

SUPREME COURT OF KOSOVO

PKL-KZZ-01/11

Date: 05 April 2011

THE SUPREME COURT OF KOSOVO, in a panel composed of EULEX Judge Martti Harsia as Presiding Judge, and Kosovo Judges of the Supreme Court of Kosovo Nesrin Lushta and Salih Toplica as members of the panel, in the presence of Adnan Isufi EULEX Legal Advisor, acting in capacity of a recording clerk,

In the criminal matter P No 2615/08, of the Municipal Court of Prishtine/Prishtina against the defendant:

S [REDACTED] Q [REDACTED], son of [REDACTED] and [REDACTED] (maiden name [REDACTED]) born [REDACTED] in [REDACTED], married, father of two children, Turkish nationality, convicted of the criminal offences of:

Trading in Influence, contrary to article 345 paragraph 1 of the Criminal Law of Kosovo (CLK) and Falsifying Documents, contrary to article 332 paragraph 1 in relation with paragraph 3 of CLK.

Deciding upon the Request for Protection of Legality filed by defence counsel [REDACTED] on behalf of defendant S [REDACTED] Q [REDACTED], against the Judgment of the Municipal Court of Prishtinë / Pristina P No 2615/08 dated 09 September 2009, and against judgment of the District Court of Prishtinë / Pristina, AP No 351/10, dated 8 September 2010,

Pursuant to Article 454 para 1 of the Kosovo Code on Criminal Procedure (*hereafter* "KCCP"), after a session on deliberation and voting held on 05 April 2011, the Supreme Court of Kosovo issues the following:

JUDGMENT

to reject the Request for Protection of Legality, dated 10 October 2010 filed by defence counsel, [REDACTED] on behalf of defendant S [REDACTED] Q [REDACTED], against the Judgment of the Municipal Court of Prishtinë / Pristina P No 2615/08, dated 09 September 2009, of the District Court of Prishtinë / Pristina AP No 351/10, dated 8 September 2010, as ungrounded, according to article 456 of KCCP.

REASONING

I. Procedural history

The Municipal Court of Pristina with the Verdict, dated 9 September 2009, found the defendant guilty of the criminal act of **Trading in Influence** in violation of article

345 paragraph 1 of CLK and of **Falsifying Documents** in violation of article 332 paragraph 1 in relation with paragraph 3 of CLK and imposed him to an aggregated sentence of two (2) years imprisonment and ordered him compensate the costs of proceedings in the amount of 100 euros.

The defence counsel of the defendant attorney [REDACTED] timely filed an appeal against the Judgment of the Municipal Court of Pristine P. no 2615/09.

The District Court, in a panel composed by two EULEX judges and one local judge, with the Verdict on 8 September 2010, rejected the appeal of the defence as unfounded and affirmed the judgment of the Municipal Court in its entirety.

On 15 November 2010, defence counsel [REDACTED] on behalf of the defendant S [REDACTED] Q [REDACTED] filed a request for protection of legality against the aforementioned judgments.

The Office of State Prosecutor of Kosovo filed on 21 January 2011 an opinion proposing to reject the request as ungrounded.

II. Issues raised in the request for protection of legality

In the request the defence counsel repeats those allegations already presented in the appeal against the judgment of the Municipal Court. Thus the counsel again contends:

- that the judgment based on inadmissible evidence when the handwritten letter (dated 8 August 2007) of A [REDACTED] Y [REDACTED] was approved as an evidence.
- that the defendant was not given an opportunity to question A [REDACTED] Y [REDACTED] and challenge the evidentiary value of the letter.
- the action of the defendant does not constitute an offence of Trading in Influence since the defendant did not contact an official person of either the judge or prosecutor.
- the falsified documents are not the kind documents which are meant in article 332 para 1 of CLK since those were not meant to convince A [REDACTED] Y [REDACTED] of the influence of the defendant on the International Judge.
- the amount of 80.000 euros was meant to be a loan to the defendant and even though A [REDACTED] Y [REDACTED] expected some assistance as return service the defendant however did not have any true influence on International Judge or International Prosecutor.

III. Findings of the Supreme Court of Kosovo

In assessing the Request for Protection of Legality, the Supreme Court of Kosovo established the following:

- a. The Request for Protection of Legality is admissible. The request is filed with the competent court pursuant to Article 454 par 1 and within the deadline pursuant to Article 452 par 3 of KCCP.
- b. The Supreme Court of Kosovo decided in a session as prescribed by Article 454 paragraph 1 of the KCCP. The parties' notification of this session was not required.
- c. The request for Protection of Legality is ungrounded.

The Supreme Court of Kosovo after examination of the file records and of the request for protection of legality of the defense counsel as well as the Opinion of the Public Prosecutor of Kosovo finds that the first and second instance courts verdicts do not warrant an *ex officio* intervention. Accordingly, the Supreme Court of Kosovo in its assessment is confined by Article 451 and Article 455 of KCCP in relation to the grounds of request and the arguments raised by the requesting party.

The first argument raised by the defendant questions the admissibility of the letter dated 8 August 2007. As the District Court has ascertained the evidence shall be defined as inadmissible evidence only if it has been obtained "in violation of the provisions of the criminal procedure" and when "the law expressly so provides". The Kosovo Code on Criminal Procedure does not define this kind of letter of the co-defendant as inadmissible when this material has been timely presented during the main trial and made available to the defence. The District Court has referred to the jurisprudence of ECHR. As the District Court has pointed out the conviction in this case does not base solely or to a decisive extent on the statement which could not be confronted by the defendant.

The panel notifies that that the afore mentioned letter, dated 8 August 2007, has been mentioned in the records of the Municipal Court session on 8 September 2009 and S█████ Q█████'s defence counsel has declared to be familiar with that and having a copy of that.

As to the opportunity of the defence to interrogate and to challenge the testimony of A█████ Y█████ and to question Y█████ this panel has the opinion that the evidence presented during the trial was considered as sufficient to convince the court of the guilt of S█████ Q█████. The proceedings had been separated against defendant Y█████ A█████ by the decision of the Presiding Judge, Arkadiusz Sedek in order to avoid the delay in S█████ Q█████'s case. In fact that goes in favor of the defendant S█████ Q█████ to having his case dealt with and completed expeditiously.

The defendant has claimed that his action does not constitute an offence since he did not contact any official person. As the District Court has correctly interpreted and applied article 345 of CLK, the criminal act of Trading in Influence does not provide taking any contact with a decision making official.

As to the nature and the use of the falsified documents, the panel concurs with the opinion of the District Court that the documents at hand are the kind of documents defined in article 107 para 6 of CLK. The Article 332 of CLK does not require as necessary condition the use of falsified document. The Supreme Court of Kosovo is satisfied that the District Court has correctly interpreted the Articles.

As to the claim that the money amounting to 80.000 euros was meant to be a loan and not a reward for illegal intermediation even though Y [redacted] might have expected some kind of service in return, the panel notifies this argument is related to a ground of incomplete or erroneous establishment of factual situation for which at this stage of procedure an appeal may not be permitted according to the articles 456 and 451 para 2 of KCCP.


In light of the above, after having reviewed the challenged verdict, the request for protection of legality and the Opinion of State Prosecutor, it is the view of the Supreme Court of Kosovo that challenged verdicts remain free from legal error.


For above mentioned reasons the request of S [redacted] Q [redacted] has to be rejected.

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


SUPREME COURT OF KOSOVO

Pkl-Kzz 01/11, 5 April 2011

Presiding Judge
Martti Harsia, Eulex Judge


Recording Clerk
Adnan Isufi, Eulex Legal Advisor


Members of the panel

Panel Member
Nesrin Lushta, Supreme Court Judge


Panel Member
Salih Toplica, Supreme Court Judge
