

SUPREME COURT OF KOSOVO

PML 117/2014

Basic Court Case Number
Ppr 11/2013

23 June 2014

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Dag Brathole as Presiding Judge, and EULEX Judge Esma Erterzi and Supreme Court Judge Nesrin Lushta as panel members, assisted by EULEX Legal Officer Natalie Dawson acting in the capacity of recording clerk,

In the criminal case against:

N. V.

Suspected of the criminal offences of:

Aggravated Murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to article 179(1.10) in conjunction with article 31 of the Criminal Code of Kosovo, and criminalised further at the time of commission of the offence under article 30(2) of the CLSAPK in conjunction with article 22 of the CCSFRY;

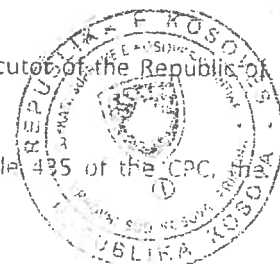
Attempted Aggravated Murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, resulting in grievous bodily injury in co-perpetration, pursuant to articles 179(1.10) and 189(2) in conjunction with articles 28, 31 and 189(2.1) and(5) of the CCK and criminalised also in the time of the commission of the offence under article 30(2) and article 38(2) of the CLSAPK in conjunction with article 19 and 22 of the CCSFRY;

Attempted Aggravated Murder in the form of *depriving another person of his or her life because of national motives* in co-perpetration, pursuant to article 179(1.10) in conjunction with articles 28 and 31 of the Criminal Code of Kosovo, and criminalised further at the time of commission of the offence under article 30(2) of the CLSAPK in conjunction with articles 19 and 22 of the CCSFRY

Deciding upon a **Request for Protection of Legality** filed by Defence Counsel on behalf of *N. V.* on 5 May 2014;

Taking into account the opinion of the Office of the State Prosecutor of the Republic of Kosovo (OSPK) filed on 12 June 2014;

Following the deliberation and voting, in accordance with Article 435 of the CPC, the Supreme Court issues the following:



JUDGMENT

1. The Request for Protection of Legality filed by *K. V.* is APPROVED.
2. The Rulings of the Court of Appeals on 20 April 2014 and 26 April 2014 are ANNULLED and the case is RETURNED to the Court of Appeals for a further decision.

REASONING

Procedural History:

1. Procedural Background

- a. The criminal investigation was initiated on 21 February 2013 by a Ruling of Initiation of Investigation. The investigation was expanded to include this Defendant *V.* on 10 March 2014.
- b. On 15 April 2014 the Defendant was arrested and brought before the Pre-Trial Judge for a detention hearing.
- c. The Pre-Trial Judge ordered detention on remand for a period of one (1) month, to expire on 15 May 2014.
On 17 April the Defendant himself filed an appeal against this Ruling.
- d. On 20 April 2014 the Court of Appeals rejected this appeal and affirmed the Ruling of the Pre-Trial Judge.
- e. On 18 April 2014, the Defence Counsel filed an appeal via post on behalf of the Defendant which was received by the Basic Court of Mitrovicë/a on 22 April 2014.
- f. On 26 April 2014, the Court of Appeals issued a Ruling dismissing the appeal of the Defence Counsel as inadmissible..
- g. On 5 May 2014, the Defence Counsel filed a Request for Protection of Legality against the ruling of Pre-trial Judge in Basic Court of Mitrovicë/a, dated 15 April 2014, and the rulings of the Court of Appeal in Prishtina, dated 20 April 2014 and 26 April 2014 mentioned above.
- h. On 9 June 2014, the Request for Protection of Legality was served on the State Prosecutor, who filed a reply on 12 June 2014.

2. Submissions of the Parties

The Defence

- a. Grounded suspicion is not established in the Ruling of the Basic Court, nor indeed by the Court of Appeals.

The Court of Appeals, on 26 April 2014, was wrong to reject the appeal filed by Defence Counsel on 22 April 2014. The fact that the Court of Appeals has previously decided on an appeal filed by the Defendant does not mean it should not review an appeal filed later by Counsel on behalf of the Defendant. The Court



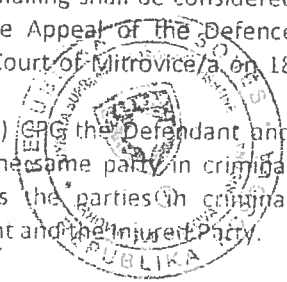
of Appeals was obliged to decide on both appeals with the same Ruling, as opposed to two separate Rulings, in relation to the appeals filed by the Defendant and the Defence Counsel.

The Appellate Prosecutor

- a. The Basic Court gave sufficient reasoning for its decision to impose detention on remand on this Defendant.
- b. The Court of Appeals addressed all the arguments raised by the Defendant in his appeal.
- c. Pursuant to article 61(1) CPC the Defence Counsel has the same rights as the Defendant in this regard, and pursuant to article 189(3) CPC each party may file an appeal within 24 hours of being served with the challenged Ruling.
- d. The Defence Counsel therefore did not have the right to appeal separate from the Defendant himself, and the Court of Appeals had already decided upon the Appeal filed by the Defendant.
- e. Therefore the Court of Appeals did not violate the provisions of criminal procedure.
- f. The challenged Rulings should be affirmed and the Request for Protection of Legality rejected.

2. Findings of the Court:

- a. The Request for Protection of Legality is admissible and timely filed.
- b. The Panel considered carefully the actions taken by the Court of Appeals in this case.
- c. The Ruling of the Basic Court of Mitrovicé/a of 15 April 2014 was served on the Defendant on 17 April 2014. There is no evidence of the date on which the Ruling was served on the Defence Counsel. Pursuant to article 189(2) CPC it must be served on both the Defendant and the Defence Counsel separately.
- d. The Defendant made the decision to compose and file his own Appeal. This was received by the Basic Court on 17 April 2014. The Appeal was received by the Court of Appeals on 19 April 2014.
- e. Pursuant to the procedure set down in article 189(3) CPC, the Court of Appeals held a deliberation on this appeal on 20 April 2014.
- f. A further Appeal was filed by Defence Counsel on behalf of the Defendant. This Appeal was posted to the Basic Court of Mitrovicé/a on 18 April 2014. It received by the Basic Court of Mitrovicé/a on 22 April 2014, and the Court of Appeals on 25 April 2014. Pursuant to article 445(3) CPC the date of mailing shall be considered the date of service of the Appeal, and therefore the Appeal of the Defence Counsel is deemed to have been served on the Basic Court of Mitrovicé/a on 18 April 2014.
- g. The Panel acknowledges that pursuant to article 61(1) CPC the Defendant and Defence Counsel are deemed to constitute one and the same party in criminal proceedings, and that article 19(1)(1.15) CPC defines the parties in criminal proceedings as being the State Prosecutor, the Defendant and the Injured Party.



- h. In holding the deliberation on the Defendant's Appeal on 22 April 2014, the Court of Appeals followed the procedure set down by the CPC. The Panel acknowledges that, the Appeal of the Defence Counsel having not yet been received by the Basic Court of Mitrovicë/a, the Court of Appeals could not have known of its existence, or the intention of the Defence Counsel to file an Appeal, when it held its deliberation. The Court of Appeals was obliged to follow the procedure set down in article 189(3) CPC, and it did so.
- i. Notwithstanding this, article 398(3) CPC is clear that the Court of Appeals shall determine all appeals of the same judgment by a single decision. Therefore the Panel concludes that, all things being equal, the Court of Appeals should have deliberated upon both the Appeal filed by the Defendant himself, and that filed by the Defence Counsel on behalf of the Defendant, in the same deliberation, and issued one Ruling on both Appeals.
- j. The Panel therefore notes that the chain of events and the procedural requirements of the CPC placed the Court of Appeals in a position in which it would inevitably violate a rule of procedure in criminal proceedings whatever action it took. A violation of the criminal procedural law has therefore taken place in any event.
- k. The Panel concludes, in deciding what action it should take, that the Defendant's basic rights, including the right to defence counsel, must prevail. The Defendant's right to be heard is fundamental. Therefore, on balance, the Panel finds that the Rulings of 20 April 2014 and 26 April 2014 should be annulled and the case returned to the Court of Appeals with the intention that one deliberation takes place to consider both Appeals together.
- l. In the interim, the status quo should prevail. The Defendant should remain in detention on remand until a further decision is taken by the Court of Appeals.

Presiding Judge:

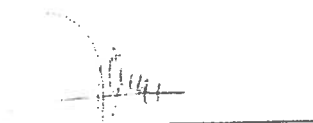


Dag Brathole
EULEX Judge

Recording Officer:



Natalie Dawson
EULEX Legal Officer



Esma Erterzi
EULEX Judge



Nesrin Lushta
Supreme Court Judge

SUPREME COURT OF KOSOVO

PML 117/2014

23 June 2014