

**SUPREME COURT OF KOSOVO**

Ap-Kz no. 166/2012

4 December 2012

**IN THE NAME OF THE PEOPLE**

**THE SUPREME COURT OF KOSOVO**, in a panel composed of Judge Horst Proetel as Presiding Judge and Reporting Judge, and Supreme Court Judges Valdete Daka, Marije Ademi and Salih Toplica, and EULEX Judge Tore Thomassen as members of the panel, in the presence of Chiara Rojek, Legal Officer acting in capacity of recording clerk,

In the criminal proceeding against **A. S.** nickname **K.K.** father's name **I. xxx** born on **xxx** in **xxx** residing in **xxx** **xxx** Prishtinë/Priština Municipality, of Kosovo citizenship, currently on detention on remand,

Charged as per in the Indictment PP no. 618/2003 filed on 24 August 2007 by the United Nations Interim Administration Mission in Kosovo (UNMIK) Prosecutor with the District Court of Prishtinë/Priština with **Endangering the safety** contrary to Article 48 of the Criminal Law of Kosovo (CLK) equivalent to Article 161 of the Provisional Criminal Code of Kosovo (PCCK) and **Terrorism** contrary to section 5.3 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences of 14 June 2001 equivalent to Article 113 paragraph 3 of PCCK (Count 1), **Causing general danger** contrary to Article 157 paragraph 3 of the CLK equivalent to Article 291 paragraph 3 of the PCCK, **Terrorism** contrary to section 2.1 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences equivalent to Article 109 paragraphs 7 and 10 of the PCCK, and **Unlawful possession of weapons** contrary to section 8.2 read with section 8.6 of UNMIK Regulation no. 2001/7 on the Authorization of Possession of Weapons in Kosovo of 21 February 2001 equivalent to Article 328 paragraphs 1 and 2 of the PCCK (Count 2), and **Unlawful possession of weapons** contrary to section 8.2 read with Section 8.6 of UNMIK Regulation no. 2001/7 equivalent to Article 328 paragraphs 1 and 2 of the PCCK (Count 3),

Convicted in first instance by Judgment P no. 461/07 of the District Court of Prishtinë/Priština dated 29 June 2011 by which Defendant **A. S.** was found guilty for **Terrorism** contrary to section 5.3 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences read with UNMIK Administrative Directive no. 2003/9 equivalent to Article 113 paragraph 3 of Criminal Code of Kosovo (CCK) (Count 1), **Terrorism** contrary to section 2.1 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences read with section 1, letter (a), numbers vii and x equivalent to Article 110 paragraph 1 in conjunction with Article 109 paragraph 1 points 7 and 10 of the CCK (Count 2), and **Unlawful possession of weapons** contrary to sections 8.2 and 8.6 of UNMIK Regulation no. 2001/7 on the Authorization of Possession of Weapons in Kosovo equivalent to Article 328 paragraph 2 of the CCK (Count 3), and by which an aggregated punishment of ten (10) years and one (1) month was imposed onto him,

Acting upon the Appeal filed on 17 April 2012 by Defence Counsel **Z. J.** on behalf of Defendant **A. S.** against the Judgment P no. 461/07 of the District Court of

Prishtinë/Priština dated 29 June 2011, and considering the Opinion and Motion to the Appeal filed on 16 May 2012 by the Office of the State Prosecutor of Kosovo (OSPK),

After having held a public session on 4 December in the presence of Defence Counsel **Z. J.** and State Prosecutor Jusuf Mejzini representing the OSPK, and having deliberated and voted on 4 December 2012,

Pursuant to Articles 420 and following of the Kosovo Code of Criminal Procedure (KCCP), issues the following

## JUDGMENT

1. The Judgment P no. 461/07 of the District Court of Prishtinë/Priština dated 29 June 2011 is **MODIFIED** *ex officio* whereby Count 3 is subsumed under Count 2.
2. The remaining parts of the challenged Judgment are **AFFIRMED**.
3. The Appeal filed on 17 April 2012 on behalf of Defendant **A.S.** against the Judgment P no. 461/07 of the District Court of Prishtinë/Priština dated 29 June 2011 is **REJECTED** as ungrounded.

## REASONING

### I. Factual and procedural background

1. On 10 May 2003, **I.B.**, who at that time held the position of **xxx**, **xxx**, received a letter signed by **S.R.R.** of the Albanian National Army, addressing death threats to **B.** because of his anti-AKSH (Armata Kombëtare Shqiptare - Albanian National Army) stance. On 20 July 2003, at around 21:00, a projectile was fired at the building of the District Court of Prishtinë/Priština located in a densely populated urban area. The projectile created a hole in the courthouse structure and entered the office of the Chief District Prosecutor, **xxx**.
2. The investigation of the events started in 2003. The suspect **A.S.** could not be found until he was apprehended on 26 February 2007. On 1 March 2007, the Decision to conduct preliminary investigation HEP no. 521/2003 was issued.<sup>1</sup> Following a hearing, detention on remand was imposed against **A.S.** on the same day. On 18 August 2007, he escaped from the detention facilities of DUVIAVA detention centre.
3. On 24 August 2007, the Public Prosecutor filed the Indictment PP no. 618/2003 against **A.S.** for the following criminal offences:<sup>2</sup> Endangering the safety contrary to Article 48 of the CLK equivalent to Article 161 of the PCCK, and Terrorism contrary to section 5.3 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences equivalent to Article 113 paragraph 3 of PCCK (count 1), Causing general danger contrary to Article 157 paragraph 3 of the CLK equivalent to Article 291 paragraph 3 of the PCCK, Terrorism contrary to section 2.1 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences equivalent to Article 109 paragraphs 7 and

<sup>1</sup> Grey binder, prosecution binder, HEP no 521.03, Volume II, page 656

<sup>2</sup> Grey binder, prosecution binder, HEP no 521.03, Volume III

10 of the PCCK, Unlawful possession of weapons contrary to section 8.2 read with section 8.6 of UNMIK Regulation no. 2001/7 equivalent to Article 328 paragraphs 1 and 2 of the PCCK (count 2), and Unlawful possession of weapons contrary to section 8.2 read with Section 8.6 of UNMIK Regulation no. 2001/7 equivalent to Article 328 paragraphs 1 and 2 of the CCK (count 3).

4. On 27 August 2007, an Order for arrest P no. 461/2007 was issued against **A.S.** by a three-judge panel of Prishtinë/Priština District Court. On 13 February 2011, the Defendant was finally apprehended and placed in detention on remand.

5. On 6 April 2011, the Indictment PP no. 618/2003 was confirmed by Ruling KA no. 135/2011 with regard to count 1 (**Terrorism** contrary to section 5.3 of UNMIK Regulation no. 2001/12), count 2 (**Terrorism** contrary to section 2.1 read with section 1, vii and x of UNMIK Regulation no. 2001/12) and count 3 (**Unlawful possession of weapons** contrary to section 8.2 read with section 8.6 of UNMIK Regulation no. 2001/7). The Defendant pleaded guilty for count 3.

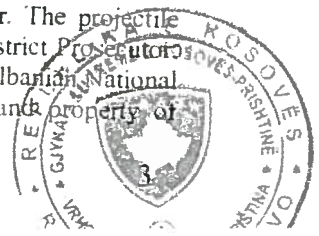
6. The main trial started on 11 May 2011. Several witnesses, notably expert witnesses, were heard and documentary evidence presented. On 29 June 2011, the District Court of Prishtinë/Priština issued the Judgment P no. 461/07<sup>3</sup> by which **A.S.** was found guilty of:

- Count 1: Terrorism contrary to section 5.3 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences read with UNMIK Administrative Directive no. 2003/9, equivalent to Article 113 paragraph 3 of CCK.<sup>4</sup>
- Count 2: Terrorism contrary to section 2.1 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences read with section 1, letter (a), numbers vii and x, equivalent to Article 110 paragraph 1 read with Article 109 paragraph 1 points 7 and 10 of the CCK.<sup>5</sup> And

<sup>3</sup> Blue binder KA no. 135/2011 **A.S.** from indictment, divider 15

<sup>4</sup> "Because On 10 May 2003 **A.S.** also known as **K.K.** actively participated in a terrorist organization, to wit, the Albanian National Army (AKSH). AKSH was defined by the Administrative Direction No. 2003/9 dated 17 April 2003 as a terrorist organization, the membership or other active participation in which constitutes a criminal offence. **A.S.** actively participated in the terrorist organization by sending a letter to **I.B.** who at that time held the position of **XXX**. The letter was signed by "**C.R.R.**" of the Albanian National Army and targeted the addressee with death threats because of his anti- AKSH stance."

<sup>5</sup> "Because On 20 July 2003 at around 21:00, **A.S.**, also known as **K.K.**, with the direct intent to create a serious threat to public order, unlawfully possessed a hand rocket launcher type "ZOLA" model 80 of 64 mm caliber No. 88141233, produced in the former Republic of Yugoslavia, and fired a missile at the building of District Court of Prishtinë/Priština located in a densely populated urban area with the commercial and residential establishments in the vicinity, thereby causing general danger. The projectile created a 20x20 cm hole in the courthouse structure and entered the office of the Chief District Prosecutor **M.S.H.** **A.S.** at that time an active member of a terrorist organization, the Albanian National Army (AKSH): his conduct caused general danger by endangering human life, body and property of substantial value."



- Count 3: Unlawful possession of weapons contrary to sections 8.2 and 8.6 of UNMIK Regulation no. 2001/7 on the Authorization of Possession of Weapons in Kosovo, equivalent to Article 328 paragraph 2 of the CCK.<sup>6</sup>

7. He was sentenced to one (1) year-imprisonment under count 1, ten (10) years-imprisonment under count 2 and one (1) year-imprisonment under count 3. Pursuant to Article 48 paragraph 2 sub-paragraph 3 read in conjunction with Article 38 paragraph 4 of the 1977 Criminal Code of the Socialist Federal Republic of Yugoslavia (CC SFRY), an aggregated punishment for a term of ten (10) years and one (1) month was imposed onto him. The Trial Panel ordered the time spent in detention on remand by Defendant **A.S.**<sup>7</sup> to be credited as part of sentence.

8. On 17 April 2012, Defence Counsel **Z.J.** filed an appeal against the First Instance Judgment. He alleges substantial violations of the provisions of criminal procedure under Article 403 of the KCCP, a violation of the criminal law under Article 404 of the KCCP, an erroneous and/or incomplete determination of the factual situation under Article 405 of the KCCP. He also contends the decision on criminal sanctions under Article 406 of the Code. He thus proposes to modify the contested judgment so to acquit the Defendant, or alternatively to impose a more lenient punishment, or to annul the judgment and return the case for retrial. Furthermore, the Defence requests to terminate the detention on remand of **A.S.** pursuant to Article 424 paragraph 6 of the KCCP. On 16 May 2012, in his Opinion and Motion, the State Prosecutor proposes to reject as ungrounded the Appeal and to affirm the contested Judgment.

## II. Findings of the Supreme Court of Kosovo

### II. A. Competence of the Supreme Court of Kosovo

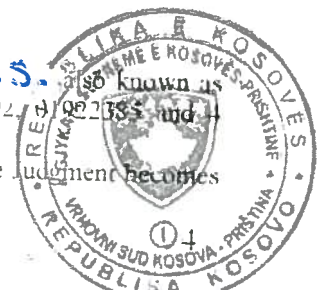
9. The Supreme Court of Kosovo has competence to decide on the Appeal filed pursuant to Article 26 paragraph 1 and Articles 398 and following of the KCCP. The Supreme Court Panel has been constituted in accordance with Article 36 of the KCCP, the Law no. 03/L-053 on the jurisdiction, case selection and case allocation of EULEX Judges and Prosecutors in Kosovo dated 13 March 2008, and the Guidelines for Case Allocation for EULEX Judges in Criminal Cases at the Supreme Court of Kosovo dated 24 March 2011.

### II. B. Admissibility of the Appeal filed by the Defence

10. The Defendant **A.S.** received the challenged Judgment on 5 April 2012. His Defence Counsel **Z.J.** filed an appeal against the First Instance Judgment on 17 April 2012. The Appeal is therefore admissible as timely filed by an authorized person pursuant to Articles 398 paragraphs 1 and 2 and 399 paragraph 1 of the KCCP.

<sup>6</sup> "Because from an unspecified period of time until 23 July 2003 in Kosovo, **A.S.** also known as **K.K.** possessed three AK 47 firearms with serial numbers 3124350, 15492 and 922385 and 4 magazines with rounds of ammunition without weapon authorization card."

<sup>7</sup> From 26 February 2007 through 18 August 2007 and from 13 February 2011 until the judgment becomes final



## II. C. Merits of the Appeal

11. The Supreme Court of Kosovo rejects as unfounded the Appeal filed on behalf of Defendant **A.S.** The undersigned Panel proceeds *ex officio* to an amendment of the First Instance Judgment so Count 3 is subsumed under Count 2, and affirms the remaining parts of the challenged Judgment.

### **The allegation that substantial violations of the provisions of criminal procedure under Article 403 paragraph 1 sub-paragraphs 8 and 12 of the KCCP were committed**

12. The Defence Counsel claims that the First Instance Court did not provide any reasoning on the arguments submitted by the Defence and on the decisive facts. He also alleges inconsistencies between the conclusions of the First Instance Court and the statements of witnesses which contain contradictions as to the direction taken by the perpetrator following the shooting at the District Court of Prishtinë/Priština building.

13. On the other hand, the State Prosecutor submits that the enacting clause of the Judgment is comprehensible and includes all the decisive facts, and that the reasoning of the contested Judgment provides ample justifications with clear and convincing conclusions on the decisive facts.

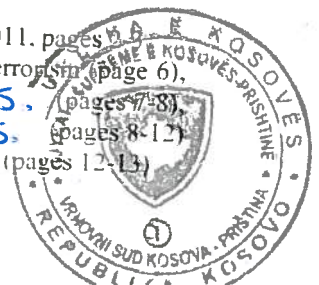
14. The Supreme Court Panel has to concur with the State Prosecutor's views. It is indeed observed that the enacting clause is comprehensible and contains all the mandatory elements as required in Article 296 paragraphs 3 and 4 read with Article 391 of the KCCP.<sup>8</sup>

15. Likewise this Court has not identified any internal inconsistencies in the enacting clause, or any discrepancies with the grounds of the judgment. The First Instance Court provides a lengthy reasoning on the legal and factual elements relevant to the three charges **A.S.** was found guilty of, to eventually reach rightful conclusions on the decisive facts.<sup>9</sup> Similarly, there are no inconsistencies between the findings of the District Court and the witness statements in the contested judgment. The First Instance Court assessed the credibility of the witnesses as well as the weight and accurateness of their statements, to conclude that "[i]n the opinion of this panel there were no discrepancies between the statements of **Z.B.** and anonymous witness and generally they corroborate. Given comprehensive eyewitness account of anonymous witness, the panel was of the opinion that this statement is of higher priority."<sup>10</sup> The Supreme Court Panel in that regard refers to its detailed reasoning under Part "The allegation that the determination of the factual state made by the First Instance Court was erroneous" (paras 26 and following of this Judgment) of the present judgment on this point.

<sup>8</sup> District Court of Prishtinë/Priština, case P no. 461/07, First Instance Judgment, 29 June 2011, pages 5-6, 7-8, 12-13 (page 6).

<sup>9</sup> Ibid, pages 5-12: applicable law in the instance (pages 5 and 7), definition of an act of terrorism (page 6), assessment of the evidential elements regarding Count 1 and the criminal liability of **A.S.** (pages 7-8), assessment of the evidential elements regarding Count 2 and the criminal liability of **A.S.** (pages 8-12) and finally assessment of the evidence in respect to the last charge of possession of weapons (pages 12-13).

<sup>10</sup> Ibid, page 11



16. Considering the above, no substantial violation of the provisions of criminal procedure was committed by the First Instance Court under Article 403 paragraph 1 subparagraphs 8 and 12 of the KCCP was committed.

**The allegation that a violation of the criminal law occurred as a result of the substantial violations of the provisions of criminal procedure**

17. In the Defence's view, the First Instance Court has erroneously applied the UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences, UNMIK Regulation no. 2001/7 on the Authorization of Possession of Weapons in Kosovo and the CLK and convicted *A.S.* on the basis of a 'dispositive norm', not of a legal provision. The Defence Counsel, additionally, contends the fact that *A.S.* was convicted for two criminal offences - use and possession of weapons -, even though it constitutes the very same act. Finally, the First Instance Court failed to prove the Defendant's intent and neglected the principle *in dubio pro reo*.

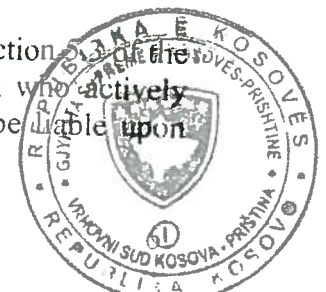
18. The State Prosecutor submits that the First Instance Court rightfully applied the provisions of UNMIK Regulations no. 2001/12 and no. 2001/7 pursuant to Article 354 of the CCK.

19. According to the enacting clause of the challenged Judgment, *A.S.* was convicted for violations of UNMIK Regulation no. 2001/12 and UNMIK Regulation no. 2001/7. The enacting clause and reasoning also contain reference to the provisions of the current law criminalizing the committed acts, i.e. Article 113 paragraph 3 of Criminal Code of Kosovo, Article 110 paragraph 1 in conjunction with Article 109 paragraph 1 points 7 and 10 of the CCK (Count 2), and Article 328 paragraph 2 of the CCK. In the First Instance Judgment, the Trial Panel stated that:

"[b]ased on section 8 of UNMIK Regulation no. 2001/12 "On Prohibition of Terrorism and Related Offences" the Special Representative of the Secretary General issued an administrative direction for the implementation of the said legal provision dated 17 April 2003 - administrative direction no. 2003/09 declaring Albanian National Army a terrorist organization as defined under section 1(f) of UNMIK regulation No. 2001/12. In section 2 it is stated that membership or other active participation shall constitute a crime punishable under section 5 of UNMIK Regulation No. 2001/12. Based on article 354 of the CCK, the panel evaluated that that particular administrative direction is still in force. The administrative direction No. 2003/9 doesn't fall under the scope of "provisions in Administrative Directions covering matters addressed in the Present Code" since the aim of that legal provision was implementation of the regulation on the prohibition of terrorism and related offences not creation of new category of criminal acts. Having considered that Albanian National Army was already declared a terrorist organization this panel was not obliged to make additional assessment on whether ANA falls under the scope of the definition of terrorist organization as defined in section 1 of UNMIK Regulation no.2001/12 on the prohibition of terrorism and related offences."<sup>11</sup>

20. *A.S.* was found guilty for sending a threatening letter under section 23 of the UNMIK Regulation no. 2001/12. This provision states that "[a]ny person who actively participates in a terrorist organization commits a criminal act and shall be liable upon

<sup>11</sup> Ibid, page 7



is to 'actively participate in a terrorist organization'. A terrorist organization is defined under Section 1.<sup>12</sup> Under the Administrative Direction no. 2003/9, "Armata Kombetare Shqiptare (AKSH)/Albanian National Army (ANA) is a terrorist organization as defined under section 1(f) of UNMIK Regulation No. 2001/12." The Direction also criminalized the membership or active participation in AKSH/ANA as crime punishable under section 5 of UNMIK Regulation no. 2001/12.

21. This Administrative Direction was issued by the Special Representative of the Secretary-General (SRSG) pursuant to section 8 of the UNMIK Regulation no. 2001/12 according to which s/he "may issue administrative directions for the implementation of the present regulation." In addition, the UNMIK Regulation no. 2001/12 was promulgated "[p]ursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999" and "taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo, and UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo". According to section 1.1 on Regulation No. 1999/1, "[a]ll legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General." There is therefore no doubt that the UNMIK Regulation and the Administrative direction fall under the category of 'regulations and subsidiary instruments' as foreseen under UNMIK Regulation no. 1999/24.<sup>13</sup> Consequently, the UNMIK Regulations and Administrative Directions were applicable in Kosovo as law applicable in Kosovo, and cannot be considered as a dispositive norm as alleged by the Defence.

22. Both UNMIK Regulations no. 2001/12 and no. 2001/7 and the Administrative direction no. 2003/09 entered into force before the commission of the criminal offences,<sup>14</sup> and were hence applicable at the critical time. As rightly specified in the First Instance Judgment, the Administrative Direction is still into force as it cannot be considered as 'covering matters addressed in the Present Code' under Article 354 of the CCK.<sup>15</sup>

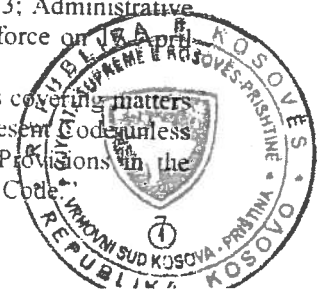
23. The Supreme Court, furthermore, concurs with the findings of the First Instance Court on the more favourable law to the Accused, hence complying with Article 2 of the

<sup>12</sup> UNMIK Regulation no. 2001/12, Section 1 Definitions "(f) "Terrorist organization" means a group of two or more persons, including unauthorised armed groups and paramilitary groups, whose objectives or activities are directed toward the commission of terrorism;"

<sup>13</sup> Under UNMIK Regulation no. 1999/24 dated 12 December 1999 on the law applicable in Kosovo, Section 1 states that "1.1 The law applicable in Kosovo shall be: (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and (b) The law in force in Kosovo on 22 March 1989. In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence."

<sup>14</sup> UNMIK Regulation no. 2001/12, section 10; UNMIK Regulation no. 2001/7 Section 13; Administrative Direction no. 2003/9, Section 3: "The present Administrative Direction shall enter into force on 22 April 2003."

<sup>15</sup> Article 354 CCK: "(1) Provisions in UNMIK Regulations and Administrative Directions covering matters addressed in the present Code shall cease to have effect upon the entry into force of the present Code unless otherwise expressly determined in the present Code or in an UNMIK Regulation. 2) Provisions in the applicable Criminal Codes shall cease to have effect upon the entry into force of the present Code."



CCK. The previous legislation, the UNMIK Regulations, was the more favourable law to A.S., and hence applicable in the case at hand.<sup>16</sup>

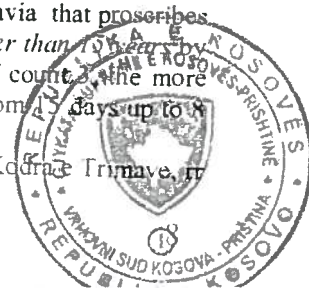
24. At last, this Court shares the views of the Defence regarding the conviction of the Defendant for two counts of weapon charge. A.S. was found guilty for unlawful possession of weapons or exploding substances under Count 2 (Terrorism contrary to section 2.1 of UNMIK Regulation no. 2001/12 on Prohibition of Terrorism and Related Offences read with section 1, letter (a), numbers vii and x) and under Count 3 (Unlawful possession of weapons contrary to sections 8.2 and 8.6 of UNMIK Regulation no. 2001/7 on the Authorization of Possession of Weapons in Kosovo). The first count relates to the shooting at the District Court of Prishtinë/Priština building on 20 July 2003 at around 21:00 with a unlawfully possessed a hand rocket launcher type ZOLA, and the second one concerns the possession of three AK 47 firearms and 4 magazines with rounds of ammunition without weapon authorization card found at A.S. residence on 23 July 2003.

25. The Supreme Court Panel is of the opinion that the act of unlawful possession of weapons and magazines falls under section 1.a (x) of UNMIK Regulation as the possession of these weapons was perpetrated "with an intent to create a serious threat to public order, to coerce a government or international organization, or to intimidate or endanger a civilian population". They were indeed recovered at A.S.'s residence only three days after the shooting at the District Court premises.<sup>17</sup> The Defendant admitted being in possession of those weapons. Finally, it has been proven that he was a member of the AKSH/ANA at the time of that criminal offence.

26. Consequently, pursuant to Article 426 paragraph 1 and Article 417 of the KCCP, and taking into consideration the benefit of the Defendant, the Supreme Court modifies *ex officio* the legal qualification of Count 3 to subsume it under Count 2. Therefore, A.S. is convicted to one count of Terrorism contrary to section 2.1 of UNMIK Regulation no. 2001/12 for both acts.

<sup>16</sup> District Court of Prishtinë/Priština, case P no. 461/2007, First Instance Judgment, 29 June 2011, page 14: "While deciding on applicable criminal law, this panel considered the provision of article 2 of CCK that reads the following: *the law in effect at the time a criminal offence was committed shall be applied to the perpetrator and further on in the event of a change in the law applicable to a given case prior to a final decision the law more favorable to the perpetrator shall apply.* Since all criminal offences were committed before 6 April 2004 when the CCK entered into force, this panel was obliged to make assessment and decide which law was more favorable to A.S.. After thorough evaluation the conclusion was reached that the previous law is more favorable to the defendant due to the fact that the possible punishment under both legislation is the same and ranges accordingly from one to ten years (count1), ten to twenty years (count2). For the count of unauthorized possession of weapons (count3) section 8.2 and 8.6 of UNMIK Regulation No. 2001/7 On the Authorization of Possession of Weapons in Kosovo" prescribes imprisonment for a term not exceeding 8 years or a fine of up to 15.000 DM or both, while article 328 par. 2 of CCK foresees for that crime a fine up to 7.500 EUR or by imprisonment of one to eight years. At that point the reference has to be made to article 38 par.1 of the Criminal Code of the Socialist Federal Republic of Yugoslavia that proscribes the following *the punishment of imprisonment may not be shorter than 15 days not longer than 10 years* by comparing these provisions there are well grounded reasons to state that in the case of count3 the more favorable law is previous UNMIK regulation since the possible punishment can range from 15 days up to 8 years whereas the CCK foresees the imprisonment starting from one year till 8 years..."

<sup>17</sup> Grey binder, district court case. A.S. volume IV, photo album of search (location: Kordace Trina, rr aventura, Prishtinë/Priština)





**The allegation that the determination of the factual state made by the First Instance Court was erroneous**

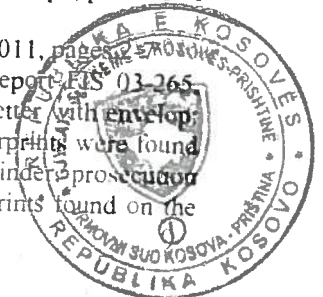
27. The Defence claims that there is no evidence that **A.S.** committed the offence of Terrorism under count 1: the fact that the letter was signed using his war pseudonym does not suffice; no graphology expertise was performed; anyone could have come into possession of the paper and envelope. The Defendant would have taken greater precaution if he were to act as such. The Defence emphasizes that the shooting occurred when no one was present in the building and that the grenade did not cause any damage.
28. The State Prosecutor puts forward that the findings of the First Instance Court are consistent with the evidence presented: expert opinion on the fingerprints identifying **A.S.** prints, awareness of the content of the letter by the Accused, the fact that **I.B.** at that time was **XXX** and member of a political party. He, in addition, submits that there are no discrepancies between the statements of anonymous witnesses and witness **F.B.** and refers to the conclusions of the Ballistic expert **H.K.** and of the Forensics expert **F.B.** regarding the damages caused by the projectile. The State Prosecutor stresses that, at the time of the shooting, **A.S.** was aware people might be present in the offices and the explosion might have been caused grievous bodily injuries and even death. The findings of the First Instance Court are justly based on the following facts which are not challenged by the Defence: at the critical time, the AKSH was a terrorist organization and criminal acts were committed on its behalf.
29. The Supreme Court of Kosovo disagrees with the Defence's contentions in respect to the establishment of the factual situation and shares the District Court's conclusions in this respect.
30. With regard to the Count 1, in the Supreme Court's opinion, all the elements of evidence presented to the Trial Panel are sufficient to conclude to the criminal liability of the Defendant. The arguments of the Defence that **A.S.** would have taken greater precaution if he were to act as such, and that anyone could have been in possession of the letter and envelope do not stand. The District Court provides detailed explanations on the assessment and weight of the evidence, including the credibility of the witnesses and the Defence's version of the events, and on the liability of **A.S.**<sup>18</sup> The Trial Panel, in its Judgment, makes reference to all the evidence available, e.g. nature and content of the letter (threats, message of political nature) signed by **K.R.R.**, Armata Kombëtare Shqiptare,<sup>19</sup> addressee of the letter **V.B.** former **XXX** (**XXX**), his testimony given in court on 17 May 2011 (notably that he was politically involved as a member of one of political parties),<sup>20</sup> fingerprints report.<sup>21</sup> The

<sup>18</sup> District Court of Prishtinë/Priština, case P no. 461/2007, First Instance Judgment, 29 June 2011, pages 6-8

<sup>19</sup> Grey binder. prosecution binder, HEP no. 521/03, Volume II: 698: original letter and envelope; pictures of letters and copies

<sup>20</sup> District Court of Prishtinë/Priština, case P no. 461/2007, minutes of main trial, 17 May 2011, pages 25-26

<sup>21</sup> Grey binder. prosecution binder, HEP no. 521/03, page 69: forensic identification report: **FIS 03-265** fingerprints filed 03-261-F, investigation file 03-11362 received on 20 July: the printed letter with envelope they found 2 prints; page 64: AFIS report investigation file 03-11362, 2 identifiable fingerprints were found on the paper sheet, the envelope was not found suitable for AFIS latent prints; Grey binder, prosecution binder, HEP no. 521.03, Volume II, page 395, forensic identification report: the fingerprints found on the



fact that a graphologist expertise was not performed does not lessen the conclusions of the First Instance Court. As pointed out in the contested Judgment, the expertise was performed by a professional expert with necessary experience, and is thus a valuable piece of evidence. The challenged Judgment also contains a reasoning on the nature of the act committed by **A.S.** and his intent to perpetrate the offence.

31. As for Counts 2 and 3, the Supreme Court of Kosovo again considers that the reasoning of the First Instance Judgment contains all the necessary justifications to conclude that the offences were perpetrated by the Defendant. It is noted that **A.S.** pleaded guilty on Count 3 (weapon charge) and therefore the Supreme Court need not to go through this point. In respect to Count 2 (terrorism charge), the First Instance Court thoroughly assessed the credibility of the witnesses and their statements, as well as the Defendant's account of the event. The Supreme Court of Kosovo fully endorses the first instance findings on the credibility and reliability of the Anonymous witness and the other witnesses.<sup>22</sup> This Panel also shares the views of the District Court as for the absence of contradictions or discrepancies between the witness statements. Anonymous witness gave a precise account of what happened on 20 July 2003 in the vicinity of the court premises and also identified in court the Defendant as the person he saw on that critical night. The Supreme Court of Kosovo acknowledges that the statement of Witness **Z.B.** cannot be considered as evidence of high value given the witness mentioned that he has forgotten the details of that very evening. In this previous statement, he also admitted that he could not remember the other details because the person was running very fast and it was dark. This witness mentioned in his statement that "I saw a person of about 25-27 years old coming from the right side of the street (from District Court) and he was running really fast, he didn't say anything he just continued running towards MEB bank (UCK street)" and provided a physical description of the person he saw that corresponds to the one given by the Anonymous witness.<sup>23</sup> He stated that he heard the explosion at about 21.05-21.10 hrs. He saw the person "after I heard the explosion for which I don't know where it occurred, immediately after a minute I went in front of yard's door and on the street". It rests that he confirmed his previous statement.<sup>24</sup> The Supreme Court of Kosovo furthermore observes that more than eight years have elapsed between the taking of this testimony and his statement in court. His lapse of memory at the time of his testimony in court is therefore understandable.

32. This Court concedes that a slight discrepancy may arise as to the direction taken by the person identified as **A.S.** on that critical night. Witness **Z.B.**

front side of the letter addressed to **i.B.** found a match with the prints of **K.K.**; fingerprints belonging to **M.K.** were found on the letter addressed to **F.i.** Grey binder, prosecution binder, HEP no 521/03, Volume II, victim statement and documents on the threatening letter against **i.B.** page 461 and following; Grey binder, prosecution binder, HEP no. 521/03, Volume II, pages 395-392, pages 373-365; forensic identification report, case file no. 03-211-F, 7 July 2003,

<sup>22</sup> Blue binder KA 135/2011 **A.S.** from indictment, District Court of Prishtinë/Prishtina, case P no. 461/2007, minutes 11 May 2011, Anonymous witness, pages 3 and following

<sup>23</sup> Grey binder, prosecution binder, HEP no. 521/03, volume I, pages 294-290

<sup>24</sup> District Court of Prishtinë/Prishtina, case P no. 461/2007, First Instance Judgment, 29 June 2011, page 10:

"The statement of this witness is not detailed as the statement of the anonymous witness and lacks detail namely the identification of the defendant, this panel considered it as reliable. Witness **Z.B.** provided a description of the young man who departed the crime spot that matches the description provided by the anonymous witness." Blue binder KA 135/2011 **A.S.** from indictment, main trial 2 June 2011, pages 12-15, witness **Z.B.**



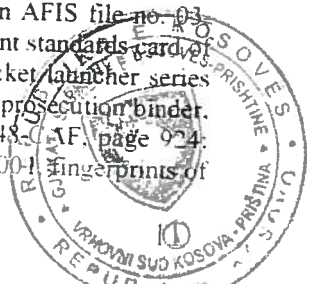
stated that the person was coming from the right side of the street towards MEB bank (UCK street), whereas Anonymous witness mentioned in court that he was about 200 meters away from the District court buildings, he immediately went outside to find out behind the building where the bus stop is located, he saw someone coming from the direction of the court building and he followed him with his eyes until he went near the mosque. He also stated that the place was partly lit by the road and by the shop lights, and that 5 minutes elapsed between the explosion and the moment he saw *Dj...*<sup>25</sup> The Supreme Court is of the opinion that the District Court Panel clearly explained this discrepancy in its reasoning. Both witnesses stated having seen the person on the same road side (that leads either to the Mosque or to UCK street). The confusion created in the vicinity that arose from the blast at the court building is to be taken into consideration when assessing the accuracy of the witness statements. Moreover, the undersigned Panel notes that it cannot be excluded that the Defendant started walking towards one direction and changed his mind to take another one.

33. The Supreme Court of Kosovo also disagrees with the Defence's contention in respect to the fact that the shooting occurred when no one was present in the building and that the grenade did not cause any damage. Even though the event occurred at night, *A.S.* was fully aware of the possible damages that may occur and of the possibility that persons could be in the court premises at that time. Besides, the Defendant knew that the surrounded area of the District Court was a dense place with several shops. The awareness of *A.S.* is also ascertained by the use of such a dangerous weapon, as attested by the expertise report, forensic reports and the testimonies of the expert witnesses in court.<sup>26</sup> The expertise concluded that one fingerprint taken from the body of the rocket launcher used to shoot at the court premises matches the right thumb fingerprints of *K.K.*<sup>27</sup> The fact that no one was injured or killed does not exclude the existence or intent of the Defendant to commit these offences or his awareness of the possible consequences of his actions. Therefore, the Supreme Court of Kosovo fully endorses the conclusions reached by the First Instance Court in this regard.

<sup>25</sup> Blue binder KA 135/2011 *A.S.* from indictment, District Court of Prishtinë/Priština, case P no. 461/2007, minutes of main trial 11 May 2011, Anonymous witness, page 3 and following; minutes of 27 June 2011, page 2

<sup>26</sup> Grey binder, district court case, *A.S.* volume IV, divider 5, forensic identification report, case file no. 03-11371; Grey binder, prosecution binder, HEP no. 521/03, Volume II, green divider, photo album, FIS file no. 03-265, dated 20 July 2003, photo album of the crime scene; Blue binder KA 135/2011 *A.S.* from indictment, District Court of Prishtinë/Priština, case P no. 461/2007, minutes of main trial 2 June 2011, pages 3-8, testimony of ballistic expert *H.K.* minutes of main trial 9 June 2011, pages 7 and following, testimony of expert witness *F.B.* minutes of main trial 9 June 2011, pages 2 and following, testimony of witness *F.B.* the court administrator

<sup>27</sup> Grey binder, prosecution binder, HEP no. 521/03, page 57: Finger examination report dated 22 July 2003, 4 fingerprints were found on the rocket launcher. Fingerprints 3 and 4 were unidentifiable; F-1 found a match - right thumb - of *K.K.* born on 13 February 1978; Fingerprints expert opinion AFIS file no. 03-148-CAF, page 54: examination comparison of 4 transparent fingerprints tapes and 10 print standards card of *K.K.* only F-1 is suitable for examination; F-1 taken from the body of the rocket launcher series 8814 1233 matches with the fingerprints of *K.K.* his right thumb; Grey binder, prosecution binder, HEP no 521/03, volume III, page 932: Fingerprints expert opinion AFIS file no. 03-148-CAF, page 924: document from Bondsteel detention facility, Kosovo, no. KS015282, dated 18 February 2004. Fingerprints of *K.K.* date of birth *xxx*



**The challenge of the decision on criminal sanctions**

34. The Defence alleges that the decision on criminal sanctions is incorrect as a consequence of the aforesaid violations. Besides, the First Instance Court failed to consider other mitigating circumstances and wrongfully reached the findings that the vulnerability of the protected property, as an element of the *corpus delicti*, is considered as an aggravating circumstance.

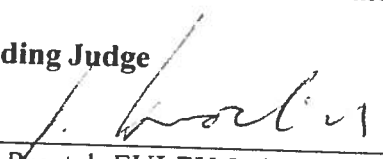
35. The State Prosecutor presents that the First Instance Court took into account all the circumstances in respect to the calculation of type and degree of punishment in accordance with Article 34 of the CCK.

36. The First Instance Court considered the following mitigating circumstances: relatively young age of the Defendant at the time the criminal acts were committed, the fact that "he was relatively inexperienced young man who easily was targeted by dangerous ideology of terrorism as the means of solving political conflicts", the time elapsed since the commission of the offences. The Trial Panel also took into account the aggravating circumstances: high intensity of danger to the protected values to wit substantial risk to health and life of many people and gravely jeopardize to property of significant value.<sup>28</sup> The challenged Judgment also refers to the fact that **A.S.** went into hiding for several years. The First Instance Court moreover provides a lengthy reasoning on these circumstances and on the imposition of the aggregated punishment of ten years and one month onto the Defendant. The Supreme Court of Kosovo thus holds that the First Instance Court rightfully decided on the punishment to be imposed, in accordance with Article 64 of the PCCK.

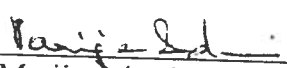
37. Having regard to the above, the Motion to terminate detention on remand filed by the Defence is rejected as unfounded.

38. It has been decided as in the enacting clause.


**Presiding Judge**

  
Horst Proetel, EULEX Judge

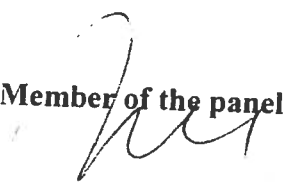
**Member of the panel**

  
Marije Ademi, Supreme Court Judge

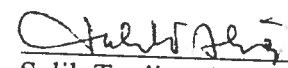
**Member of the panel**

  
Tore Thomassen, EULEX Judge

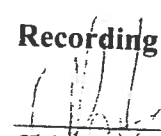
**Member of the panel**

  
Valdete Daka, Supreme Court Judge

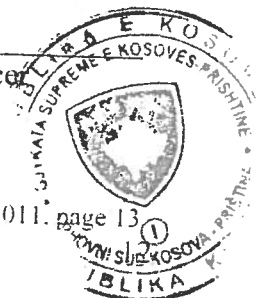
**Member of the panel**

  
Salih Toplica, Supreme Court Judge

**Recording clerk**

  
Chiara Rojek, Legal officer

<sup>28</sup> District Court of Prishtinë/Priština, case P no. 461/2007, First Instance Judgment, 29 June 2011, page 13



**SUPREME COURT OF KOSOVO**

**Ap-Kz no. 166/2012**

**4 December 2012**

**Prishtinë/Priština**