

SUPREME COURT OF KOSOVO
PKL.-KZZ. No. 24/2011
27 December 2011
Prishtinë/Priština

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of
EULEX Judge Charles L. Smith III. as Presiding Judge,
EULEX Judge Martti Harsia and
Supreme Court Judge Salih Toplica as members of the panel,

in the presence of EULEX Legal Officer Holger Engelmann, acting in the capacity of the
recording clerk, in a session held on 27 December 2011, in the criminal case against:

A Z ., father's name J , mother's maiden name F A , born on
. . . . in the village of , Gjilan/Gnjilane Municipality, residing at
. . . . , , Prishtinë/Priština Municipality, Kosovo, Kosovo
Albanian, married, father of children, completed education, of good financial
status, ID no. . . . , with no previous convictions, in house detention from 30
June 2008 until 11 August 2008,

Charged as per indictment PP. No. 1916/09, filed by the Municipal Public Prosecutor of
Prizren on 20 August with the criminal offense of **Giving Bribes** pursuant to Article 344
paragraph 1 of the Provisional Criminal Code of Kosovo (henceforth PCCK);

Found guilty of the criminal offense of Giving Bribes as intermediary pursuant to Article
344 paragraph 1 of the PCCK and sentenced to a term of imprisonment of twelve (12)
months and a fine of two thousand (2,000) Euro by first instance judgement of the Municipal
Court of Prizren P. 385/10, dated 25 March 2010 and by second instance judgment of the
District Court of Prizren KP. 160/10, dated 30 July 2010, .

Deciding upon the **Request for Protection of Legality** of Defence Counsel *R.G.*
on behalf of the defendant on 15 November 2010 against the judgment of the Municipal
Court of Prizren P. 385/10, dated 25 March 2010 and by second instance judgment of the
District Court of Prizren KP. 160/10, dated 30 July 2010

Issues the following:

JUDGMENT

The Request for Protection of Legality filed by the defense counsel of the
defendant A Z against the judgment of the Municipal Court of Prizren,
P. No. 385/2010, dated 25 March 2010 and the judgment of the District Court
of Prizren KP. No. 160/2010, dated 30 July 2010, is **REJECTED AS
UNFOUNDED.**

REASONING

I. Procedural Background

By indictment PP. no. 1916/09, filed by the Municipal Prosecutor in Prizren on 20 August 2009 the defendant was charged with the criminal offense of Giving Bribes in violation of Article 344 paragraph 1 of the PCCK.

After having pleaded guilty on the charges the defendant was convicted by first instance judgment of the Municipal Court of Prizren, P. No. 385/2010, dated 25 March 2010, for Giving Bribes as an intermediary and sentenced to 12 months imprisonment and a fine of 2,000 Euro.

Upon the defendant's appeal, filed on 19 May 2010 by his defense counsels and an appeal filed on 30 April 2010 by the Municipal Prosecutor, the District Court of Prizren with judgment KP. No. 160/2010 on 30 July 2010 rejected the appeal and confirmed the judgment of the 1st instance court.

Against both judgments a Request for Protection of Legality was filed by Defense Counsel R. G. on behalf of the defendant on 15 November 2010.

The Office of the State Prosecutor of Kosovo (OSPK) filed a reply on 21 April 2011.

II. Supreme Court Findings

The Request for Protection of Legality is admissible but unfounded.

1. Admissibility of the Request for Protection of Legality

The Request for Protection of Legality is admissible. It was filed with the competent court pursuant to Article 451 paragraph 3 and 453 of the KCCP and within the deadline of Article 452 paragraph 3 of the KCCP.

2. Procedures followed by the Supreme Court

The Supreme Court has decided in a session as described by Article 454 paragraph 1 of the KCCP. Parties have not been notified of the session, since according to Article 451 through 460 of the KCCP there is no obligation for the Supreme Court to notify the parties.

3. On the merits of the Request for Protection of Legality

The Request for Protection of Legality alleges violations of criminal law and essential provisions of the provisions of criminal procedure and proposes to annul the previous judgments and return the case for retrial by the court of 1st instance.

In particular it claims that the enacting clause of the 1st instance judgment is unclear and incomprehensible since it does not sufficiently specify in which way the defendant acted as intermediary, who was the recipient of the bribe and what act the recipient was supposed to render as exchange for the bribe. Therefore the judgment violates Article 451 paragraph 1 item 2 in conjunction with Article 403 paragraph 1 item 12 of the KCCP.

In the defense's opinion the 1st instance wrongly convicted the defendant for the criminal offense according to Article 344 paragraph 1 of the KCCP instead of Article 344 paragraph 2 of the KCCP, which would have been the correct provision.

The 1st instance mistakenly and without legal base pronounced a fine as punishment.

The OSPK in its reply proposes to reject the Request for Protection of Legality as ungrounded.

In regard to the alleged shortcomings of the enacting clause the OSPK refers to the Supreme Court's consolidated case law practice according to which an act has to be interpreted in a way in which it has a meaning and that enacting clause of a decision and the statement of grounds have to be read together. When following this principle the enacting clause is sufficiently understandable and clear.

The prosecution maintains that the conduct described in both judgments corresponds to the criminal offense of Article 344 paragraph 1 of the CCK.

In respect to the pronounced fine the OSPK submits that Article 39 paragraph 5 together with Article 54 paragraph 1 of the CCK authorizes the imposition of a fine as accessory punishment together with a principle or alternative punishment.

The objection in regard to the pronounced fine is ungrounded. The Supreme Court entirely agrees with the OSPK opinion. The fine as an accessory punishment is based on Article 39 paragraph 5 together with Article 54 paragraph 1 of the CCK.

In respect to the claim raised by the defence that the defendant was convicted for the wrong criminal offense, the Supreme Court of Kosovo notes that the defendant had pleaded guilty to the charges of Article 344 paragraph 1 of the CCK. Therefore he should not have the opportunity to now claim that he should have been convicted according to another criminal provision, except for the case that he had not understood the charges properly during the main trial. He has not raised such an objection. Granting the defendant now – after pleading guilty – the objection that he was convicted for the wrong criminal offense would be an abuse of rights. Consequently this objection cannot stand.

Moreover, as correctly described in the OSPK motion, the challenge is also without any ground since the defendant's conduct, which is subject to the charges corresponds to the description of the criminal offense of Article 344 paragraph 1 of the CCK. The defendant was convicted for serving as an intermediary in bribing an official person for performing

an act in violation of his official duty – the acquittal, release or the pronouncement of an unjustified mild punishment of A and B A who were charged with Murder.

The enacting clause of the challenged judgment is sufficiently clear, comprehensible and internally consistent. It contains all the necessary elements required by Article 396 paragraph 4 in conjunction with Article 391 of the KCCP and does not violate Article 451 paragraph 1 item 2 in conjunction with Article 403 paragraph 1 item 12 KCCP. The court bases its assessment on the principle that a judicial decisions needs to be interpreted in its entirety in such a way that that it makes sense and that the enacting clause has to be read together with the reasoning.

In the case against L Xh¹ the Supreme Court of Kosovo stated:

“...the enacting clause is an integral part of the judgment [and] it has to be read and interpreted in connection with other parts of the judgment, especially with the statement of grounds.

Based on the principle that an act has to be interpreted in the way in which it has a meaning and not in a way in which it has no meaning, the enacting clause and the statement of grounds have to be read together...”

The enacting clause of the first instance judgment, as affirmed upon appeal by the second instance, clearly enumerates the elements of the aforementioned criminal offence. In particular, it sufficiently defines the benefits conferred upon the judge as an official person and the role of the defendant as intermediary. All details of the objective and subjective elements of the criminal offense are clearly and exhaustively described in the statement of grounds.

Based on the aforementioned arguments, the Supreme Court of Kosovo decides as in the enacting clause.

SUPREME COURT OF KOSOVO

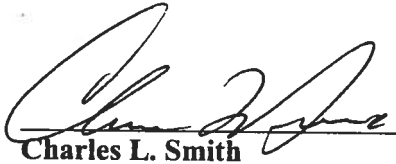
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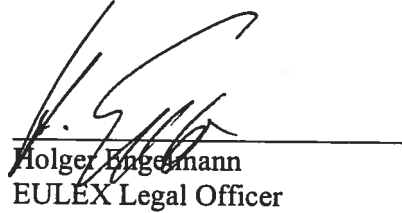
¹ Supreme Court of Kosovo, PKL.-KZZ. No. 114/2009, Request for Protection of Legality in the criminal case against L Xh , dated 12 April 2010

Presiding Judge:



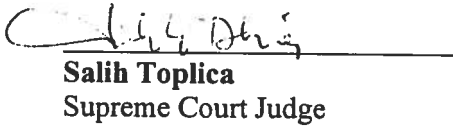
Charles L. Smith
EULEX Judge

Recording Officer:

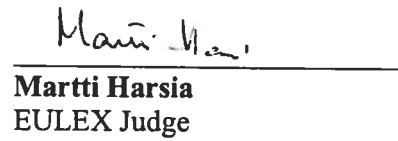


Holger Engelmann
EULEX Legal Officer

Members of the panel:



Salih Toplica
Supreme Court Judge



Martti Harsia
EULEX Judge

