

DISTRICT COURT OF PRIZREN

Ap. 156/10

07 December 2010

IN THE NAME OF THE PEOPLE

The Panel of the District Court of Prizren, comprising EULEX Judge Ingo Risch, as Presiding Judge, EULEX Judge Gunnar Oyhaugen and local Judge Raima Elezi, assisted by Labinot Jetishi as court recorder, in the criminal case against:

E.A, father's name , mother's name (maiden name
, born on , in
Municipality of , currently residing at
Albanian ethnicity, lawyer and working in two
companies, married, father of four children, of average economic status, ID no.

charged as

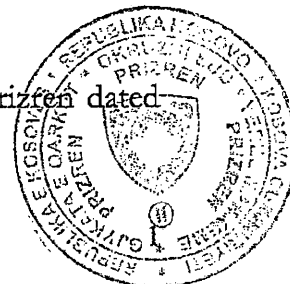
per in the Indictment PP no. 524/09 filed 03 August 2009 with the criminal offence of Issuing unlawful judicial decisions contrary to Article 346 of Criminal Code of Kosovo (hereinafter CCK),

as described below.

On 04 June 2008, the Defendant acting as a Judge at the District Court of Prishtinë/Priština, intended to obtain unlawful material benefit for another person, causing damage to third party issued an unlawful judicial decision, respectively Ruling 547/2008 dated 04 June 2008. After receiving the documents of the case file upon inheritance through an appeal, the Defendant issued an unlawful decision where he decided on the appeal based on a final Ruling allegedly issued by Municipal Court of Prishtinë/Priština T. no. 136/2002 dated 14 October 2002; supposedly the Ruling was issued by Judge *Z.S* who was not selected pursuant to UNMIK provisions by United Nations Special representative. The Ruling was verified with a circled seal where it was written an inscription *Republic of Serbia, Autonomous Province of Kosova and Metohia, Municipal Court of Prishtinë/Priština*, a parallel court body.

deciding upon:

- 1) the appeal of the Municipal Public Prosecution Office in Prizren dated 05.11.2010, and



- 2) response on appeal of the defence counsel of the defendant *E.A*
– lawyer Hamit Gashi

submitted against:

the Judgment of the Municipal Court of Prizren P no. 917/10, dated 7 October 2010

pursuant to

the Article 423 of the Kosovo Code of Criminal Procedure (hereinafter KCCP) issues the following :

JUDGMENT

The appeal of the Municipal Prosecution in Prizren is **REJECTED AS UNGROUNDED** and consequently the Judgment of the Municipal Court of Prizren P no. 917/10 dated 7 October 2010 is **CONFIRMED**.

REASONING

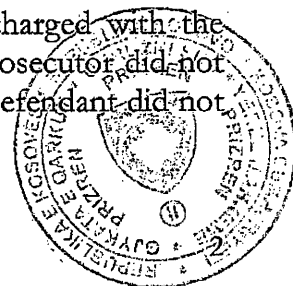
1. Procedural background

On 10 November 2008, a ruling on initiation of investigation PP no. 5105-15/2008 was issued by the Municipal Public Prosecutor of Prizren against *B.L* and *S.N* for reasonable suspicion that they have committed the criminal offence of Issuing unlawful judicial decisions contrary to Article 346 of CCK.

The following day, the Municipal Public Prosecutor initiated an investigation against *E.A* on the same suspicion (PP no. 5105-15/2008).

The Public Prosecutor issued a Ruling terminating the investigation against *B.L* and *S.N* on 22 January 2009.

On 03 August 2009, the Municipal Prosecutor of Prizren filed an Indictment PP no. 524/09 dated 30 July 2009 against *E.A* charged with the criminal offence of Issuing unlawful judicial decisions. The prosecutor did not point out an injured party in the case. The charge against the defendant did not contain any information on damaged persons.



A confirmation hearing was held by a Kosovo judge on 15 September 2009. Upon the Defense counsel's proposal, the session was postponed.

On the same day the Defense counsel filed an application for disqualification of the Kosovo Public Prosecutor in the case and requested EULEX judges and prosecutor to take over the case.

On 28 October 2009, another confirmation hearing was held at the Municipal court of Prizren. The Defense counsel petitioned for the Public Prosecutor to review of the indictment. He further mentioned the application filed to EULEX Judges. The confirmation judge granted the Defence counsel's motion and postponed the session to an indefinite date.

The case was assigned to EULEX judges following a hearing held at Prizren Municipality Court on 21 January 2010.

On 26 February 2010, the confirmation hearing organized by a EULEX judge was postponed due to the absence of the Municipal Public Prosecutor.

Another confirmation hearing took place at the Municipal court of Prizren on 2 March 2010. The EULEX confirmation Judge, by ruling KA no. 116/09, dismissed the indictment PP no. 524/09, pursuant to Article 316, para 1, item 4 KCCP. The prosecutor admitted that he had not mentioned the damaged party in the indictment. Moreover he explicitly stated that the damage had been caused to the Republic of Kosovo.

Against the ruling of dismissal, the Municipal Public Prosecutor filed an appeal on 10 March 2010. On 15 April 2010, a panel composed of a majority of EULEX judges granted the appeal and confirmed the indictment (Ruling KP no. 26/10).

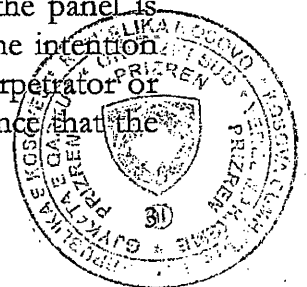
On 1 July 2010, the Supreme Court of Kosovo by Ruling PKL-KZZ 47/10 dismissed as inadmissible the request for protection of legality filed by the Defence counsel against the confirmation ruling dated 15 April 2010.

On 7 October 2010 the Municipal Court of Prizren in the case P no. 917/10 issued the Judgment with which the Defendant, E.A., whose personal data is abovementioned, is found NOT GUILTY of the criminal offence described above.

On 05.11.2010 the Municipal Prosecutor filed the appeal against the Judgment issued by Municipal Court in Prizren P. no. 917/10 dated 07.10.2010.

2. Court findings

Regardless if the decision, in question taken by the accused which let to the bill of indictment was right or wrong, if it was lawful or unlawful, the panel is missing the further element of article 346 CCK which requires the intention either to cause damage to a party or receive any benefit for the perpetrator or for somebody else. There are no indications and there is no evidence that the

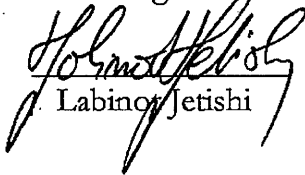


accused decided the civil law case in question with such intention. There are also no tracks in the file or indications in the appeal of the Public Prosecutor that the defendant maintained any relationship to one of the parties. Finally there is also no suspicion that the defendant decided in a hostile way regarding the party to whose disfavor the decision was taken.

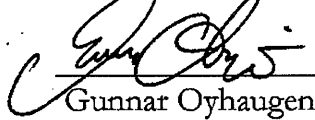
For the reason the panel is convinced that the requirement under article 346 are not fulfilled with the results that the appeal had to be rejected and the acquittal had to be maintained.

DISTRICT COURT OF PRIZREN
Ap. 156/10 DATED 07.12.2010

Recording Clerk


Labinot Jetishi

Panel Members


Gunnar Oyhaugen

Presiding Judge


Ingo Risch

