

SUPREME COURT OF KOSOVO
Pkl.-Kzz. 9/2013
Pristinë/Priština
10 September 2013

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of
EULEX Judge Gerrit-Marc Sprenger as Presiding Judge,
with Kosovo Judges Gyltene Sylejmani and
Salih Toplica as members of the panel,
and in the presence of Legal Officer Holger Engelmann as recording clerk, in the
criminal case Pkl.-Kzz. No. 9/2013 of the Supreme Court of Kosovo

Against the defendants:

1. **M.D.** born on _____
_____ Pejë/Peć Municipality,
_____ Kosovo Albanian, residing in _____
Kosovo, student, married, _____ completed secondary school, of
average financial situation,
in detention on remand from 1 March 2010 until 28 May 2010 and from 16 June
2010 to 22 September 2010 and thereafter under the security measure of reporting
at the police station,
2. **B.M.** born on _____
_____ Municipality,
_____, Kosovo Albanian, residing in the _____ Istog/Istok
Municipality, Kosovo, student, married, completed secondary school, of average
financial situation, no known previous convictions,
in detention on remand from 1 March 2010 until 28 May 2010 and from 16 June
2010 to 22 September 2010 and thereafter under the security measure of reporting
at the police station,
3. **A.V.** born on _____ Pejë/Peć
Municipality,
Kosovo Albanian, residing in the village _____ Municipality,
Kosovo, employed in the Kosovo Security Forces, married, rather of
_____, completed secondary school, of average financial situation, no known
previous convictions,
in detention on remand from 1 March 2010 until 28 May 2010 and from 16 June
2010 to 22 September 2010 and thereafter under the security measure of reporting
at the police station,

All three of them convicted in the first instance by verdict of the District Court of Peja/Pec, dated 16 September 2010, P. No. 128/2010 for jointly in co-perpetration having committed the criminal acts of

Extortion contrary to Article 267 paragraphs 1 and 2 as read with Article 23 of the Criminal Code of Kosovo (CCK), because in Pejë/Peć, in a period of time between November and December 2009, acting as members of a group with the intent to obtain unlawful and great material benefit they threatened I E.L. with the words: 'do not think we only know how to break windows' and: 'I warn you', to compel him to give them 150.000 Euros, half of which were actually given through the middleman N.H. to M.D. in December 2009;

And of

Attempted Extortion contrary to Article 267 paragraphs 1 and 2 as read with Articles 20 and 23 of the CCK, because in Pejë/Peć, 28 February 2010, acting as members of a group they took immediate action to compel E.L. to give them 75.000 Euros, threatening the middleman N.H. by saying that if the remaining 75.000 Euros had not been given to them, Pejë/Peć would be burned down, but not receiving the money because of the refusal of E.L. to pay the above amount.

They were therefore sentenced with an aggregate punishment of two (2) years and six (6) months of imprisonment each as per Article 71 paragraph 1 and 2, subparagraph 2 of the Kosovo Code of Criminal Procedure (KCCP), consisting of two (2) years of imprisonment each for the criminal offense of Extortion in co-perpetration pursuant to Article 267 paragraphs 1 and 2 as read with Article 23 of the CCK and of one (1) year of imprisonment each for the criminal offense of Extortion in co-perpetration pursuant to Article 267 paragraphs 1 and 2 as read with Articles 20 and 23 of the CCK, with credit for the time served in detention on remand between 01 March 2010 and 28 May 2010 and from 16 June 2010 onwards, as per Article 391 paragraph 1, subparagraph 5 and Article 278 paragraph 7 of the KCCP.

The first instance verdict was modified against all three defendants in the second instance by the judgment of the Supreme Court of Kosovo, Ap.-Kz. No. 28/2011, dated 11 May 2012, pursuant to art. 426 par. 1 of the KCCP, in that the defendants were found guilty for the criminal offense of Extortion in co-perpetration as per Article 267 paragraphs 1 and 2 as read with Article 23 of the CCK, because in Pejë/Peć between November 2009 and 28 February 2010, acting as a group with the intent to obtain an unlawful material gain, they took immediate action to compel E.L. to give them 150.000 Euros by threatening the middleman N.H.

Therefore, the punishments for M.D. and B.M. were modified to three (3) years of imprisonment each and the punishment for A.V. was modified into two years of imprisonment.

Acting upon the Request for Protection of Legality filed by the Defence Counsel of A.V. Av. G.K. on 22 October 2012 and supplemented on 29 January 2013, as well as supported by supplemental brief of the Defense Counsels of A.V. Av. L.S. and Av. B.L. filed on 3 September 2013, and upon Request for Protection of Legality on 4 December 2012 filed jointly by Defense Counsels Av. Z.B. and Av. Z.B. on behalf of the defendants M.D. D. and B.M. directed against the Verdict of the District Court of Pejë/Peć, dated 16 December 2010 (P.No.128/10) and the Judgment of the Supreme Court of Kosovo, dated 11 May 2012 (Ap.-Kz. No. 28/2011),

Issues the following

JUDGMENT

The Request for Protection of Legality filed on behalf of the defendant A.V. and the joint Request for Protection of Legality filed on behalf of the defendants B.M. and M.D. against the Judgment P. 128/2010 of the District Court of Pejë/Peć, dated 16 September 2010, and the Judgment AP.-KŽ. 28/2011 of the Supreme Court of Kosovo, dated 11 May 2012, are hereby REJECTED AS UNFOUNDED.

REASONING

I. Procedural Background

On 29 March 2010 the District Public Prosecutor in Peja/Pec filed an indictment (PP.no.84/2010) against M.D., B.M. and A.V. accusing them for the commission of the criminal offense of Extortion in violation of Article 267 paragraph 2 of the CCK. According to the prosecutor, the three defendants, acting as a group, extorted E.L. to pay them the amount of 150.000 Euros in order to allow him to freely buy a hotel he had provided the highest bid for.

The indictment was confirmed by the Confirmation Judge at the District Court of Pejë/Peć on 29 April 2010.

The Bid Deposit and the amount of 25% of bid as already paid by E.L. in advance and pursuant to the Rules of Tender of the Privatization Agency of Kosovo (PAK) were subsequently returned by PAK to the E.L. Company of E.L.

The main trial hearings commenced through seven sessions on the 4, 5, 12, 24 and 25 August as well as on 15 and 16 September 2010 and the following evidence was assessed by the Court:

the injured party F.L. witnesses NoH KeB A.Z.
F.Z. NoKo and A.E. the police report dated 21 November
 2009, case number 2009-DA-3199, the police report dated 22 December 2009, case
 number as above; the police report dated 22 February 2010, case number 2010-DA-436;
 the criminal report dated 2 March 2010, case number 2010-DA-436; the Official
 Memorandum of the Regional Investigation Unit, dated 5 March 2010, ref. no.
 HE/PE-06/2010; the Request of the Privatization Agency of Kosovo (PAK) for General
 Investigative Information, dated 8 March 2010; several documents related to the
 privatization procedure of the H in Banja e Pejes provided to the panel by the
 witness KeB., on 12 August 2010; documents and a CD containing the
 privatization procedure of the Hotel in Banja e Pejes acquired by the police from
 the PAK, based on the order issued by the panel on 16 August 2010; police report on
 metering of telephone and SMS, case no. 2010-DA-436, dated 6 September 2010;
 telephone listings and SMS content for the numbers: owned by A.
Vo owned by P.M. owned by M.
D. and owned by NoHo owned by
E.K. and owned by A.E. for the period of time between 1
 November 2009 and 1 March 2010; the police report on financial disclosure, case no.
 2010-DA-436, 8 September 2010; the financial disclosure of the bank accounts of F.
Z. ShPK, E.L. and NoH. the partnership agreement
 between A.E. and M.D. dated 20 October 2009 as well as the the
 statements given by the three defendants during the main trial on 25 August and 15
 September 2010.

As a result, the District Court of Pejë/Peć decided as outlined before.

Upon appeal of the defendants through their respective Defence Counsels, the Supreme
 Court of Kosovo – having re-assessed the case - issued its Judgment (AP-Kz- 28/2012)
 on 11 May 2012 and decided as previously described.

Against both verdicts, Requests for Protection of Legality were timely filed by the
 Defence Counsels Av. Z.B. and Av. Z.B. on behalf of defendants
M.D. and B.M.; on 4 December 2012, and by Defence
 Counsel Av. G.K. on behalf of the defendant A.V., dated 16
 October 2012 and supplemented on 17 January 2013 as well as supplemented by Defence
 Counsels Av. L.S. and Av. B.T. on 30 August 2013. Defence
 Counsels jointly claim essential violations of the criminal procedure by both verdicts and
 propose the Supreme Court to annul both previous decisions and either send the case
 back for re-trial or acquit the defendants from all charges.

On 28 January 2013, the Office of the State Prosecutor of Kosovo (OSPK) submitted a
 reply to the requests of the Defence for Protection of Legality as well as – regarding the
 ‘Supplemental Brief’ of Av. S., and Av. To – on 04 September 2013 a
 supplemental motion, proposing to reject all Requests for Protection of Legality as
 unfounded and affirm the challenged Judgments in their entirety.

II. Supreme Court Findings

1. Admissibility of the Requests for Protection of Legality

All Requests for Protection of Legality are admissible. They were filed with the competent court pursuant to Article 453 of the KCCP and within the deadline of Article 452 paragraph 3 of the KCCP. Although the document submitted by the Defence Counsels of defendant / *A.V.* and dated 30 August 2013 contains precise own motions of the Defence, the Supreme Court of Kosovo understands that this document, which is headlined as 'Supplemental Brief to the Petition for Protection of Legality' as filed by the defendant, provides just additional reasoning under the request of the defendant, but does not have the quality of a separate Request for Protection of Legality of the Defence.

2. Procedures followed by the Supreme Court

The Supreme Court panel has decided in a session as described by Article 454 of the KCCP.

3. On the merits of the Request for Protection of Legality

The Request for Protection of Legality is unfounded.

Alleged violations of Article 403 of the KCCP

All Defence Counsels in their submissions allege violations of the criminal procedure, in that there would be evidence through several witnesses that the defendant / *A.V.* had had no role in the indicted crime or was not even personally known to the other defendants or the middleman / *Noti* or that – also according to witness statements – the behaviour of the other two defendants would not meet conditions of threat or force against *EoL*.

Moreover, Defence Counsels Av. / *LoS* and Av. / *B.I.* on behalf of the defendant *A.V.* have stressed that / *E.L.* described a 'U-turn' when stating in front of the court, but that the first instance panel had assessed all evidence exclusively to the detriment of the defendant.

The Supreme Court finds that the allegations of the Defence do not match the requirements of procedural violations of the District Court of Pejë/Peć. The first instance Verdict in particular is not inconsistent in itself or in contradiction with its reasoning.

The Supreme Court of Kosovo finds that the first instance Court has conducted a very thorough assessment of all evidence available and that – besides all this – all the considered evidence was admissible at the time when it was taken and in accordance with the then applicable KCCP. As a logical consequence of this assessment, the District Court of Pejë/Peć has then arrived to the guilty finds and imposed punishments as described before.

The first instance Appeals Panel of the Supreme Court has seen this as well and therefore – after proper discussion of all relevant aspects of the case – modified the first instance Judgment but – basically – confirmed the guilty finds.

The Supreme Court of Kosovo finds that the allegations of the Defence – although they all claim violation of the criminal procedure – in reality refer to an erroneous determination of the factual situation by the District Court.

With regards to the current stage of proceedings, reference is made to Article 451 paragraph 2 of the KCCP, according to which the Supreme Court will not re-assess aspects of erroneous establishment of the facts. Given the thorough assessment of evidence as carried out by the District Court, there is also no room for Article 458 of the KCCP, according to which the Supreme Court shall annul previous judgments and order a new main trial, if in proceedings on request for protection of legality *'considerable doubt arises as to the accuracy of the factual determination in a decision, challenged by the request'*. The Supreme Court of Kosovo finds that there is no such *'considerable doubt'* in the case at hand. It is up to the first instance court to assess the evidence and arrive to an opinion of what has happened when a crime was committed. This is what the District Court of Pejë/Peć has properly done.

Under these circumstances it can be left open, whether or not the arguments submitted by Defence Counsels Av. Loš and Av. BeTo in behalf of the defendant, AV could still be taken into consideration because the submission of additional arguments at a later stage should be allowed, or if they need to be rejected as belated, given that the referred submission was filed on 30 August 2013, whereas the deadline for submission of a request for protection of legality has expired already in 2012.

III. Conclusion of the Supreme Court of Kosovo

For the abovementioned reasons, the Supreme Court concludes that the Requests for Protection of Legality are rejected as unfounded.

Consequently, the Supreme Court of Kosovo decides on the Requests for Protection of Legality as in the enacting clause, based on Article 456 KCCP.

Presiding Judge:



Gerrit-Marc Sprenger
EULEX Judge

Recording Officer:

Holger Engelmann
Legal Officer

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