nr. 246/2010, dated 25 May 2012 are hereby **rejected as unfounded**.

I. PROCEDURAL HISTORY

District Court

On 12 August 2008 the Public Prosecutor filed an Indictment against the defendants E [REDACTED] H [REDACTED] S [REDACTED] Q [REDACTED] and other.

On 5 January 2008 the President of the EULEX Judges assembly issued a Ruling assigning the case to the EULEX Judges.

On 2 February 2009 the Confirmation Judge confirmed counts 2-4 of the Indictment against all of the defendants.

On 5 May 2009 the main trial commenced. The Judgment was announced on 22 September 2009. E [REDACTED] H [REDACTED] and S [REDACTED] Q [REDACTED] were found guilty of Aggravated Murder, Grievous Bodily Harm and Causing General Danger, and sentenced to an aggregate sentence of 25 years of imprisonment. The defendants appealed this Judgment.

Supreme Court

The Supreme Court session was held on 22 May 2012 and the Judgment was announced on 25 May 2012. The Supreme Court of Kosovo rejected the appeals of the defendants as ungrounded. However, the Supreme Court modified the Judgment by stating that the Count 1, Aggravated Murder, consumed the Count 3, Causing General Danger. The Judgment was confirmed in the remaining parts.

The case file does not contain a delivery slip of the service of the judgment to the defendant E [REDACTED] H [REDACTED]. The Defence Counsel M [REDACTED] H [REDACTED] filed an appeal against the Judgment of the Supreme Court on 24 July 2012.

The case file does not contain a delivery slip of the service of the judgment to the defendant S [REDACTED] Q [REDACTED]. The Defence Counsel A [REDACTED] filed an appeal against the Judgment of the Supreme Court on 25 July 2012.

On 16 November 2012 the opinion of the State Prosecutor was received by the Supreme Court.

II. THE APPEALS

i. The appeal of B [REDACTED] H [REDACTED]

The appeal of Defence Counsel M [REDACTED] H [REDACTED] challenges the first instance judgment on several grounds. He claims that the Judgment of the first instance contains essential violations of the criminal procedure and of the criminal code, that the factual state has been established erroneously and incompletely, and the criminal sanction imposed **unlawfully**.

The Defence Counsels request that the Judgment be altered by acquitting the defendants pursuant to Article 390 paragraph 1 item 3 of the KCCP, or failing that the Judgment be annulled and the case sent back for re-trial.

The presented grounds for the appeal are summarized as follows:

Essential violations of the criminal procedure:

- The Judgment does not contain reasoning to the points raised by the defence in their appeal. Therefore he repeats the arguments stated in the appeal against the first instance Judgment.
- The communication between the Court and the prosecutor infringed the rights of the defendant as the documents lack the appropriate delivery stamps and received stamps.
- The panel was not composed according to law as the Article 345 paragraph 1 of the KCCP was violated when the panel composition changed. This is a violation of Article 403 paragraph 1 item 1 of the KCCP.
- In the 1st appeal was alleged that the Judgment is based on inadmissible evidence. The second instance court violated the Article 176 paragraph 1 of the KCCP because the prosecutor does not have the authority to order expertize.
- The swabs from the police car 4 months after the explosion are inadmissible as evidence.
- The Judgment exceeds the indictment in relation to the motive.
- The Judgment contains violations of the Article 304 paragraph 1 item 12 of the KCCP.

The factual situation was established erroneously and incompletely;

- Finding the witnesses A [REDACTED] J [REDACTED], M [REDACTED] J [REDACTED] and I [REDACTED] C [REDACTED] bias and subjective is wrong.
- The explosive expertize from the police vehicle is inadmissible evidence and therefore cannot be taken into consideration.
- The Judgment does not provide convincing reasoning as to the credibility of the statement of witness M [REDACTED] I [REDACTED] and the report of police I [REDACTED] dated 9.11. 2009.

- The Court has chosen evidence selectively without providing reasoning as to the credibility of the evidence.
- There are at least 4 other suspects in relation to this case that have not been tried yet. The Judgment should be squashed and the cases tried together.

ii. The appeal of Shpend Qerimi

The appeal of Defence Counsel A [REDACTED] challenges the first instance judgment on several grounds. He claims that the Judgment of the first instance contains essential violations of the criminal procedure and criminal code, and that the factual state has been established erroneously and incompletely.

The Defence Counsels request that the Judgment be altered by acquitting the defendants, or failing that the Judgment be annulled and the case sent back for re-trial.

The presented grounds for the appeal are summarized as follows:

Essential violations of the criminal procedure:

- The Supreme Court has unjustly and without any factual or legal ground rejected the appeal.
- The defence was not present when witnesses M [REDACTED], A [REDACTED] "O [REDACTED]" and "Th [REDACTED]" were heard at the police and at the public prosecutor. As the defence did not have a chance to challenge those statements they are inadmissible pursuant to Article 156 and Article 157 of the KCCP.
- The Judgment is based on the statement of witness M [REDACTED]. Therefore the Judgment is based on inadmissible evidence and thus violates Article 403 paragraph 1 subparagraph 8 of the KCCP.
- The enacting clause does not state when the explosive device was planted and detonated, the type of the explosive or how it was activated, or the motive for such an act. The assessment of the Supreme Court that the violations of the Article 403 paragraph 1 subparagraph 12 of the KCCP are not severe enough to affect the clarity or comprehensibility of the enacting clause is not grounded on the KCCP as the code does not stipulate a threshold but a violation of the said article automatically renders the Judgment unlawful.
- The findings and opinions of the expertise provided by the prosecutor is inadmissible evidence as they are ordered by the prosecutor and not by the Court.
- The Judgment exceeds the scope of the indictment, as is stipulated in the Article 386 paragraph 1 of the KCCP, when it concludes that the defendants committed the murder of the late N [REDACTED] and two of his cousins.

The factual situation was established erroneously and incompletely;

- The District Court has found that there is no direct evidence of the guilt of the defendants but only indicators;

- these indicators are dubious, contradicting, illogical, “do not match the regular course of the things” and entirely uncertain;
- due to the lack of motive the evidence presented does not establish the factual situation as is stated in the enacting clause;
- the witness statements are contradictory and uncertain so they do not suffice to prove the factual situation as is stated in the enacting clause;
- the finding in the Judgment of H [REDACTED] and Q [REDACTED] killing N [REDACTED] E [REDACTED] cannot be correct as the prosecutor has indicted other persons for this criminal offence;
- the expert evidence has not provided any direct evidence of the guilt of the defendants;
- the analysis of the cell phone poisoning does not place Q [REDACTED] at the scene of the crime;
- the statement of M [REDACTED] is not credible as “it does not correspond to the real state of facts”, is incredible, “not possible at all as it is fabricated” and

Violations of the criminal law;

- the criminal offence of causing general danger (Article 291 paragraphs 1 and 5 of the CCK) absorbs all the acts described in the indictment, including the criminal offences described in the Articles 147 and 154 of the CCK.

III. THE RESPONSES

- i. The response of the District Prosecutor.

There is no response from the District Prosecutor.

- ii. The response of the State Prosecutor

The State Prosecutor proposes to reject the appeals and affirm the appealed Judgment.

As to the alleged essential violations of the criminal procedure the prosecutor states that the stamps in the orders are correct and therefore the claim of their inadmissibility is ungrounded. Also, the rights of the defence have not been infringed by the continuation of the proceedings after the change in the composition of the panel. Further, according to Article 237 of the KCCP the prosecutor has a general power to appoint experts during the pre-trial proceedings and thus the expertise is not inadmissible evidence. Moreover, as the Court has the power to consider any admissible evidence that it deems relevant, using evidence collected in another investigation does not render this evidence inadmissible. Also, the District Court had thoroughly assessed each witness' accounts and gave comprehensive reasoning to why it attached or did not attach weight to such testimonies. Further, the enacting clause is clear and understandable as well as fully consistent with the reasoning. Lastly, as the defence had an opportunity to question the witnesses at the main trial their rights have been respected.

As to the determination of the factual situation the state prosecutor states that the defence counsel is simply expressing generic dissatisfaction with the assessment of the Court without stating the reasons why the assessment is incorrect. The District Court has given comprehensive reasoning as to why it attached or did not attach weight to the testimonies. Also, witness [REDACTED] and her daughters were threatened by the defendants.

As to the violations of the criminal law the state prosecutor notes that the aggravated murder and the grievous bodily harm are not absorbed by the criminal offence of Causing General Danger because the defendants acted with murderous intent.

IV. COURT FINDINGS

A. Permissibility of the appeal

1. To guarantee the defendants their right to an effective legal remedy as stipulated in the Article 398 of the KCCP the appeals must be presumed timely filed. The appeals are filed by their Defence Counsels, authorized persons.
2. The Panel will now assess each of the arguments raised in the appeal of the defence.

B. Essential violations of the criminal procedure

3. The Supreme Court notes that the Supreme Court has in its Judgment dated 25 May 2012 replied to all the points of arguments it has summarized under in the appeal.
4. The Supreme Court also notes that the validity of the Court order is not dependent on the delivery stamp of that order to the prosecutor. The Supreme Court has no reason to question the existence and lawfulness of the orders in the case files. Further, as the Supreme Court has in its Judgment dated 25 May 2012¹ noted the documents bear the stamps used at the time of their issuance.
5. In relation to the claims about the composition of the panel the Supreme Court notes that the Supreme Court has in its Judgment dated 25 May 2012² given reasoning for the lawfulness of the procedure. Also, according to the minutes the presiding judge states that *“This situation falls within article 345 and according to the second part of the first paragraph of this article I ask the parties their opinion of the issue. Then we will decide how to proceed, whether to start from the beginning or read the previous testimonies into*

¹ Judgment dated 25 May 2012, page 12 of the English version

² Judgment dated 25 May 2012, pages 12-13 of the English version

the records.”³ The prosecutor notes that “... I have no objection to read the minutes and it will be in the interest of justice ...”⁴ Defence Counsel M [REDACTED] H [REDACTED] for H [REDACTED] opines that “Since your honor the law is clear, we are in front of this situation and we have no objections.”⁵ Defence Counsel A [REDACTED] (for Q [REDACTED] states that “Your honor, in order not to repeat my colleague I support this declaration and have no objections to read the minutes.”⁶ Defence Counsel A [REDACTED] V [REDACTED] for C [REDACTED] states that “Your honor, I agree with the proposal not to restart the trial and think it is logical to continue from where we left off.”⁷ Defence Counsel V [REDACTED] B [REDACTED] (for C [REDACTED] states that “I agree with the proposal of my colleagues.”⁸ A moment later Defence Counsel D [REDACTED] J [REDACTED] (for H [REDACTED] asks the panel “Since we are dealing here with a mandatory provision of the law, has it been put in the minutes that the trial will not start again?”⁹ And then he replies himself that “I agree with my colleagues ...”¹⁰ To this the presiding judge answers that “For the sake of clarity and following the request of D [REDACTED] on the basis of article 345 we note that the trial **will start from the beginning** but as said before the witnesses will not be heard again ...”¹¹

6. Therefore the Supreme Court agrees with the reasoning and the conclusion made in the Judgment dated 25 May 2012, that is to say that the rights of the parties have not been violated in a manner that would warrant to an unfair trial. Thus there is no reason to return the case back to the District Court for retrial.

7. As to the admissibility of the expertize ordered by the prosecutor and the swabs from the police car the Supreme Court notes that according to the Article 153 paragraph 1 of the KCCP “Evidence obtained in violation of the provisions of criminal procedure shall be inadmissible when the present Code or other provisions of the law expressly so prescribe.” The Code does not state that expertize acquired without the written order by the Court is inadmissible. Nor does the Supreme Court find the accuracy of this expertize questionable. Also, the District Court has given reasoning as to why the expertize on the swabs from the police car are admissible.¹² The Supreme Court agrees with this reasoning.

8. Further, the indictment indicates the Article 149 paragraph 9 as one of the basis of the change. This reads “Deprives another person of his or her life because of unscrupulous

³ minutes of the main trial 19 August 2009, page 2 of the English version

⁴ minutes of the main trial 19 August 2009, page 2 of the English version

⁵ minutes of the main trial 19 August 2009, page 2 of the English version

⁶ minutes of the main trial 19 August 2009, page 2 of the English version

⁷ minutes of the main trial 19 August 2009, page 2 of the English version

⁸ minutes of the main trial 19 August 2009, page 2 of the English version

⁹ minutes of the main trial 19 August 2009, page 2 of the English version

¹⁰ minutes of the main trial 19 August 2009, page 3 of the English version

¹¹ minutes of the main trial 19 August 2009, page 3 of the English version

¹² Judgment dated 22 September 2009, pages 39-41 of the English version

revenge or other base motives;". As the motive for the activity of the defendants is mentioned as one of the basis of the indictment the District Court did not exceed the charge when deciding upon it.

9. The Supreme Court recalls that the Article 156 paragraph 2 of the KCCP reads "*A statement of a witness given to the police or the public prosecutor may be admissible evidence in court only when the defendant or defence counsel has been given the opportunity to challenge it by questioning that witness during some stage of the criminal proceedings.*"¹³

10. Also, Article 157 of the KCCP reads "*The court shall not find the accused guilty based solely, or to a decisive extent, on testimony or other evidence which could not be challenged by the defendant or defence counsel through questioning during some stage of the criminal proceedings.*"¹⁴

11. As the defence had the chance to question the witnesses M^S [REDACTED] A [REDACTED] M [REDACTED] "C [REDACTED]" and " [REDACTED]" at the main trial the requirements stipulated in the Articles 156 and 157 of the KCCP have been fulfilled.

12. The Supreme Court recalls that just as is pointed out in the Judgment of the Supreme Court dated 25 May 2012, Articles 391 and 396 of the KCCP stipulate on the content of the enacting clause. The enacting clause shall include the following: personal data of the accused; the decision by which the accused is pronounced guilty; the act of which he has been found guilty, together with facts and circumstances indicating the criminal nature of the act committed and facts and circumstances on which the application of pertinent provisions of criminal law depends; the legal designation of the act and the provisions of the criminal law applied in passing the judgment; the punishment imposed on the accused; the decision to include the time spent in detention on remand in the amount of the punishment; and the decision on costs of criminal proceedings and on a property claim. Therefore the Supreme Court opines that the purpose of the enacting clause is not to explain every minute detail of the activities of the defendant but to enable him to understand what it is the act that he has found guilty of and why this act is a criminal offence.

13. The Supreme Court further notes that the following facts are undisputed: an explosive device was placed on the ground floor of a building at Bill Clinton Avenue, Prishtinë/Priština and detonated on 24 September 2007; this explosion caused the deaths of N [REDACTED] M [REDACTED] and P [REDACTED] S [REDACTED] and caused grievous bodily harm to X [REDACTED] S [REDACTED] V [REDACTED] Z [REDACTED] I [REDACTED] N [REDACTED], C [REDACTED] S [REDACTED] E [REDACTED] H [REDACTED] N [REDACTED] H [REDACTED] F [REDACTED] E [REDACTED]

¹³ Emphasis by the Supreme Court

¹⁴ Emphasis by the Supreme Court

L [REDACTED] K [REDACTED] and S [REDACTED] S [REDACTED] The enacting clause includes all the above described information. Further, establishing every minor detail of the acts of the defendants, such as when the explosive device was planted and detonated, the type of the explosive or how it was activated is unnecessary as they are not relevant to the criminal nature of the act committed or the criminal responsibility of the defendants. Also, the enacting clause does mention the motive as basis of the criminal responsibility and the reasoning further elaborates the motive.

C. The determination of the factual situation

14. As to the claim of selective use of evidence without providing reasoning of the credibility of the evidence the Supreme Court recalls that according to the principle of free assessment of evidence, as is stipulated in the in Article 152 paragraph 2 of the KCCP, it is the prerogative of the trial panel to assess the evidence presented even when it is contradictory. This is because the District Court, having directly heard the evidence is in the best position to assess the credibility of the witnesses and/or expert witness. It is the duty of the Supreme Court to determine if the trial Court has done this assessment properly. The Supreme Court's revision of the District Courts assessment is thus restricted to the questions as to whether the facts have been explored carefully, whether the evidence presented was admissible and whether the evaluation was plausible, logical and comprehensible. The First Instance Court has discretion over the assessment of the evidence that the Supreme Court will not interfere with so long as the appealed Judgment does not infringe rules of logic and common sense. The Supreme Court only reassesses the evidence if it finds that the trial Court's assessment is faulty.

15. The Supreme Court notes that the Judgment of the District Court generally points out the atmosphere of fear of the witnesses.¹⁵ It further notes that "... a culture of fear amongst the witnesses... applies to witnesses C [REDACTED] and T [REDACTED] M [REDACTED]" and that "a conspiracy of silence ... F [REDACTED] C [REDACTED] and [REDACTED] [REDACTED]..." and also "... have an interest which is anyway conflicting with their duty to say the truth (A [REDACTED] E [REDACTED] and A [REDACTED] [REDACTED]"¹⁶ This is an initial assessment of the credibility of these witnesses.

16. The Judgment also notes that "*The witnesses were clients ... of the bar 'Passage' located in the same building where the explosion took place and devastated by the explosion, or people present in the proximity of the crime scene because of their work ...*". The assessment continues by stating that "*Their statements in Court give a homogenous description of the events with very limited divergence. ... From the different*

¹⁵ For example see Judgment dated 22 September 2012, page 8 of the English version: "*With few exceptions, every single witness showed or expressed his or her discomfort for giving testimony.*"

¹⁶ Judgment dated 22 September 2012, page 10 of the English version

testimonies it emerges that ...”¹⁷ The judgement concludes that “*The witnesses accurately described ... which weight in favour of their genuineness and originality.*”¹⁸ This is an assessment of the credibility of their statements.

17. The Judgment notes that the statements of the injured parties X [REDACTED], S [REDACTED], V [REDACTED], Z [REDACTED], [REDACTED], N [REDACTED] as well as the witnesses Beta, Delta, Epsilon, Gamma, F [REDACTED], H [REDACTED], One and Zeta “... give a homogenous description of the events with very limited divergencies.”¹⁹ It then moves to describe those events and finally to draw conclusions from these statements.

18. The witness statements of M [REDACTED] were also significant to the findings of the District Court. Her witness statement is scrutinised thoroughly in the Judgment.²⁰

19. Witnesses A [REDACTED], B [REDACTED]²¹, A [REDACTED], I [REDACTED]²², E [REDACTED], V [REDACTED]²³, M [REDACTED], A [REDACTED]²⁴, Omega²⁵ and Theta²⁶ were heard in relation to the circumstances related to the murder of NB²⁷ and these in turn are of circumstantial evidentiary value to this case. The Judgment concludes that “*In sum, all indicators point towards the reliability of the declarations of witness Omega and Theta, as well as M [REDACTED] and [REDACTED] the declarations of B [REDACTED] gives a motive and a rationale to the entire story.*”²⁸

20. As to the witness statements of Z [REDACTED] and F [REDACTED] the Judgment clearly assesses them as untrustworthy and not credible.²⁹ As to the witness statements of D [REDACTED], T [REDACTED], A [REDACTED], C [REDACTED] and R [REDACTED], S [REDACTED] the Judgment explains and assesses them adequately.³⁰ The Judgment describes the witness A [REDACTED], J [REDACTED] as a “*competent source*” and summarizes his findings.³¹ The Judgment reads that “*A [REDACTED], A [REDACTED] who should be the cornerstone of the alibi, has changed her versions on the course of the investigations and in the course of the trial*”³² and goes on describing how her testimony could not reflect the truth. The Judgment summarizes the statement of witness F [REDACTED], C [REDACTED] assesses that “*However, the deposition gave the clear impression to the panel that*

¹⁷ Judgment dated 22 September 2012, pages 11 – 12 of the English version

¹⁸ Judgment dated 22 September 2012, page 13 of the English version

¹⁹ Judgment dated 22 September 2012, pages 11 – 12 of the English version

²⁰ Judgment dated 22 September 2012, pages 15 – 20 of the English version

²¹ Judgment dated 22 September 2012, page 23 of the English version

²² Judgment dated 22 September 2012, pages 24 - 25 of the English version

²³ Judgment dated 22 September 2012, pages 25 – 26 of the English version

²⁴ Judgment dated 22 September 2012, pages 25 – 26 of the English version

²⁵ Judgment dated 22 September 2012, pages 26 – 27 of the English version

²⁶ Judgment dated 22 September 2012, pages 26 – 27 of the English version

²⁷ Judgment dated 22 September 2012, page 21 of the English version

²⁸ Judgment dated 22 September 2012, page 28 of the English version

²⁹ Judgment dated 22 September 2012, page 31 of the English version

³⁰ Judgment dated 22 September 2012, page 36 of the English version

³¹ Judgment dated 22 September 2012, page 40 of the English version

³² Judgment dated 22 September 2012, page 42 of the English version

the witness was prepared and that he referred circumstances that he was asked to repeat.³³ and goes on to explain the reasons the panel reached this conclusion. As to the witness statement of R [REDACTED] B [REDACTED] the Judgment concludes that "... can not give any guarantee of genuineness, as evident. Nor can the witness."³⁴ The Judgment notes that "... in B [REDACTED] S [REDACTED]'s deposition it is not possible to find any substantial confirmation of the alibi put forward by E [REDACTED] H [REDACTED]"³⁵ The statement of the witness S [REDACTED] S [REDACTED] is evaluated in the Judgment as follows:" Completely unable to remember even significant things ... she showed extreme precision on the night that preceded the bombing at the point to remember ... a phone call ... She stuffed her deposition with incredible, absurd explanations, in the attempt to match with the version of A [REDACTED] A [REDACTED]"³⁶ Witness G [REDACTED] H [REDACTED] testified about the sick leave and schedules. Although the Judgment does not connect the evaluation of his testimony to his name it does conclude that this testimony cannot be used for or against the defendants.³⁷ Similarly, the testimonies of I [REDACTED] G [REDACTED] who testified about who used the official cars, trip tickets and weapons used, as well as E [REDACTED] E [REDACTED] who testified about trip tickets and vehicle maintenance, are evaluated as not having a probative value but without mentioning their names.³⁸

21. The Judgment concludes that "... the alibi of E [REDACTED] H [REDACTED] is unfounded because based on unreliable and false statements of witnesses (A [REDACTED] A [REDACTED] R [REDACTED] B [REDACTED] F [REDACTED] G [REDACTED] and S [REDACTED] S [REDACTED] who came to Court simply to give fabricated depositions."³⁹

22. The Judgment does not refer to the statements of the witnesses S [REDACTED] K [REDACTED] M [REDACTED] J [REDACTED], A [REDACTED] F [REDACTED] S [REDACTED] D [REDACTED] H [REDACTED] M [REDACTED], F [REDACTED] H [REDACTED] F [REDACTED] V [REDACTED] in the Judgment.

23. S [REDACTED] K [REDACTED] is a police officer who worked shortly at the Kacanik police station and thus knows E [REDACTED] H [REDACTED]. He also knows S [REDACTED] Q [REDACTED] and N [REDACTED] C [REDACTED] as police officers. His testimony is confusing as he first states that he knew of no animosity on the side of the police officers towards E [REDACTED] S [REDACTED] and later says that "We hate him as a suspect, not because I have something personal with him."⁴⁰ He also claims that the text message he sent to E [REDACTED] H [REDACTED] "...wasn't meant initially for E [REDACTED] H [REDACTED] but for another colleague, but mistakenly sent it to E [REDACTED] H [REDACTED]"⁴¹ Therefore the Supreme

³³ Judgment dated 22 September 2012, pages 41 – 42 of the English version

³⁴ Judgment dated 22 September 2012, pages 43 – 44 of the English version

³⁵ Judgment dated 22 September 2012, page 44 of the English version

³⁶ Judgment dated 22 September 2012, page 43 of the English version

³⁷ Judgment dated 22 September 2012, page 37 of the English version

³⁸ Judgment dated 22 September 2012, page 36 of the English version

³⁹ Judgment dated 22 September 2012, page 44 of the English version

⁴⁰ Minutes of the main trial 14 May 2009, page 29 of the English version

⁴¹ Minutes of the main trial 14 May 2009, page 27 of the English version

Court concludes that the statement of S [REDACTED] K [REDACTED] does not support or dispute the innocence of F [REDACTED] H [REDACTED]

24. M [REDACTED] is a police officer who has worked with B [REDACTED] H [REDACTED]. He stated that as he was not the driver of the vehicle he did not check the licence plates but still he was certain that at the weekend of the bombing he and I [REDACTED] C [REDACTED] used the official vehicle from which the traces of the explosives were later found. He also stated that it is the driver who fills in the trip ticket and in this case the driver was I [REDACTED] C [REDACTED]. The trip ticket has two separate entries for the said vehicle – first is for “[REDACTED]” and second is for “[REDACTED]”. The Supreme Court opines that as M [REDACTED] admitted that he did not sign the trip ticket, drive the car, or indeed check the licence plate of the car he travelled in, he cannot say for certain which of the vehicles he and I [REDACTED] C [REDACTED] were using.

25. A [REDACTED] F [REDACTED] is a police officer and his testimony concerned explanations of the police reports in the case files. S [REDACTED] D [REDACTED] was the leading investigator of the case and testified about the course and methods of investigation. F [REDACTED] H [REDACTED] was an investigator in the case. F [REDACTED] V [REDACTED] is a police and his testimony concentrated on the uniforms used by the police during the time of the explosion.

26. The testimony of H [REDACTED] [REDACTED] concerns N [REDACTED] C [REDACTED] only and is thus not relevant to the appeals under consideration.

27. The Supreme Court opines that the District Court has evaluated the credibility of the witnesses thoroughly. The Supreme Court sees no flaw in this evaluation.

28. As to the claim that the witnesses heard testified about another case the Supreme Court notes that according to the Article 152 of the KCCP the Court may admit and consider any admissible evidence that it deems to have probative value. According to the Article 360 paragraph 5 of the KCCP the trial panel has the authority to collect evidence. Therefore hearing these witnesses did not violate the criminal procedure code.

29. As to the notification that there are at least four other suspects in relation to this case that have not been tried yet and the contention that all the defendants should be tried together, the Supreme Court notes that this would be desirable but it is not a ground for annulling a Judgment.

D. The alleged violations of the criminal code

30. The Supreme Court notes that the appealed Judgment gives reasoning as to why the trial panel found that the aggravated murder and the grievous bodily harm were proven.⁴²

⁴² Judgment dated 22 September 2009, pages 46 – 48 of the English version

The Supreme Court has, on its Judgment modified the Judgment of the District Court by stating that the criminal offence of aggravated murder absorbs the act of causing general danger.

31. Further, the Supreme Court points out that there is a difference between the term intention as used in the everyday language and the term "intent" as is expressed in the Article 15 of the KCCP. The eventual intent stipulated in the Article 15 paragraph 3 of the KCCP covers also those situations where the person did not directly intent an outcome but was aware that a prohibited consequence can occur as a result of his act and accedes to its occurrence.

32. The Supreme Court agrees with the reasoning of the District Court in relation to the criminal offences of aggravated murder and grievous bodily harm as well as the conclusions.

E. CONCLUSIONS

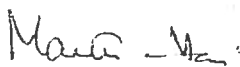
33. The Supreme Court did not recognize *ex officio* any violations of law (as per Article 415 paragraph 1 of the KCCP) which were not the subject of appeal by the defense.

34. Based on all of the above stated reasons it is decided as in the enacting clause.

Dated this 16 January 2013.

Api – Kži – 6/2012

Presiding Judge


Martti Harsia

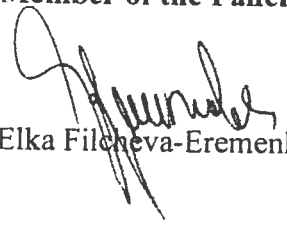
Recording clerk


Nóora Aarnio

Member of the Panel


Charles Smith, III

Member of the Panel


Elka Filcheva-Eremenkova

Member of the Panel


Avdi Dinaj

Member of the Panel


Gyltene Sylejmani