



AP nr. 8/2001

THE SUPREME COURT OF KOSOVO

The Supreme Court of Kosovo in its panel composed of international judges Antti Ruotsalainen, presiding and presenting judge, members Renate Winter and Guy Van Craen, and recording clerk Allten Murseli, in criminal case against the accused Milos Jokic from Vitina charged for the criminal act of war crimes against civilian population under Article 142 of the CLY, deciding upon the appeal of Branko Stanic, Zivojin Jokanovic and Stoja Djuricic, the defense counsels of the accused, filed against the verdict P. nr. 27/2000 of the District Court of Gjilan, dated 20.9.2000, in the panel session held pursuant to Article 371 of the LCP, on 26.4.2001 brought the following

DECISION

The appeals of the defense counsels of Milos Jokic, B [REDACTED] S [REDACTED], Z [REDACTED] J [REDACTED] and S [REDACTED] D [REDACTED], are accepted and the verdict P. nr. 27/2000 from 20.9.2000 of the District Court of Gjilan is overruled and the case is returned to the court of first instance for retrial.

REASONING

The District Court of Gjilan in its verdict P. nr. 27/2000 on 20.9.2000 has found Milos Jokic guilty of war crimes against civilian population under Article 142 of the CLY and convicted him into twenty (20) years of imprisonment including the time spent in detention from 26.8.1999.

Separate appeals were filed against the verdict of the first instance court by the defense counsels B [REDACTED] S [REDACTED], Z [REDACTED] J [REDACTED] and S [REDACTED] D [REDACTED] on the grounds of significant violations of the provisions of the criminal procedure law, significant violations of the provisions of criminal law, wrongful and incomplete establishment of facts and the decision on sentence, with the proposal that the challenged verdict should be revised, the charges against the accused be dropped or the verdict be overruled and the case returned to the court of first instance for a retrial.

The Public Prosecutor of Kosovo has by means of his motion PPA. Nr. 1/2001 dated 20 March 2001 proposed that the appeal of the defense counsels be rejected as ungrounded and the verdict of the District court of Gjilan P. nr. 27/2000 dated 18.09.2000 is upheld.

The Supreme Court has reviewed the case file and examined the appealed verdict pursuant to Article 376, Paragraph 1 of LCP and assessed the allegations of the appeal, and found the following:

The appeals the defense counsels of Milos Jokic are grounded.

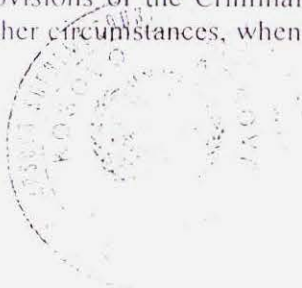
Defense counsel Branko Stanic in his appeal referred to the Article 347 of the LCP, which requires the court to assess individually whether the fact has been proved. It is not enough to refer to the witness statements given in the main trial. The verdict does not contain the crucial facts for sentencing. The witness statements insufficiently corroborate the criminal charges. The court refused to hear witnesses named by the defense. In addition 34 people, who are still living in Vitina and who have signed a motion concerning the person of the accused, may have essential information of the location and living conditions of the accused. The presence of Milos Jokic in Vrbane on the 30 May 1999 was contested by S [REDACTED] D [REDACTED], S [REDACTED] P [REDACTED], Z [REDACTED] D [REDACTED] M [REDACTED] D [REDACTED] and S [REDACTED] D [REDACTED]. These people gave their statements in the investigation, but were not heard in the main trial. The court did not mention in the verdict which of the facts have been proven and which have remained unproven and did not even take into consideration the statements given by the aforementioned Serbian witnesses. The reason why it refused to accept individual proposal of a party concerning the presentation of evidence may lead to the annulment of the verdict ex officio.

The decision furthermore excluded explanation of committing the crime in collaboration. It would have been quite logical to try the cases of Bozidar Stojanovic and Agim Ajeti together with Milos Jokic assuming that those two were the accomplices.

Defense Counsel Živojin Jokanović in his appeal remarks that the enacting clause of the verdict is unclear and contradictory. Item 1 refers to a group of people and the next items only deal with the accused. No assessment has been made in relation to the reliability of the contradictory statements of witnesses. Pursuant to the Procedure Law the comparison of the evidence has to be included in the reasoning. It is not enough to quote certain witnesses. There is another criminal case concerning Bozidar Stojanovic and Agim Ajeti where they were found guilty of ruthless and intense murder of R [REDACTED] B [REDACTED]. Therefore, under these circumstances Milos Jokic cannot be accused for the same offence. There is no evidence that Milos Jokic was involved in shooting and deporting of Albanians. The reason why the nominated witnesses were not accepted for hearing has not been explained.

Defense Counsel Stoja Djuricic in her appeal was referring to an official letter of the UNMIK Criminal Investigation Unit stating that the investigating judge did not allow to investigate the participation of Milos Jokic in the criminal case of the murder of R [REDACTED] B [REDACTED]. The witnesses heard by the court of first instance gave inconsistent statements in the main trial. According to the common sense it is not possible to recognize a person in uniform grabbing a victim by his hair and hitting him from the distance of 70 meters, as M [REDACTED] E [REDACTED] has told.

Upon assessment of all allegations from the appeal, the Supreme Court finds that the factual situation was wrongfully and insufficiently established, the first instance court did not properly apply the provisions of the Criminal Law, and thereby failed to establish important facts and other circumstances, when deciding that all elements of



the criminal act of war crimes against the civilian population pursuant to Article 142 of the CLY are present and the accused is liable for the stated criminal act.

The Supreme Court has found that there is more evidence, which can significantly influence the outcome of the trial in this case. Thus, it finds it necessary to complement the existing evidence with other available evidence, which would contribute to the further clarification of the incident.

The Supreme Court exhorts the court of first instance to re-examine the witnesses S [redacted] D [redacted] S [redacted] P [redacted] Z [redacted] D [redacted] M [redacted] D [redacted] and S [redacted] D [redacted] on the whereabouts of the defendant during the critical time.

Therefore, pursuant to the provision of Article 385 of LCP, the Supreme Court is returning the case to the District Court of Gjilan with the instructions to obtain adequate evidence of the criminal offense. After this additional information is collected, the Court will decide on the evidence and the guilt of the accused, comparing the weight of the evidence obtained.

Based on the above-mentioned and as provided for by Article 397 of LCP, applied in accordance with UNMIK Regulation 1999/24, it has been decided as stipulated in the enacting clause of this decision.

The detention of the accused Milos Jokic, which commenced on 1 September 1999, is extended until the court of first instance in its verdict decides on detention.

THE SUPREME COURT OF KOSOVO

Allten Murseli
The Recording Clerk

Antti Ruotsalainen
The President of the Panel



SAKTËSINË E KOPJES E VËRTETON
DUEHEQËSIT SHKRIMTARËS SE GJYKATËS
TAKËSIT KOPIJE POTVRDIJE
RUKOVODIOČ SUDSKE PISARNE