

BASIC COURT OF MITROVICĚ/MITROVICA
P. No. : 28/2016

31 August 2016

IN THE NAME OF THE PEOPLE

THE BASIC COURT OF MITROVICĚ/MITROVICA, with the EULEX-Judge René van Veen acting as a Single Trial Judge, and with the participation of EULEX Legal Officer Asja Zujo as the Recording Officer, in the criminal case P. No. 28/2016 against:

F.K., father's name: _____; mother's name and maiden name: _____; born on _____ in _____; nationality: _____; civil status: _____; profession: _____; current address: _____; ID-number: _____;

and

D.V., father's name: _____; mother's name and maiden name: _____; born on _____ in _____; nationality: _____; civil status: _____; profession: _____; current address: unknown address in _____; ID-number: _____;

Both indicted with the criminal offence of:

"Obstruction of evidence or official proceedings contrary to Article 394 paragraphs 1.7 and 5, read in conjunction with article 31 of the Criminal Code of the Republic of Kosovo"

Having held Main Trial hearings, all open to the public, on 24, 25, and 26 August 2016, in the presence of the State Prosecutor and the Accused F.K. and D.V., both of whom elected to represent themselves in these criminal proceedings;

After the Prosecutor gave notice of withdrawal from prosecution against the Accused F.K. and D.V. under Article 52 of the CPC, in the court session on 31 August 2016;

Pursuant to Article 363, Sub-Paragraph (1.1) and Article 366, Paragraph (1) of the Criminal Procedure Code of the Republic of Kosovo (CPC) on 31 August 2016 in a public hearing and in the presence of the Accused F.K., D.V., and the State Prosecutor;

renders the following:

JUDGMENT

I.

The charge of *Obstruction of evidence or official proceedings* against the Defendants F.K. and D.V. is **REJECTED**.

II.

According to Article 454, Paragraph (1) of the CPC, the costs of the criminal proceedings shall be paid from budgetary resources.

REASONING

A. PROCEDURAL BACKGROUND

1. On 24 March 2014, the Mitrovicë/Mitrovica Basic Prosecution Office filed a Ruling on expansion of investigation, dated 24 March 2014, in case PP 157/2013 (Ppr. 70/2013). The expansion concerned the suspects (now defendants) F.K. and D.V. In this Ruling it was asserted that there is a grounded suspicion that both suspects committed the following criminal offence:

“On 24th March 2014 EULEX TFM investigators received information from a reliable source that witnesses in the case of aggravated attempted murder starting on the 25th March 2014 against Z.V. _____ were contacted by both lawyers of the defendant Z.V. _____, D.V. and F.K., in order to instruct them in view of the upcoming court hearings. The purpose of the instructions was to pressure the witnesses to alter their statements, to lie in front of the court and to testify in contradiction to truth. The source revealed to the TFM police officers that all the witnesses of Serbian ethnicity from the _____ who were supposed to testify in court, were also contacted by the _____ F.K. and D.V. They received instructions in the same manner, to alter the truth and lie in front of the court, to provide the same version of the facts, favourable to the defendant, Mr. Z.V. _____.”

2. On 22 March 2016 the Mitrovicë/Mitrovica Basic Prosecution Office filed an indictment (PP 70/13) against the defendants F.K. and D.V. Both defendants are indicted for the criminal offence of *“Obstruction of evidence or official proceedings contrary to Article 394 paragraphs 1.7 and 5, read in conjunction with article 31 of the Criminal Code of the Republic of Kosovo”* (CCRK). The Prosecutor submitted three binders of evidence with the indictment.
3. The President of the Basic Court of Mitrovicë/Mitrovica, pursuant to the Law No. 04/L-273 on Amending and Supplementing the Laws related to the Mandate of the EU Rule of Law Mission in the

Republic of Kosovo and based on article 5 (a) of the Agreement between the Head of EULEX and Kosovo Judicial Council on relevant aspects of operation and cooperation of EULEX Judges with the Judges that work in Local Courts signed on 18 June 2014, on 12 April 2016 issued a Decision GJA.no. 125/16 assigning the criminal case P. nr. 28/2016 to EULEX Judges and appointing Judge René van Veen as Single Trial Judge in this case.

4. The initial hearing was held on 21 April 2016. The initial hearing was attended by the EULEX Prosecutor Mr. Pascal Persoons and both fore mentioned defendants. Both defendants pleaded not guilty. The defendants were informed about the provisions of Article 245, Paragraph (6), of the CPC.
5. During the initial hearing on 21 April 2016, both defendants stated that they would represent themselves during the main trial.¹ According to Article 57, Paragraph (1), Subparagraph (1.3) of the CPC, the present case does not involve mandatory defence.
6. On 21 April 2016, during the initial hearing, the Single Trial Judge decided not to hold a second hearing but instead instructed the parties to file written submissions only pursuant to Article 245, Paragraph (5), of the CPC.
7. Both defendants filed requests to dismiss the indictment, while defendant **D.V.** also filed an objection to the evidence, in a timely manner and pursuant to Article 245, Paragraph (5), Article 249 and Article 250 of the CPC. The prosecutor filed a response to both requests in a timely manner.
8. On 10 June 2016, the Single Trial Judge issued two decisions rejecting defendant **F.K.**'s request to dismiss the indictment and defendant **D.V.**'s request to dismiss the indictment and the objection to the evidence respectively. Both defendants filed appeals to the respective decision in a timely manner.
9. On 28 July 2016, the Court of Appeals issued a Ruling rejecting as unfounded the appeals of the defendants **F.K.** and **D.V.** to the decisions of the Single Trial Judge dated 10 June 2016.
10. On 9 August 2016, the Single Trial Judge issued a Scheduling Order for the main trial hearings to be held on 24, 25, 26 and 31 August and 5 September 2016. Seven witnesses proposed by the prosecution were scheduled to testify at the main trial. All parties and witnesses were duly summoned.
11. On 10 August 2016, the Basic Court of Mitrovicë/a received notice of the death of witness E.M. _____, who was scheduled to testify on 26 August 2016. All parties were informed of the death of the witness by a Court letter dated 11 August 2016.
12. On 17 August 2016, the prosecutor filed a Motion to Read the Statement of Witness E.M. _____ Recorded During the Investigation State of the Proceedings dated 14 August 2016. The motion was served on defendants **F.K.** and **D.V.** on 18 August 2016.
13. On 18 August 2016, the Prosecution submitted to the Court three binders of evidence. The Prosecutor clarified in the hearing on 24 August 2016 that the binders contained the evidence

¹ Record of the initial hearing, 21 April 2016, p. 2.

already disclosed with the indictment with the addition of two witness statements which were discovered by the Prosecution subsequently.²

14. The main trial began on 24 August 2016 and subsequent hearings were held on 25, 26 and 31 August 2016 in the presence of EULEX Prosecutor Ms. Neeta Amin and the Defendants F.K. and D.V. The Court heard five prosecution witnesses.
15. On 31 August 2016, at the beginning of the main trial session, the prosecutor gave notice of withdrawal from prosecution, pursuant to Article 52 of the CPC.
16. In light of the prosecutor's withdrawal from prosecution, the Single Trial Judge announced in the session of 31 August 2016 a judgment rejecting the charge, in accordance with Article 363, Paragraph (1), Subparagraph (1.1) of the CPC.

B. COMPETENCE OF THE COURT

17. Under Article 11, Paragraph (1), of the Law on Courts,³ Basic Courts are competent to adjudicate in the first instance all cases, except otherwise foreseen by Law.
18. Article 9, Paragraph (2), Subparagraph (2.7) of the same Law states that the Basic Court of Mitrovicë/a is established for the territory of the Municipalities of Mitrovicë/a South and Mitrovicë/a North, Leposaviq/Leposavić, Zubin Potok, Zvečan/Zveçan, Skenderaj/Srbica and Vushtrri/Vučitrn. Based on the filed Indictment, the alleged criminal offence took place in the northern part of Mitrovicë/a and, therefore, falls within the territorial jurisdiction of the Basic Court of Mitrovicë/a, as per Article 29, Paragraph (1), of the CPC.
19. According to Article 21, Paragraph (3), and Article 22 of the CPC, the criminal offence of Obstruction of evidence or official proceedings, covered by Article 394 of the CCRK, falls within the jurisdiction of the General Department of the Basic Court. Therefore, the case was adjudicated by a Single Trial Judge, in accordance with Article 25, Paragraph (2), of the CPC and Article 16, Paragraph (2), of the above-mentioned Law on Courts.
20. The President of the Basic Court of Mitrovicë/Mitrovica, pursuant to the Law No. 04/L-273 on Amending and Supplementing the Laws related to the Mandate of the EU Rule of Law Mission in the Republic of Kosovo and based on article 5 (a) of the Agreement between the Head of EULEX and Kosovo Judicial Council on relevant aspects of operation and cooperation of EULEX Judges with the Judges that work in Local Courts signed on 18 June 2014, on 12 April 2016 issued a Decision GJA.no. 125/16 assigning the criminal case P. nr. 28/2016 to EULEX Judges and appointing Judge René van Veen as Single Trial Judge in this case.

² Record of the main trial hearing, 24 August 2016, p. 5.

³ Law no. 03/L-199.

C. MAIN TRIAL

21. The main trial sessions were held on 24, 25, 26 and 31 August 2016 in the presence of the parties. All sessions were open to the public.
22. During the main trial session on 24 August 2016, the accused **F.K.** and **D.V.** pleaded not guilty to the charge in the indictment.
23. Based on Article 16 of the Law on Jurisdiction and competencies of EULEX Judges and Prosecutors in Kosovo, the language used in the court proceedings was English. In accordance with Article 1, Paragraph (2), of the CPC, interpreters translated the court proceedings and all court documents relevant to the trial from English into Serbian and vice-versa. Defendant **F.K.** agreed during the initial hearing to have the proceedings translated to and from Serbian,⁴ and he did not raise any objections to the language used throughout the main trial.

D. EVIDENTIARY PROCEDURE

D.1. In-Court Testimony

24. The Single Trial Judge heard the testimony of the following Prosecution witnesses during the main trial:
1. A.J. _____, on 24 August 2016;
 2. B.J. _____, on 25 August 2016;
 3. C.S. _____, on 25 August 2016;
 4. D.S. _____, on 25 August 2016; and
 5. D.V.1 _____, on 25 August 2016.

D.2. Statement of deceased witness E.M. _____

25. Witness E.M. _____ was scheduled to testify on 26 August 2016. On 10 August 2016, the Basic Court of Mitrovicë/a received notice of the death of the witness, and all parties were informed accordingly. On 17 August 2016, the Prosecutor filed a Motion to Read the Statement of Witness E.M. _____ Recorded During the Investigation State of the Proceedings dated 14 August 2016. The Prosecutor's motion was discussed in the court sessions on 24 August and 26 August 2016 and, with the agreement of both defendants, the Single Trial Judge granted the Prosecutor's motion to consider the statement given by witness E.M. _____ to the Prosecutor on 28 April 2016 as read in accordance with Article 338, Paragraph (1), Subparagraph (1.1), of the CPC.⁵

⁴ Record of the initial hearing, 21 April 2016, p. 4.

⁵ Record of the main trial hearing, 26 August 2016, p. 6.

D.3. Protected Witness "A"

26. On 24 March 2014, the Court received a Prosecution's Request for Protective Measures in case Ppr. 70/2013 requesting protective measures to a specific witness during the investigative stage of the proceedings.
27. On 25 March 2014, the Pre-Trial Judge in case Ppr. 70/2013 issued an order thereby granting protective measures to Witness A.
28. On 22 March 2016, the same day the Indictment was filed, the Prosecution filed a Request for Protective Measures to be ordered on Witness A. Within the Indictment, the Prosecution also filed a Motion to Read the Statement of Witness A recorded during Investigation Stage of the Proceedings.
29. On 19 April 2016, the Single Trial Judge issued an Order thereby granting protective measures to Witness A.
30. On 24 August 2016, during the main trial session, the Prosecutor informed the Single Trial Judge that she wished to formally withdraw the Motion to Read the Statement of Witness A, filed within the Indictment, due to the fact that the witness had expressed his readiness to testify in open court without protective measures.⁶ The Single Trial Judge decided that the witness should be heard before the order for protective measures is rescinded. The Court was subsequently informed that the witness would not be able to appear before the Court on the scheduled date due to health problems and his testimony was postponed accordingly.⁷ The Prosecutor formally withdrew the charges against the Defendants before the witness testified before the Court.

D.4. Documentary Evidence

31. In light of the fact that the Prosecutor filed a motion to withdraw from prosecution before all witnesses were heard, the admissibility of the documentary evidence proposed by any of the parties was not considered by the Single Trial Judge.

E. APPLICABLE LAW

32. The alleged criminal offence took place in March 2014.
33. The Criminal Code of the Republic of Kosovo (CCRK), which entered into force on 01 January 2013,⁸ was applicable in the present case.
34. Pursuant to Article 539 of the CPC, the trial proceedings were carried out in accordance with the CPC which entered into force on 01 January 2013.

⁶ Record of the main trial hearing, 24 August 2016, p. 8.

⁷ Record of the main trial hearing, 31 August 2016, p. 2.

⁸ Code No. 04/L-082.

F. LEGAL REASONING

35. Both defendants were indicted of committing the criminal offence of *“Obstruction of evidence or official proceedings contrary to Article 394 paragraphs 1.7 and 5, read in conjunction with article 31 of the Criminal Code of the Republic of Kosovo.”*

36. At the beginning of the main trial session on 31 August 2016, the Prosecutor gave notice of withdrawal from prosecution, pursuant to Article 52 of the CPC. Subsequently the prosecutor -while referring to Article 358, Paragraph (2), of the CPC and Article 358, Paragraph (1), Subparagraph (1.3), of the CPC- asked the Single Trial Judge to render a ruling by which the indictment is dismissed.

37. The Single Trial Judge finds that Article 363 of the CPC is applicable rather than Article 358 of the CPC. There are two reasons for this:

1. Article 358, Paragraph (2), of the CPC stipulates that the Single Trial Judge may render a ruling by which the indictment is dismissed *“even after the main trial has been scheduled”*. To the contrary, it is not written that he/she may do so even after the main trial has commenced.
2. Moreover, even if it were possible to dismiss the indictment after the main trial has commenced, one of the conditions of Article 358, Paragraph (1), of the CPC would have to be fulfilled. Contrary to the argument of the Prosecutor, the Single Trial Judge finds that the mere fact that the prosecution waives the hearing of the final witness, Mr. S.V. _____, whatever the reasons for such a decision, is not a circumstance which bars prosecution as defined in Article 358, Paragraph (1), Subparagraph (1.3), of the CPC.

38. For all those reasons, the Single Trial Judge, pursuant to Article 363, Paragraph (1), Subparagraph (1.1), of the CPC, rejected the charge against the defendants **F.K.** and **D.V.**

G. COST OF PROCEEDINGS

39. The decision on the costs, as set out in the enacting clause, is made pursuant to Article 454, Paragraph (1), of the CPC.

René van Veen
EULEX Single Trial Judge

Asja Zujo
Recording Officer

Legal Remedy: Authorised persons have the right to file an appeal against this judgment within 15 days of the day the copy of the judgment has been served (Article 380, Paragraph (1) of the CPC).