SUPREME COURT

Case number: **Pml.Kzz 157/2014**
(P. No. 371/2010 District Court of Pristina)
(PAKR 1175/2012 Court of Appeals)

Date: **2 October 2014**

The Supreme Court of Kosovo, in a Panel composed of EULEX Judge Esma Erterzi (Presiding and Reporting), and EULEX Judge Timo Vuojolahti and Supreme Court Judge Salih Toplica as Panel members, and EULEX Legal Officer Kerry Kirsten Moyes as the Recording Officer, in the criminal case number P. No. 371/2010 of the (then) District Court of Pristina against:

> **FG**, Kosovo Albanian, Kosovo citizenship, arrested on 13 July 2010, in house detention from 14 July 2010 to 19 August 2010 and in detention on remand since 19 August 2010;

Indicted and found guilty of the criminal offence of **War Crime against the Civilian Population**, pursuant to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), in violation of Article 3 common to the four Geneva Conventions of 12 August 1949, and of Article 4 of Protocol II of 8 June 1977, Additional to the 1949 Conventions;

acting upon **the Request for Protection of Legality** filed by Defence Counsel Tahir Rrecaj on 5 June 2014 on behalf of the defendant against the Judgment of the (then) District Court of Pristina dated 23 November 2011 in this case, and the Judgment of the Court of Appeals dated 10 February 2014;

having considered the Response to the Request filed by the State Prosecutor KMLP 113/14 on 25 July 2014;

having deliberated and voted on 2 October 2014;

pursuant to Articles 418 and Articles 432-441 of the Criminal Procedure Code (CPC)

renders the following

JUDGMENT

The Request for Protection of Legality filed by Defence Counsel Tahir Rrecaj on 5 June 2014 on behalf of the defendant against the Judgment of the (then) District Court of Pristina dated 23 November 2011 and the Judgment of the Court of Appeals dated 10 February 2014 is partially granted. The enacting clause of the Judgment of the Court of Appeals is amended to add the following to paragraph 2: The time spent by the defendant FG in house detention from 14 July 2010 until 18 August 2010, and in detention on remand since 19 August 2010, is to be credited in the amount of the punishment, pursuant to Article 50 Paragraph 1 of the CC SFRY. The remainder of the Request is rejected as unfounded.

REASONING

1. **Procedural background**

1.1. On 5 November 2010 an Indictment was filed against the defendant and **HR**, charging the defendant with the criminal offence of War Crime against Civilian Population pursuant to Articles 22 and 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY). The Indictment was confirmed by a Ruling of the District Court of Pristina dated 21 December 2010. The main trial was held between 15 March 2011 and 22 November 2011. On 23 November 2011 the verdict was announced.

1.2. The defendant was found guilty of the criminal offence of War Crime against Civilian Population because on 15 June 1999 at around 21.30 during the internal armed conflict in Kosovo, in his capacity as Kosovo Liberation Army (KLA) member and in co-perpetration with **NB** killed a civilian **SG** in his home. He was sentenced to eighteen (18) years of imprisonment, with the time spent in house detention and in detention on remand to be credited.

1.3. On 16 May 2012 Defence Counsel Tahir Rrecaj filed an appeal on behalf of the defendant, proposing that the defendant be either acquitted or the case returned to the first instance court for retrial. The Appellate Prosecutor filed a response on 11 January 2013, proposing that the Court of Appeals reject the appeal as unfounded and affirm the Judgment of the First Instance Court. The Court of Appeals partially granted the appeal by modifying the Judgment of the District Court to sentence the defendant to fourteen (14) years of imprisonment.

1.4. A Request for Protection of Legality was filed by Defence Counsel Tahir Rrecaj on 5 June 2014 on behalf of the defendant, and a Response to the Request was filed by the State Prosecutor on 25 July 2014. Both are timely.

2. **Submissions by the Parties**

2.1. Defence Counsel states that there has been violation of the criminal law, Article 404

paragraph 1 sub paragraph 4 and paragraph 6 of the CPC, in conjunction with Article 142 and 22 of the CPC, and essential violation of provisions of the criminal procedure, Article 403 paragraph1 sub paragraphs 3, 8, 12 and paragraph 2 subparagraph 1 and 2 of the CPC.

a. Defence Counsel submits that the legal qualification of the criminal offence is erroneous as the war in Kosovo ended on 9 June 1999, as this is the date of the Peace Agreement. Factually and legally, the war was over at the time the murder occurred.

b. The Appellate Court did not calculate the time the defendant spent under house arrest and in detention in the imposed sentence.

c. The written Judgment of the First Instance Court was served on the defence on 9 May 2012, a delay of 6 months, in violation of Article 403 of the CPC and Article 6 of the European Convention on Human Rights. Further, the Court of Appeals violated the right to a trial within a reasonable time by having 'forgot' the defence appeal filed against the Judgment of the First Instance Court.

d. The Court of Appeals also violated Article 356 of the CPC by holding a Panel session although the defendant was suffering a serious mental illness. He also has serious physical health problems. This being so, under Article 412 of the CPC, the Court of Appeals should have either held a trial session or ordered a medical expertise to establish his mental state or annul the Judgment of the First Instance Court and return the matter for retrial.

e. The enacting clause of the impugned Judgment is incomprehensible and in contradiction with its content and reasoning. It does not contain reasoning as to decisive facts or address the contradictory evidence.

f. The First Instance Court violated Article 371.1 of the CPC as it heard the defendant before the defence witness **BD**. It is irrelevant that the defence agreed to this. The Article is also violated as the Court did not make the defendant **HR** leave the courtroom while the defendant **FG** was questioned. Defence Counsel disagrees with the Court of Appeals that this violation was not so serious as to warrant an annulment of the First Instance Judgment.

g. The First Instance Court based its Judgment wholly on the evidence of the cooperative witness **NB**, in violation of Article 157 (4) of the CPC. The defence requested that some of this witness' statement be declared as inadmissible, but these requests were simply ignored. The statements are inadmissible as the status of **NB** changed from being a defendant to being a witness.

h. The Order announcing **NB** to be a cooperative witness was not served on the defendant as per Article 302 of the CPC, and so they were denied the right to challenge the order.

Defence Counsel disagrees with the Court of Appeals that there is no right to appeal this order, as it was made by a Ruling of the Pre-Trial Judge and Article 431 paragraph 1 of the CPC states that an appeal against a Ruling of a Pre-Trial Judge may be filed by parties whose rights have been violated unless an appeal is explicitly prohibited.

i. The EULEX police used the prohibited methods of coercion and threats towards **HR** to change his status from that of a witness to that of a suspect. The same methods were employed by the Public Prosecutor in the investigations stage, to change his status from suspect to defendant to intentionally obstruct him from giving evidence in support of the defendant **FG**.

j. The Indictment was confirmed in contradiction with the provision of Article 313 paragraph 2 of the CPC as the parties were not present at the session or notified about it.

k. The Court of First Instance permitted the Prosecutor to put suggestive and leading questions, and repeating the same question, to the cooperative witness and other Prosecution witnesses. The Prosecutor also brought the cooperative witness back into Court two more times for him to correct his previous statements. He also obstructed and misled the defence in their questions, and constantly interfered with the defence. The Prosecutor was also permitted to order that witnesses who had not answered the court summons were brought to Court by force.

l. The Trial Panel violated the rules on the admissibility of evidence as the Prosecutor was allowed to use as evidence the statements of some witnesses that the Prosecutor had heard during the main trial.

m. Regarding the factual situation, the Court of Appeals erroneously accepted the assessment of the First Instance Court regarding the defendant's alibi. The Court also did not examine many witnesses proposed by the defence but never issued any Ruling.

n. The statement in the Judgment that all material in the case was admissible, and that the material was administered in the course of the hearings, does not stand. The Panel did not issue any Ruling to declare evidence admissible or not, neither did the Court issue a Ruling accepting or dismissing the defence proposal to hear a number of witnesses and to administer as evidence hundreds of threatening message sent from **NB** to the defendant and others.

o. The Court of Appeals did not review the appeal of the defence in its entirety with regards to the factual situation, which the defence submitted is erroneous and incomplete. Paragraphs 88 to 165 of Defence Counsel's Request for Protection of Legality are a repeat of the submissions that he made in his appeal on this issue.

Defence Counsel proposes that the impugned Judgments are amended to acquit his client, or that they are annulled and the matter returned for a retrial.

2.6. The State Prosecutor moves the Supreme Court to assess whether the right of the accused person to follow the course of the criminal proceedings during the session held on 10 February 2014 was violated, and if not to credit in the punishment the time spent in detention on remand and to reject all other grounds for Protection of Legality as unfounded and to affirm the challenged Judgments. The Prosecutor notes that most of the claims raised in the Request for Protection of Legality were raised in the appeal.

a. The Prosecutor agrees with the assessment given in the First Instance Judgment regarding the continued existence of an internal armed conflict at the time of the criminal conduct.

b. The enacting clause of the Court of Appeals Judgment should be modified to add that the time spent in detention is credited in the defendant's sentence.

c. The delays that Defence Counsel complains of did not influence the rendering of a lawful and proper Judgment as per Article 403 paragraph 2 of the KCCP, and no explanation or proof of this has been offered.

d. The Prosecutor observes from the minutes of the Court of Appeals session that the defendant did not react to the questions posed by the Presiding Judge, and Defence Counsel was not able to discuss matters with the defendant during the appeal. However, Defence Counsel stated that there were no impediments to continue the session and the Presiding Judge, based on the procedural provision that the presence of the parties is not mandatory during the session of the appeal, ordered the continuation of the session.

e. The enacting clauses of the challenged Judgments contain all the requirements foreseen in law, containing the act of which the defendant has been found guilty, and the facts and circumstances.

f. The examination of the witness **BD** was requested by Defence Counsel of the defendant, and he also agreed with the proposal of the Presiding Judge to examine the defendant before the witness. Article 371 paragraph 1 of the KCCP was not violated when **HR** was present during the examination of **FG** and before his examination. Defence Counsel does not provide any ground for believing that the above mentioned violation influence or might have influenced the rendering of a lawful and proper Judgment, having in mind that **HR** stood by his previous statements and refused to be examined at trial.

g. There was no violation of Article 157 paragraph 4 of the KCCP as the statements of the cooperative witness have been corroborated by direct and circumstantial evidence

presented by the Public Prosecutor, and assessed by the First Instance Court. Defence Counsel claims violation of Article 153 paragraph 2 and Article 154 paragraph 4 of the KCCP by the First Instance Court in allowing the parties to refer to the statements given by **NB** during the investigations as suspect or defendant and based its decision on inadmissible evidence. The Prosecutor should have re-interviewed **NB** on all the circumstances of the criminal offence after he became a cooperative witness. The Prosecutor notes that the Court of Appeals did not address this violation. However, Defence Counsel does not indicate the legal provision to support his view. **NB** was interviewed in accordance with the status he had at the time; suspect, then defendant, then a cooperative witness. The procedures followed respected the KCCP provisions, and Defence Counsel has not provided any legal provision which prescribes the inadmissibility of the evidence in such a case, or the legal provision which expressly prescribes the obligation to re-interview those who become cooperative witnesses.

h. Article 302 of the KCCP states that the defence has to receive a copy of the Order declaring a person a cooperative witness prior to the main trial. The Prosecutor notes that the defence was provided with a copy of the Order at the Confirmation hearing on 25 November 2010. Such an order is not subject to appeal.

i. The Prosecutor notes that Defence Counsel has repeated low allegations regarding the police and Public Prosecutor changing the status of **HR** by prohibited methods such as coercion and threats. Article 220 paragraph 4 imposes on the investigating authorities a specific duty to treat any person as defendant in case during the gathering of information they obtain knowledge that the person has committed a criminal offence which is prosecuted ex officio.

j. The Confirmation hearing was held on 25 November 2010, at which Defence Counsel was present. On 21 December 2010 the Confirmation Judge issued the Ruling confirming the Indictment. The Prosecutor concludes that there was no hearing on 21 December 2010. Parties were informed by the written Ruling of the right of the parties to appeal, and Defence Counsel did not.

k. The Prosecutor's request to call back **NB** to testify was granted by the Panel and not opposed by Defence Counsel. This was based on the need to clarify some issues and confront him with the statements given by other witnesses. The Public Prosecutor interrupted the Defence Counsel only to raise objections to the way in which the interview of the witness was being conducted. The Panel asked the Prosecutor to intervene to have the witnesses picked up by the police. The Panel stated, in answer to the matter being raised by Defence Counsel, that it was their official request to have the witnesses brought in with the help of the police, intermediated by the Public Prosecutor, and there is no violation of the law.

l. Regarding the Trial Panel allowing the Prosecutor to use witnesses' statements collected by the Prosecutor during the main trial as evidence at trial, the Prosecutor notes that no

provision of the Code forbids post-indictment investigations, and no provision of the Code prevents the Prosecutor from interviewing witnesses proposed by the defence.

m. The First Instance Court thoroughly assessed the documents submitted by the parties in support of the defendant's alibi, and heard a number of witnesses. The Court gave comprehensive reasoning why it attached or did not attach any weight to such testimonies and to the alibi provided by the defendant.

n. The State Prosecutor notes that during the trial the parties were allowed to present evidence and propose the Court to collect additional evidence as the result of the hearing of the witnesses. The Court issued Rulings deciding on the defence's proposals to hear some witnesses, and some items were returned to the defence as inadmissible evidence.

o. The Prosecutor disagrees with Defence Counsel's claims that the assessment of the credibility of **NB**'s statements is self-contradictory. Defence Counsel does not put forward any concrete argument to show that the findings of the Court are incorrect and limits himself to asserting that they are erroneous. The Court of Appeals correctly gave the Trial Court a margin of the deference in reaching its factual findings as those findings are fully reasonable and exempt from censure. The Defence Counsel's claim that the impugned Judgments do not contain a proper assessment of the factual situation is simply his disagreement with the factual findings of the Panel. A challenge on these grounds is not permitted under Article 451 paragraph 2 of the KCCP.

3. Findings of the Panel

3.1. The Request for Protection of Legality by the Defense Counsel and the Response by the State Prosecutor are admissible and timely filed.

3.2. The Supreme Court notes that Defense Counsel raises a number of issues with the evaluation of the evidence by the District Court, particularly that of the cooperative witness. Defense Counsel is reminded that Requests for Protection of Legality may be filed on the ground of a violation of the criminal law, on the ground of certain substantial violations of the provisions of the criminal procedure, or if there is any other violation of the provisions of the criminal procedure that has affected the lawfulness of the judicial decision. A Request may not be filed on the ground of erroneous or incomplete determination of the factual situation (Article 432 of the CPC). The Supreme Court concurs with the State Prosecutor that the content of the Request is largely a repetition of the Appeal against the First Instance Judgment. It is a widely spread and unfortunate tendency among many Defense Counsels to try to use the Request for Protection of Legality as a second Appeal, which it is not supposed to be.

3.3. Generally, Defense Counsel claims that both Judgments did not clearly and fully indicate what facts and for what reasons were found to be true, or that they are incomprehensible or contradictory. The Supreme Court completely disagrees with these submissions. The

Judgement of the District Court is very thorough and clear as to what exactly has been found as proven – again, this is detailed in a completely comprehensible manner. The Court of Appeals Judgment is equally articulate in its Reasoning and entirely clear as to its Findings. Nor can the Supreme Court identify any contradictions between the enacting clause and the Reasoning in either Judgment. Therefore the Panel, referring to the reasoning of the factual situation in the District Court's Judgment and without any further reason to analyse in a more detailed way, does not find any violations of the rules in Article 403 (1) item 12 of the KCCP/Article 384 (1) item12 of the CPC as alleged in the Requests.

3.4. Regarding the credit for time spent in detention on remand, the Supreme Court considers that it was the intention of the Court of Appeals to modify the period of imprisonment from eighteen (18) years to fourteen (14) years, but that the credit as per the enacting clause in the Judgment of the District Court was unaltered and should be considered as remaining extant. However, to avoid uncertainty, the Request for Protection of Legality is partially granted to add it to the enacting clause of the Judgment of the Court of Appeals.

3.5. Defense Counsel has claimed that the internal armed conflict had ended when the offence was committed, and therefore it cannot be qualified as a War Crime. The Panel agrees with the detailed reasoning of the District Court on this point, and also notes that much of the case law cited by Defense Counsel is concerned with challenges to the existence of a non-international armed conflict, rather than determining the dates that it began and ended. The ICTY and the Supreme Court of Kosovo have on multiple occasions affirmed an ongoing non-international armed conflict in Kosovo at least since early spring 1998 onwards between the (governmental) Serbian armed forces and the KLA, continuing into 1999.[1] The ICTY Trial Chamber in *Milutinović* and *Đorđević* explicitly held that the armed conflict continued until June 1999.[2] Yet, in those documents no specific reference is made as a date marking the end of the armed conflict, but only to the month as June 1999. However, regardless of the signature of the Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia on 9th June 1999, stipulating that the forces would be withdrawn within 11 days, the issue to consider is whether there were armed forces in the country, attacks or clashes even after 9 June 1999. It is known that on 20 June 1999 FRY forces were certified as being out of Kosovo and NATO declared a formal end to its bombing campaign against the FRY. On 21 June 1999 KFOR and the KLA concluded a Demilitarization Agreement whereby the KLA undertook to cease hostilities immediately and to demilitarize itself within 90 days. The FRY officially lifted the state of war on 26 June 1999. In this regard, Supreme Court recalls the provision of Article 3.1 of the UNMIK Regulation No 2006/50 which explicitly refers to a timeframe of the armed conflict as 'that occurred between 27 February 1998 and 20 June 1999'. Accordingly, the Supreme Court considers that 15 June 1999 falls within the period of armed conflict in Kosovo.

[1] See e.g. *Prosecutor* v. *Milan Milutinović*, ICTY, Trial Judgment, 26 February.2009, Volume 1 of Judgment, paragraphs 840-841; *Prosecutor* v. *Vlastimir Đorđević*, ICTY, Trial Judgment, 23 February 2011 para. 1579.
[2] *Ibid*.

With regard to the time when the alleged criminal offence occurred, the existence of an internal armed conflict between the KLA and the Serbian forces has been established also by the Supreme Court of Kosovo in the *K* Decision of 5 August 2004 and in the *LG* Decision of 21 July 2005.[3] The Panel therefore does not consider there to have been a violation regarding the qualification of the offence.

3.6. Defense Counsel claims that he was not given a copy of the Order declaring **NB** a cooperative witness prior to the main trials per Article 302 of the KCCP. The Prosecutor claims that Defense Counsel was provided with a copy of the Order during the hearing on 25 November 2010. The Panel has reviewed the minutes of the hearing, and it is clear that the issue of the Order was raised by Defense Counsel that day, and that the Order was copied and given to him. The requirements of Article 302 were therefore met. Defense Counsel has also raised the issue as to whether or not an appeal against such an Order is available. The provisions regarding Cooperative witness begins at Article 298 of the KCCP, which state that such an Order can be 'revoked' by a three Judge Panel in certain conditions as per Article 301 (and which do not include on the application of the defendant or Defence Counsel). Nowhere does it detail a procedure for such an Order to be appealed. The Panel therefore interprets the provisions in the same way as the Prosecutor and the Court of Appeals, in that an appeal against an Order declaring a person to be a Cooperative Witness is not foreseen in the KCCP, and that therefore there has been no violation of criminal procedure.

3.7. It is equally clear that the hearing of 25 November 2010, at which the defendant and Defense Counsel was present, was the Hearing on the Confirmation of the Indictment. As the Defense Counsel wished for time to consider the Order declaring **NB** a co-operative witness, the Confirmation Judge allowed him until the following week to make written statements. There was no hearing on 21 December 2010. The confusion seems to have arisen as the Confirmation Judge dated his Ruling on Confirmation 21 December 2010 rather than 25 November 2010. There has therefore been no violation of criminal procedure.

3.8. It is clearly impossible for the Supreme Court to now speculate on what the state of the defendant's mental health may have been during the main trial before the District Court. Nor are there any indications that the defendant did not fully participate in his defence, or that there were any issues with him communicating with his Defense Counsel, who did not raise any concerns at the time. Regarding the Court of Appeals session, the Panel notes Article 410 of the KCCP, and that it is clear that it is not mandatory for the defendant to be present. Paragraph 2 states that the accused can attend the session if he wishes, and paragraph 4 states that the Court of Appeals can hold the session even if those summonsed do not attend. As the minutes of the session make clear, at no time did Defense Counsel suggest that the session should not proceed, and in fact stated that there was no impediment to proceeding with the session that day. Otherwise, the Panel does not see how any subsequent decline in the mental (or physical) health of a defendant could affect the rendering of a lawful and proper Judgment.

[3] Decision of Supreme Court of Kosovo (K), AP-KZ 139/2003, 05.08.2004, p. 14 et seq; Decision of Supreme Court of Kosovo (LG), AP-KZ 139/2004, 21.07.2005, p. 9 et seq.

3.9. The Court of Appeals found a violation of Article 371 paragraph 3 (regarding **HR**), but that this is not serious enough to justify the annulment of the Judgment of the District Court as there is no ground to believe that this violation influenced the rendering of a lawful and proper Judgment. The Panel considers that the requirement that co-accused defendants shall not be present when the other or others are being examined at trial is relevant only when they are indicted with the same criminal offence or offences. It is clear that the point is to prevent each from being influenced in their evidence by hearing the evidence of their co-accused as to the account they give of the circumstances surrounding a particular criminal offence. Clearly the evidence will concern a particular time, place and event. However, in this case this defendant and his co-accused were indicted for different offences. **FG** was indicted for War Crimes whereas his co-accused **HR** was indicted for Providing Assistance to Perpetrators After the Commission of Criminal Offences. Therefore, in this case the provision becomes irrelevant, and as a result the Supreme Court finds that there has been no violation of criminal procedure.

3.10. The Court of Appeals noted that it was the defence which requested that the Trial Panel heard the defendant before a witness (**BD**), contrary to Article 371 paragraph 1. Defense Counsel now submits that this is a violation of criminal procedure. The Supreme Court considers that the requirement in Article 371 paragraph 1 is not an absolute rule. There are several provisions which allow for the possibility to hear witnesses at different points in the trial. For example, even upon completion of the evidentiary proceedings, so after the examination of the accused, the Presiding Judge shall ask the parties if they have any motions for supplementing the evidentiary proceedings (Article 374.1). The Panel finds no violation of criminal procedure, and no indication that the order of taking evidence affected the rendering of a lawful and proper Judgment.

3.11. The Supreme Court notes that there should be a separate Ruling by the Presiding Trial Judge on the issue of what evidence is admissible. It appears that this was not done, and that there was a violation of criminal procedure. However, the Panel finds that this was not a substantial violation. It is clear that the parties were permitted to propose to the Court the collection of additional evidence as the result of hearing the evidence of the witnesses. Rulings were issued on 5 August 2011 and 7 September 2011 on the defense's proposal to hear some witnesses, and on the 7 June 2011 items were returned to defense counsel as inadmissible evidence. Further, on 21 October 2011 the Presiding Trial Judge made clear what had been admitted and what had not been admitted. The Panel therefore concludes that Defense Counsel was not hampered in his ability to present the defence, and there is no indication that this affected the fairness of the trial, or influenced the rendering of a lawful and proper Judgment.

3.12. Defence Counsel repeats his allegations of threats and coercion by the police and Public Prosecutor and also takes issue with the behaviour of the Prosecutor during the trial. Defense Counsel also objects to investigations which are within the discretion of the Prosecutor. The conduct of the trial and of the advocates is a matter for the Presiding Judge, and the Supreme Court can detect no violation of criminal procedure. Defense Counsel raises again the issue of the transportation of the witnesses to the Court. It is clear from the minutes of the trial that this

was at the request of the Panel.

3.13. Regarding the delays the Defense Counsel experienced in receiving the written Judgment and in the determination of the appeal, the Supreme Court is mindful of the provisions of the KCCP, the Constitution of the Republic of Kosovo and Article 6 of the European Convention on Human Rights. The European Court of Human Rights (ECHR) has presented some guidance, though its jurisprudence, on the issue of the entitlement of everyone to a hearing with 'a reasonable time', as laid down in Article 6 (Right to a fair hearing), which states:

> '1. In the determination of … any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…'.

The ECHR has held that the period to which Article 6 is applicable covers the whole of the proceedings in question, to include appeal proceedings[1]. Where there is a conviction, there is no 'determination…of any criminal charge', within the meaning of Article 6, as long as the sentence is not definitively fixed[2]. Article 6 requires judicial proceedings to be expeditious, but it also lays down the more general principle of the proper administration of justice, and a fair balance has to be struck between the various aspects of this fundamental requirement[3]. When determining whether the duration of criminal proceedings has been reasonable, the ECHR has had regard to factors such as the complexity of the case, the applicant's conduct and the conduct of the relevant administrative and judicial authorities. Article 6 imposes the duty for judicial authorities to organise their judicial systems in such a way that their courts can meet each of its requirements[4].

The following are cases where the ECHR found that 'a reasonable time' had been exceeded:

> - 9 years and 7 months, without any particular complexity other than the number of people involved (35), despite the measures taken by the authorities to deal with the court's exceptional workload following a period of rioting[5].
> –13 years and 4 months, political troubles in the region and excessive workload for the courts, efforts by the State to improve the courts' working conditions not having begun until years later[6].
> –5 years, 5 months and 18 days, including 33 months between delivery of the judgment and production of the full written version by the judge responsible, without any adequate disciplinary measures being taken[7].

[1] *Delcourt v. Belgium*, 17 January 1970, Series A no. 11 §§ 25-26; *König v. Germany*, no. 6232/73, 28 June 1978, Series A no. 27 § 98; *V. v. the United Kingdom* [GC], no. 24888/94, ECHR 1999-IX § 109
[2] *Eckle v. Germany*, no.8130/78, 15 July 1982, series A no. 51 § 77; *Ringeisen v. Austria*, no. 2614/65, 16 July 1971, Series A no. 13 § 110; *V. v. the United Kingdom* [GC], *ibid*
[3] *Boddaert v. Belgium*, 12 October 1992, Series A no. 235-D § 39
[4] *Abdoella v. the Netherlands*, 25 November 1992, Series A no. 248-A §24; *Dobbertin v.France*, 25 February 1993, Series A no. 256-D § 44
[5] *Milasi v. Italy*, 25 June 1987, Series A no. 119 §§ 14-20
[6] *Baggetta v. Italy*, 25 June 1987, Series A no. 119 §§ 20-25

–5 years and 11 months, complexity of case on account of the number of people to be questioned and the technical nature of the documents for examination in a case of aggravated misappropriation, although this could not justify an investigation that had taken five years and two months; also, a number of periods of inactivity attributable to the authorities. Thus, while the length of the trial phase appeared reasonable, the investigation could not be said to have been conducted diligently[8].

–12 years, 7 months and 10 days, without any particular complexity or any tactics by the applicant to delay the proceedings, but including a period of two years and more than nine months between the lodging of the application with the administrative court and the receipt of the tax authorities' initial pleadings[9].

The following are cases where the ECHR found that 'a reasonable time' had not been exceeded:

– 5 years and 2 months, complexity of connected cases of fraud and fraudulent bankruptcy, with innumerable requests and appeals by the applicant not merely for his release, but also challenging most of the judges concerned and seeking the transfer of the proceedings to different jurisdictions[10].

– 7 years and 4 months: the fact that more than seven years had already elapsed since the laying of charges without their having been determined in a judgment convicting or acquitting the accused certainly indicated an exceptionally long period which in most cases should be regarded as in excess of what was reasonable; moreover, for 15 months the judge had not questioned any of the numerous co-accused or any witnesses or carried out any other duties; however, the case had been especially complex (number of charges and persons involved, international dimension entailing particular difficulties in enforcing requests for judicial assistance abroad etc.)[11].

3.14. In reviewing the overall time that the criminal proceedings in this case has taken, the Supreme Court concludes that, while regrettable and in violation of criminal procedure, the delays that this case has experienced do not amount to a violation of the right to a fair hearing under Article 6 of the European Convention on Human Rights. This is a complex and sensitive case, involving numerous documents which had to be assessed and translated, and included evidence from a large number of sessions and witnesses. Further, the Presiding Trial Judge demonstrated the appropriate sensitivity to the issue of delay by writing to the President of the District Court of Pristina on the subject. There are no indications that the lawfulness of either the decision of the District Court or that of the Court of Appeals was affected, or the defendant's entitlements as guaranteed by international conventions.

Conclusion

The Panel of the Supreme Court did not find any violations as foreseen in Article 432.1 of the CPC. Thus, the request shall be rejected.

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[7] *B. v. Austria*, 28 March 1990, Series A no. 175 §§ 48-55

[8] *Rouille v. France*, no. 50268/99, 6 January 2004 § 29

[9] *Clinique Mozart SARL v. France*, no. 46098/99, 8 June 2004 §§ 34-36

[10] *Ringeisen v. Austria*, no. 2614/65, 16 July 1971, Series A no. 13 § 110

[11] *Neumeister v. Austria*, 27 June 1968, Series A no. 8 § 21

Done in English, an authorised language.

Presiding Judge

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Esma Erterzi

EULEX Judge

Recording Officer

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Kerry Kirsten Moyes

EULEX Legal Officer

Panel members

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Timo Vuojolahti

EULEX Judge

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Salih Toplica

Supreme Court Judge