

THE SUPREME COURT OF KOSOVO, in the panel session composed of judges Renate Winter, international judge as presiding judge, Leonard Assira, international judge, and Zait Xhemajli, as members, in presence of the professional collaborator Muhamet Dabiqaj as the recording clerk, in criminal case against the accused Momcilo Trajkovic from Kamenica, for criminal act of war crimes against civilian population as per Article 142 of CLY, for the criminal act of attempted murder pursuant to Article 30, paragraph 1 in connection with Article 19 of CLY and for criminal act of illegal possession of weapons and explosive materials pursuant to article 199, paragraph 3 in relation with paragraph 1 of CLK, deciding upon the appeals lodged by the defense counsels of the accused against the verdict of the District Court of Gjilan, P.nr.68/2000 dated 06.03.2001, in the session held on 30.11.2001, brings this:

DECISION ACT

The appeals of the defense counsels are approved.

The verdict of the District Court of Gjilan, P. No. 68/2000, dated 06.03.2001 is overruled and the case is returned to the same court for retrial.

The detention of the accused Momcilo Trajkovic is extended on the basis of Article 191 paragraph 2 item 1 of Criminal Procedure Code.

REASONING

The District Court of Gjilan in its verdict number P.nr.68/2000, dated 06.03.2000 has found the defendant guilty for the criminal act of:

I.-attempted murder on 27 June 1999, pursuant to Article 30, paragraph 1 in connection with article 19 of CLY

II -illegal possession of weapons and explosive material in Kamenica until 7 september 1999, pursuant to Article 199, paragraph 3 in relation with paragraph.1 of CLK

III- qualified war crimes under article 142 of the CLY committed on:

- 1 April 1999, injuries with firearms of Mehmet Rambaja
- 11 April 1999 in Kamenica, arson of a house and a bus of Hajdar Ramabaja
- 17 April 1999 in Kamenica, injuries with firearms of Xhemail Limani
- 17 April 1999 in village Krileve, kidnapping and maltreatment of Haqif Demolli
- 18 April 1999, creation of panic and terror and eviction of civilian population in villages of Strezovc, Leshtar, Rahovice, Krileve, and murder of Ahmet Mehmeti, Arsim Isufi, Shemsi isufi and Ramadan Kastrati
- 18 April 1999 in village Krileve, injuries with firearms of Zeqir Demolli, Avdyl Demolli and Bahtije Sinani
- 19 April 1999, in Petrovc, eviction by force of civilian population, arson of houses and disappearance of Murtez Sherifi and Fadil Sherifi
- 4 may 1999 in Kamenice, injuries of Arif Kraniqi
- 11 May 1999, surrounding of Hogosht, Kopernice, Shispanice, Kranidell, upper karaqeve, lower Karaqeve, Rogocice, Hodonovc, Topanice and Koretin willages , with the list of names already compiled, murder of Ramadan Latifaj, Mehmet Sabedinaj, Ismail Ismajli, Nevzad Kryeziu, Asllan Thaci
- 17 May 1999, in willage Topanice and in Kamenice, kidnapping, maltreatments and torture of Rexhep Morina

The District Court of Gjilan has qualified these acts as crimes against humanity.

The same has acquitted the accused for the criminal act, qualified war crimes under article 142 of CLY according to the indictment of 21 September 2000 on:

- 1 April 1999, in Kamenica, injuries of raif Ramabaja with firearms
- 3 April 1999, in Kamenica, injuries of Ibrahim Berisha and Abdullah Berisha, with a hand grenade thrown in their backyard
- 17 April 1999, in Kamenica, injuries with firearms of Gezil Limani and Vlera Shabani
- 1 May 1999 at the place named Qafa and Kopernices, murder of emin Jerliu and Ramadan Sijarina
- 11 may 1999in the willage Hodonovc, injuries of Shefki Berisha and Hajrije Shurdani while traveling in their vehicle
- 20 may 1999 in the willage Koretin, injuries of Sinan Selishta, Halime Hazliu and Xhavit Ramadani.

The District Court of Gjilan has decided to pronounce to the accused an integrated sentence of 20 (twenty) years of imprisonment, in which the time spent in detention from 7 September 1999 will be included. The accused is obliged to pay the cost of criminal proceedings.

The defense counsels of the defendant have lodged appeals against the verdict of the District Court of Gjilan, because of essential violation of the provisions of the criminal procedure, violation of the criminal law, wrongfully and incompletely established state of facts and the decision on punishment, proposing to the Supreme Court to change the verdict of the District Court and to acquit the accused or the contested verdict be overruled and the case be returned to the Court of first instance for re-trial before another panel with a different composition.

The Public Prosecutor of Kosovo has by means of motion PPA.Nr.147/2001 dated 13.07.2001 proposed that the Supreme Court to reject the appeals lodged by the Defense Counsels and to upheld the verdict of the District Court of Gjilan, no.68/2000 dated 06.03.2001.

At the panel session participated the accused Momcilo Trajkoviq, his defense counsels Zhivojin Jokanovic and Dragana Markovic who remained in their appeals.

The International Prosecutor Michael Hartmann, assigned to the Office of the Public Prosecutor, submitted a detailed document and was of the opinion that the verdict does not support the convictions for war crimes or crimes against humanity, attempted murder and illegal possession of weapons.

Accordingly, he proposed that the Supreme Court should cancel the conviction of the accused because the state of facts was erroneously established in relation to all charges and because there were essential violations of the principles of criminal procedure and to return the case for retrial. He furthermore proposed to re – evaluate, the detention, so that only the provisions of the LCP Article 191, paragraph 2, items 1 and 2 apply.

The Supreme Court examined all the case materials, deliberated the appealed verdict pursuant to Article 376 paragraph 1 of the LCP, estimated the appeals and asserted:

The appeals lodged by the defense counsels of the accused are grounded.

The Supreme Court found that the state of facts was erroneously established in relation to all charges as there is no direct or conclusive evidence that the accused acted personally or gave orders leading to the alleged crimes or that he should be held liable under command

responsibility duties concerning the above – mentioned crimes, nor that there is evidence stated his deliberate intention required in the case of attempted murder nor of the no – reasoned finding of shooting from a window.

Furthermore the Supreme Court found that there were essential violation of the principle of criminal procedure, among which the most important are the failure to call essential witnesses properly proposed by the defense on the issue of responsibility, the improper use of investigation minutes in violation of Article 333 of Criminal Procedure Code, the violation of the principle of the right of defense to be present in all investigative hearings and in the failure to render a comprehensible verdict that assesses each evidence alone and in connection to others.

During the retrial, the court of first instance should therefore assess the reliability and credibility of witnesses, the issue of the accused personal responsibility on participation in the crimes alleged by hearing additional witnesses brought forward by the defense appeals, to be able to establish eventually a clear, non contradictory state of facts and implement the criminal law properly by taking a decision based n the law with a clear and complete reasoning.

According to UNMIK Regulation 1999/24 and 2000/59 the European Convention on Human Rights is applicable. In this regard, the duration of pre – trial detention has to be evaluated ex – officio.

As ruled in the enacting clause of this decision act, pre – trial detention can now only be based on Article 191, paragraph 2, item 1. Article 191 paragraph 2 item 2 does not apply any more, due to the time elapsed since the events have taken place so that traces cannot be destroyed anymore, nor influencing of witnesses would make sense in a state of procedure where any fact is known at a broad scale. Therefore, the competent court will have to thoroughly evaluate the existing evidence, the already very long lasting period in pre – trial detention and other possibilities to secure the trial and eventually possible execution of punishment.

Based on the aforementioned and based in Article 387, paragraph 1 of the LCP it was decided as in the enacting clause of this Decision Act.

SUPREME COURT OF KOSOVA IN PRISHTINA
AP.nr.145/2001 dated 30.11.2001

Recording clerk

Muhamet Dabiqaj

Presiding judge

Renate Winter