

DISTRICT COURT OF PRISHTINË/PRIŠTINA

P. No.: 673/2012

Date: 23th November 2012

**IN THE NAME OF THE PEOPLE**

The District Court of PRISHTINË/PRIŠTINA through the trial panel composed of EULEX Judge Vitor Hugo Pardal, as presiding, EULEX Judge Cornelia Peeck and local Kosovo Judge Nenad Lazic as panel members, assisted by Legal Assistant Murlan Prizreni and Robert Abercrombie as the Court Recorder, in the criminal case against:

**ALEKSANDAR BULATOVIC**, nickname Acka, son of [REDACTED] and [REDACTED], born on the 28<sup>th</sup> February 1975 in Pristina, Kosovo, male, residing in Nis, Serbia as well as in Fushe Kosova/Kosovo Polje, driver, with secondary school, with poor financial conditions, married and father of three children, national Serb with Montenegro nationality, on remand since the last 13<sup>th</sup> August 2012,

accused for having committed the criminal **Offense of war crime against the civilian population** contrary to articles 22 and 142 of the Criminal code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under articles 23 and 121, paragraph 1 of the Criminal Code of Kosovo (CCK),

After having held 8 public trial sessions respectively on the 5, 6, 7, 8, 9, 20, 22 and 23 November 2012, in the presence of the defendant and his two Defense Counsels Mr. Miodrag Brkljac and Mr.

Zivojin Jokanovic, together with the SPRK Prosecutor Mr. Charles Hardaway and Sh [REDACTED] I [REDACTED] as injured party,

After the trial panel's deliberation and voting hold on the 22<sup>nd</sup> November 2012, pursuant to articles 388.1 and 390.2 of the KCCP issues the following

## JUDGMENT

Pursuant to article 390 paragraph 2 of the KCCP, the accused ALEKSANDAR BUATOVIC with personal data listed above, is

### ACQUITTED

of criminal charge of war crime against the civilian population contrary to articles 22 and 142 of the Criminal code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under articles 23 and 121, paragraph 1 of the Criminal Code of Kosovo (CCK), because in concrete it has not been proven that the accused have committed the act with which he has been charged, as follows:

*“In violation of article 3 common to the four Geneva Conventions of 12 August 1949 and article 13.2 of Protocol II of 8 June 1977, Additional to the 1949 Geneva Conventions, all rules of international law effective at the time of the internal armed conflict in Kosovo and at all times relevant to the present application, Aleksander Bulatovic in his capacity of member of the Serbian Police or paramilitary in co-perpetration with P [REDACTED] B [REDACTED], M [REDACTED] P [REDACTED] and an undefined number of so far unidentified members of the Serbian Police or paramilitary, violated the bodily integrity and health of Xh [REDACTED] I [REDACTED] a Kosovo Albanian civilian from Fushe Kosovo/Kosovo Polje, by repeatedly beating him and by slitting his throat; Aleksander Bulatovic then abducted the victim, whose remains were later found in a grave in Vragoli/Vragolja village, near Fushe Kosova/Kosovo Polje on 8 April 1999.”*

Pursuant to article 103 paragraph 1 of the KCCP, the budgetary resources shall pay the costs of this criminal procedure as listed by article 99, paragraphs 1 and 2, subparagraphs 1 to 5.

Pursuant to article 393.2.1 KCCP, the court determines the immediate cancelation of current detention on remand and thus, hereby is ordered the immediate release of the defendant.

## REASONING

### **Procedural background**

On the 23<sup>rd</sup> August 2012 the SPRK Prosecutor Mr. Charles Hardaway filed an indictment against Aleksandar Bulatovic suggesting documentary evidence to be read and 4 witnesses to be examined in order to support the charge of war crime against the civilian population contrary to articles 22 and 142 of the Criminal code of the Socialist Federal Republic of Yugoslavia (CCSFRY), currently criminalized under articles 23 and 121, paragraph 1 of the Criminal Code of Kosovo (CCK) with which the defendant has been indicted for.

The defense has proposed 4 witnesses to be examined in the main trial, but has withdrawn two of them.

On the 3<sup>rd</sup> October 2012 the Confirmation judge confirmed the indictment in its entirety.

Ordinary proceedings were followed on this case within the main trial.

Eight main trial sessions have been hold on the 5 to 9, 20, 22 and 23 November 2012, being the judgment orally announced during the last one.

The defendant produced a statement whilst examined at the trial, in line with article 372 KCCP and he also provided closing statements as well as both defense counsels, the injured party and the SPRK Prosecutor did.

The defendant has been present during the announcement of the final judgment.

### **Jurisdiction of this Court**

The judges composing this panel are competent to adjudicate this case, having the court the material and territorial jurisdiction, as per article 33 CCK and articles 21 and 23.1.i) KCCP;

following a delegated decision of the President of the assembly of EULEX Judges dated 9<sup>th</sup> October 2012 to assign the undersigning EULEX Judges for adjudicating this case; the local judge was appointed by a ruling of the President of the District court of Prishtinë/Priština dated 16<sup>th</sup> October 2012, following the applicable roster in force at the Pristina DC. No objections have been raised by the parties during the trial sessions. Thus, all the undersigning panel members are the competent, and in accordance to article 3.1 LoJAF (Law 03/L-53).

### **Administered Evidence**

The following set of evidence was considered relevant to the final deliberation and further judgment.

Written exhibits: The following list of documentary evidence was considered:

- 4 Witness's statements of B [REDACTED] Sh [REDACTED], dated 8Jun2000, 14Feb2008, 17Mar2008 and 31Jul2008;
- 2 witness's statements of L [REDACTED] Sh [REDACTED], dated 4Mar2008 and 17Mar2008;
- Witness's statements of M [REDACTED] M [REDACTED] dated 29Jan2008, Sh [REDACTED] I [REDACTED] dated 30Jan2008, B [REDACTED] T [REDACTED] dated 15Feb2008;
- Previous statement of the defendant before the SPRK dated 16Aug2012;
- Witness's statement of M [REDACTED] B [REDACTED] examined by Swiss authorities dated 7July2009;
- Autopsy report of Xh [REDACTED] I [REDACTED] dated 3Dez1999;
- Commission for war crimes and missing person's report, dated 1Dec1999 including minutes of opening a mass grave in Vragoli/Vragolje and a statement of B [REDACTED] Sh [REDACTED] dated 11Aug1999;
- Military certificate of the defendant's mobilization dated 17Aug2012

Witnesses: statements produced at the main trial by Sh [redacted] I [redacted] as injured party, B [redacted] Sh [redacted], M [redacted] B [redacted], M [redacted] M [redacted], L [redacted] Sh [redacted], N [redacted] P [redacted] and M [redacted] K [redacted].

Defendant: statement provided in main trial.

## Statement of Grounds

### 1. Factual Grounds:

a. *The following relevant facts have been established as PROVED:*

1. *On 8 April 1999 an undefined number of unidentified members of the Serbian Police or paramilitary, violated the bodily integrity and health of Xh [redacted] I [redacted] a Kosovo Albanian civilian from Fushe Kosovo/Kosovo Polje, by repeatedly beating him and by slitting his throat;*
2. *Xh [redacted] I [redacted] was abducted and his remains were later found in a grave in Vragoli/Vragolja village, near Fushe Kosova/Kosovo Polje.*
3. *Aleksandar Bulatovic has been member of Yugoslavian Army in Military post 1351, Military Command in Pristina from 25Mar1999 to 14Jun1999.*

b. *The following relevant facts have been established as NOT BEEN PROVED:*

*Aleksander Bulatovic in his capacity of member of the army as above defined in 3 or as member of the Serbian Police or paramilitary, has taken part on the facts as described above in 1 and 2.*

### 2. Findings:

The charge in this case is basically grounded on witness's statements and no material evidence has been produced apart from a military certificate. The victim's autopsy report may be relevant

for other facts but not for the charge at stake: *violation of bodily integrity and health of Xh [REDACTED] I [REDACTED] by repeatedly beating him and by slitting his throat; Aleksander Bulatovic then abducted the victim, whose remains were later found in a grave.*

The panel considered those further facts as much as they could help to understand and reconstruct what happened to Xh [REDACTED] I [REDACTED].

The commission report dated 1<sup>st</sup> Dec 1999 consists further in the statement of B [REDACTED] Sh [REDACTED] as a witness and minutes of the examination. The minutes of the exhumation have had the same utility as the aforementioned autopsy report.

The statements provided by the injured party, Sh [REDACTED] I [REDACTED], and by the witness M [REDACTED] M [REDACTED] have considered. However these statements are less relevant since all they present indirect information collected from direct witnesses which all have had the opportunity to provide a direct statement before the panel during the trial. The previous statement of B [REDACTED] T [REDACTED] was not provided before the panel and regards exclusively to executing an inhumation, which, as explained, is not useful for evidentiary purposes in this case.

In the case at stake, as it was exposed along the indictment, this panel found two main factual issues: on the one hand, the facts as they happened on the 8<sup>th</sup> April 1999 in Fushe Kosovo/Kosovo Polje directly regarding to Xh [REDACTED] I [REDACTED]; on the other hand, the disputed presence of the defendant at the crime scene and his eventual participation on the facts. To clarify both the panel had a set of witnesses, namely B [REDACTED] Sh [REDACTED], D [REDACTED] Sh [REDACTED], M [REDACTED] B [REDACTED], N [REDACTED] P [REDACTED] and M [REDACTED] K [REDACTED], as well as the defendant himself.

From all those witnesses, and considering now all the statements gathered within the case file (being it provided during the investigation, being it provided at the main trial) B [REDACTED] Sh [REDACTED] has been the only one affirming to have seen the defendant beating Xh [REDACTED] I [REDACTED], together with other 3 individuals. He declared so before the investigative authorities on the 14 Feb 2008 and on the 17 Mar 2008. He never affirmed having seen the defendant slitting Xh [REDACTED]'s throat. However

this crucial fact that has been affirmed on the 14 Feb 2008 and on the 17 Mar 2008 is not part of other statements provided by the same witness, specifically on the 8 Jun 2000, 31 Jul 2008 and 11 Aug 1999 as brought out by the investigation.

Considering the entirety of those statements provided by B [REDACTED] Sh [REDACTED] and analyzing them accurately, the panel does not consider them as necessarily contradictory. The facts narrated by B [REDACTED] Sh [REDACTED] concern to at least two - if not three - different situations in different times, in spite of being in the same place and concerning the same victim. This was advised by B [REDACTED] Sh [REDACTED] for several times along the years in the statements he has successively given. On the other hand, B [REDACTED] Sh [REDACTED] provided several sort of statements, generally pointing all Albanian neighbors as victims of anyone who was Serbian in the neighborhood, rather than a precise criminal report or complaint against specific individuals regarding specific actions. Due attention has not been given, due clarification has not been taken from this witness and the outcome was a melting pot of facts all of them attributed to 8<sup>th</sup> April 1999.

There is a fundamental contradiction in his previous statements of 14 Feb 2008 and on the 17 Mar 2008 and what has been said during the main trial. The witness B [REDACTED] Sh [REDACTED] affirmed before the panel that he never saw the defendant beating the victim or slitting his throat. Although this absolute contradiction could be somehow explained in some details, some others are materially inexplicable. Without any corroborating evidence, the panel cannot rely on the statement of this witness.

Being B [REDACTED] Sh [REDACTED] the only witness who allegedly saw the victim being beaten by the defendant, this important fact cannot be considered as evidenced by the trial panel.

However these considerations are not a definitive answer to this case. The panel considered all facts having in mind an alleged criminal action in co-perpetration with other individuals as being part of the indictment. Therefore the defendant could be factually connected to the paramilitary

and somehow contributing to the actions as narrated not only by B■■■■ Sh■■■ but also by L■■■■ Sh■■■ and M■■■■ B■■■, as eyewitness of some relevant facts.

For this effect it has been relevant whether the defendant was present in Fushe Kosova/ Kosovo Polje close to the victim's residence while those criminal acts have been committed. According to L■■■■ Sh■■■ and B■■■■ Sh■■■ he was there threatening B■■■■ Sh■■■. According to this last he was even participating in the actions, wearing a "paramilitary" uniform, and with weapons, guarding the perpetrators in one situation, threatening him and beating the victim in another. According to N■■■■ P■■■■ and M■■■■ K■■■, in line with the stated by the defendant, this one was not present, but in Pristina instead.

The witness M■■■■ B■■■ never connected the defendant with the actions she has narrated in trial or before, describing several other individuals as the perpetrators and never placing the defendant at the crime scene. In a different occasion, L■■■■ B■■■ refers to threats made by the defendant but she does not associate him to any violent act at that moment. Connecting the defendant with the masked and/or bearded "paramilitary" at the crime scene and somehow contributing for a common violent action there is only and again the previous statements of B■■■■ Sh■■■ which even have not been confirmed at the main trial, by him or by any other witness. Taking into consideration the aforementioned lack of credibility of those previous statements, the necessary connection between a possible presence of the defendant at the crime scene and the violent acts of beating, slitting throat or abducting must be considered as not proved at all. Therefore, being present in the crime scene would never be a sufficient link to the described acts committed by the direct perpetrators, and therefore turns this into a redundant fact for the outcome of this case.

Considering all aforementioned grounds it was as decided as in the enacting clause.



**Legal remedy:** This Judgment may be appealed by the Prosecution before the Supreme Court of Kosovo through the District Court of Pristina within 15 (fifteen) days of the day the full written judgment has been served to the parties, according to Article 398, paragraph 1 of KCCP.

Pristina 23<sup>rd</sup> November 2012

Vitor Hugo Pardal

Presiding Judge

Cornelie Peeck

Panel member

Nenad Lazic

Panel member

Robert Abercrombie

Court Recorder